Title 19. Environmental Quality Code

Chapter 1
General Provisions

Part 1
Organization

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

Enacted by Chapter 112, 1991 General Session

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

Enacted by Chapter 112, 1991 General Session

19-1-103 Definitions.
As used in this title:
(1) "Department" means the Department of Environmental Quality.
(2) "Executive director" means the executive director of the department appointed pursuant to Section 19-1-104.
(3) "Local health department" means a local health department as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act.
(4) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

Enacted by Chapter 112, 1991 General Session

19-1-104 Creation of department -- Appointment of executive director.
(1) There is created within state government the Department of Environmental Quality. The department shall be administered by an executive director.

(2) The executive director shall be appointed by the governor with the consent of the Senate and shall serve at the pleasure of the governor.
(3) The executive director shall have demonstrated the necessary administrative and professional ability through education and experience to efficiently and effectively manage the department's affairs.
(4) The Legislature shall fix the compensation of the executive director in accordance with Title 67, Chapter 22, State Officer Compensation.

Amended by Chapter 176, 2002 General Session

19-1-105 Divisions of department -- Control by division directors.
(1) The following divisions are created within the department:
(a) the Division of Air Quality, to administer Title 19, Chapter 2, Air Conservation Act;
(b) the Division of Drinking Water, to administer Title 19, Chapter 4, Safe Drinking Water Act;
(c) the Division of Environmental Response and Remediation, to administer:
(i)Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; and
(ii)Title 19, Chapter 6, Part 4, Underground Storage Tank Act;
(d) the Division of Waste Management and Radiation Control, to administer:
(i)Title 19, Chapter 3, Radiation Control Act;
(ii)Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;
(iii)Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;
(iv)Title 19, Chapter 6, Part 5, Solid Waste Management Act;
(v)Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal;
(vi)Title 19, Chapter 6, Part 7, Used Oil Management Act;
(vii)Title 19, Chapter 6, Part 8, Waste Tire Recycling Act;
(viii)Title 19, Chapter 6, Part 10, Mercury Switch Removal Act;
(ix)Title 19, Chapter 6, Part 11, Industrial Byproduct Reuse; and
(x)Title 19, Chapter 6, Part 12, Disposal of Electronic Waste Program; and
(e) the Division of Water Quality, to administer Title 19, Chapter 5, Water Quality Act.
(2) Each division is under the immediate direction and control of a division director appointed by the executive director.
(3)
(a) A division director shall possess the administrative skills and training necessary to perform the duties of division director.
(b) A division director shall hold one of the following degrees from an accredited college or university:
(i) a four-year degree in physical or biological science or engineering;
(ii) a related degree; or
(iii) a degree in law.
(4) The executive director may remove a division director at will.
(5) A division director shall serve as the executive secretary to the policymaking board, created in Section 19-1-106, that has rulemaking authority over the division director's division.

Amended by Chapter 451, 2015 General Session

19-1-106 Boards within department.
(1) The following policymaking boards are created within the department:
(a) the Air Quality Board, appointed under Section 19-2-103;

(b) the Drinking Water Board, appointed under Section 19-4-103;
(c) the Water Quality Board, appointed under Section 19-5-103; and
(d) the Waste Management and Radiation Control Board, appointed under Section 19-6-104.
(2) The authority of the boards created in Subsection (1) is limited to the specific authority granted them under this title.

Amended by Chapter 451, 2015 General Session

19-1-108 Creation of Environmental Quality Restricted Account -- Purpose of restricted account -- Sources of funds -- Uses of funds.

(1) There is created the Environmental Quality Restricted Account.
(2) The sources of money for the restricted account are:
(a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4 and other fees collected under Subsection 19-3-104(5);
(b) hazardous waste disposal fees collected under Section 19-6-118;
(c) PCB waste disposal fees collected under Section 19-6-118.5;
(d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and
(e) the investment income derived from money in the Environmental Quality Restricted Account.
(3) In each fiscal year, the first $400,000 collected from the waste disposal fees listed in Subsection (2), collectively, shall be deposited in the General Fund as free revenue. The balance shall be deposited in the Environmental Quality Restricted Account.
(4) The Legislature may annually appropriate money from the Environmental Quality Restricted Account to:
(a) the department for the costs of administering radiation control programs;
(b) the department for the costs of administering solid and hazardous waste programs; and
(c) subject to Subsection (6), the Hazardous Substances Mitigation Fund, up to $400,000, to provide money to:
(i) meet the state's cost share requirements for cleanup under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq. as amended; and
(ii) respond to an emergency as provided in Section 19-6-309.
(5) After the requirements of Subsection (3) are met, sources of money for the restricted account described in Subsection (2)(a) may only be used for the purpose described in Subsection (4)(a).
(6) An annual request for money to be appropriated from the Environmental Quality Restricted Account to the Hazardous Substances Mitigation Fund may be made by the department only after the executive director's review of the Environmental Quality Restricted Account's or the Hazardous Substances Mitigation Fund's balance as of the end of the fiscal year immediately before the general session for which the request is made.
(7) In order to stabilize funding for the radiation control program and the solid and hazardous waste program, the Legislature shall in years of excess revenues reserve in the Environmental Quality Restricted Account sufficient money to meet departmental needs in years of projected shortages.
(8) The Legislature may not appropriate money from the General Fund to the department as a supplemental appropriation to cover the costs of the radiation control program and the solid and hazardous waste program in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year.

(9) Money appropriated under this part that is not expended at the end of the fiscal year lapses into the Environmental Quality Restricted Account.
(10)
(a) The balance in the Environmental Quality Restricted Account may not exceed $4,000,000 above the anticipated revenue need for the money in the restricted account for the fiscal year.
(b) Excess funds under Subsection (10)(a) shall be credited on a proportionate basis to each person who paid money to the fund in the previous fiscal year.

Amended by Chapter 330, 2013 General Session

Part 2
Powers

19-1-201 Powers and duties of department -- Rulemaking authority -- Committee.
(1) The department shall:
(a) enter into cooperative agreements with the Department of Health to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered;
(b) consult with the Department of Health and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups;
(c) coordinate implementation of environmental programs to maximize efficient use of resources by developing, in consultation with local health departments, a Comprehensive Environmental Service Delivery Plan that:
(i) recognizes that the department and local health departments are the foundation for providing environmental health programs in the state;
(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;
(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and
(iv) is reviewed and updated annually; and
(d) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as follows:
(i) for a board created in Section 19-1-106, rules regarding:
(A) board meeting attendance; and
(B) conflicts of interest procedures; and
(ii) procedural rules that govern:
(A) an adjudicative proceeding, consistent with Section 19-1-301; and
(B) a special adjudicative proceeding, consistent with Section 19-1-301.5.
(2) The department shall establish a committee that consists of:
(a) the executive director or the executive director's designee;
(b) two representatives of the department appointed by the executive director; and

(c) three representatives of local health departments appointed by a group of all the local health departments in the state.

(3) The committee established in Subsection (2) shall:

(a) review the allocation of environmental quality resources between the department and the local health departments;

(b) evaluate department policies that affect local health departments;

(c) consider policy changes proposed by the department or by local health departments;

(d) coordinate the implementation of environmental quality programs to maximize environmental quality resources; and

(e) review each department application for any grant from the federal government that affects a local health department before the department submits the application.

(4) The committee shall create bylaws to govern the committee's operations.

(5) The department may:

(a) investigate matters affecting the environment;

(b) investigate and control matters affecting the public health when caused by environmental hazards;

(c) prepare, publish, and disseminate information to inform the public concerning issues involving environmental quality;

(d) establish and operate programs, as authorized by this title, necessary for protection of the environment and public health from environmental hazards;

(e) use local health departments in the delivery of environmental health programs to the extent provided by law;

(f) enter into contracts with local health departments or others to meet responsibilities established under this title;

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

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

(i)

(i) establish a schedule of fees that may be assessed for actions and services of the department according to the procedures and requirements of Section 63J-1-504; and

(ii) in accordance with Section 63J-1-504, all fees shall be reasonable, fair, and reflect the cost of services provided;

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

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

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

(m) establish a supplementary fee, not subject to Section 63J-1-504, to provide service that the person paying the fee agrees by contract to be charged for the service in order to efficiently utilize department resources, protect department permitting processes, address extraordinary or unanticipated stress on permitting processes, or make use of specialized expertise.

(6) In providing service under Subsection (5)(m), the department may not provide service in a manner that impairs any other person's service from the department.

Amended by Chapter 441, 2015 General Session

Amended by Chapter 453, 2015 General Session

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

(1) The executive director shall:

(a) administer and supervise the department;

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

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

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

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

(f) in accordance with Section 19-1-301, appoint one or more administrative law judges to hear an adjudicative proceeding within the department.

(2) The executive director may:

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

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

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

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

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

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

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

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

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

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

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

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

(m) maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions for the protection of the public health and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, or under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous calendar year, and those that the department plans to address in the upcoming year pursuant to this title, including if upon completion of the response action the site:
(i) will be suitable for unrestricted use; or
(ii) will be suitable only for restricted use, stating the institutional controls identified in the remedy to which use of the site is subject.

Amended by Chapter 377, 2009 General Session

19-1-203 Representatives of department authorized to enter regulated premises.
(1) Authorized representatives of the department, upon presentation of appropriate credentials, may enter at reasonable times upon the premises of properties regulated under this title to perform inspections to insure compliance with rules made by the department.
(2) The inspection authority provided in this section does not apply to chapters in this title which provide for specific inspection procedures and authority.

Enacted by Chapter 112, 1991 General Session

19-1-204 Legal advice and representation for department.
(1) The attorney general is the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them.
(2) The attorney general or the county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil or criminal action requested by the executive director or any board created in Section 19-1-106 to abate a condition which exists in violation of, or to prosecute for the violation of or for the enforcement of, the laws or standards, orders, and rules of the department.

Enacted by Chapter 112, 1991 General Session

19-1-205 Assumption of responsibilities.
The department assumes all the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities of the Division of Environmental Health, the Air Conservation Committee, the Solid and Hazardous Waste Committee, the Utah Safe Drinking Water Committee, and the Water Pollution Control Committee previously vested in the Department of Health and its executive director:
(1) including programs for individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies; but
(2) excluding all other sanitation programs, which shall be administered by the Department of Health.

Enacted by Chapter 112, 1991 General Session

19-1-206 Contracting powers of department -- Health insurance coverage.
(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:
(i) works at least 30 hours per calendar week; and
(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.
(b) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
(c) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.
(d) "Subcontractor" means the same as that term is defined in Section 63A-5-208.
(2)
(a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, and to a prime contractor or subcontractor in accordance with Subsection (2)(b).
(b)
(i) A prime contractor is subject to this section if the prime contract is in the amount of $2,000,000 or greater at the original execution of the contract.
(ii) A subcontractor is subject to this section if a subcontract is in the amount of $1,000,000 or greater at the original execution of the contract.
(3) This section does not apply to contracts entered into by the department or a division or board of the department if:
(a) the application of this section jeopardizes the receipt of federal funds;
(b) the contract or agreement is between:
(i) the department or a division or board of the department; and
(ii)
(A) another agency of the state;
(B) the federal government;
(C) another state;
(D) an interstate agency;
(E) a political subdivision of this state; or
(F) a political subdivision of another state;
(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or
(d) the contract is:
(i) a sole source contract; or
(ii) an emergency procurement.
(4)
(a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).
(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.
(5)
(a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall:
(i) place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependants during the duration of the subcontract; and
(ii) certify to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.
(c)
(i)
(A) A contractor who fails to comply with Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
(ii)
(A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
(6) The department shall adopt administrative rules:
(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(b) in coordination with:
(i) a public transit district in accordance with Section 17B-2a-818.5;
(ii) the Department of Natural Resources in accordance with Section 79-2-404;
(iii) the State Building Board in accordance with Section 63A-5-205;
(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
(v) the Department of Transportation in accordance with Section 72-6-107.5; and
(vi) the Legislature's Administrative Rules Review Committee; and
(c) that establish:
(i) the requirements and procedures a contractor shall follow to demonstrate to the public transit district compliance with this section that shall include:
(A) that a contractor shall demonstrate compliance with Subsection (5)(a) or (b) at the time of the execution of each initial contract described in Subsection (2)(b);
(B) that the contractor's compliance is subject to an audit by the department or the Office of the Legislative Auditor General; and
(C) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency, which is no more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates;
(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;
(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and
(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(c), that is provided by the Department of Health, in accordance with Subsection 26-40-115(2).
(7)
(a)
(i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.
(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:
(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:
(I) an actuary; or
(II) an underwriter who is responsible for developing the employer group's premium rates; or
(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).
(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).
(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.
(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:
(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Amended by Chapter 20, 2016 General Session
Amended by Chapter 355, 2016 General Session

Part 3
Administration

19-1-301 Adjudicative proceedings.
(1) As used in this section, "dispositive action" means a final agency action that:
(a) the executive director takes following an adjudicative proceeding on a request for agency action; and
(b) is subject to judicial review under Section 63G-4-403.

(2) This section governs adjudicative proceedings that are not special adjudicative proceedings as defined in Section 19-1-301.5.
(3)
(a) The department and its boards shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
(b) The procedures for an adjudicative proceeding conducted by an administrative law judge are governed by:
(i)Title 63G, Chapter 4, Administrative Procedures Act;
(ii) this title;
(iii) rules adopted by the department under:
(A) Subsection 63G-4-102(6); or
(B) this title; and
(iv) the Utah Rules of Civil Procedure, in the absence of a procedure established under Subsection (3)(b)(i), (ii), or (iii).
(4) Except as provided in Section 19-2-113, an administrative law judge shall hear a party's request for agency action.
(5) The executive director shall appoint an administrative law judge who:
(a) is a member in good standing of the Utah State Bar;
(b) has a minimum of:
(i) 10 years of experience practicing law; and
(ii) five years of experience practicing in the field of:
(A) environmental compliance;
(B) natural resources;
(C) regulation by an administrative agency; or
(D) a field related to a field listed in Subsections (5)(b)(ii)(A) through (C); and
(c) has a working knowledge of the federal laws and regulations and state statutes and rules applicable to a request for agency action.
(6) In appointing an administrative law judge who meets the qualifications described in Subsection (5), the executive director may:
(a) compile a list of persons who may be engaged as an administrative law judge pro tempore by mutual consent of the parties to an adjudicative proceeding;
(b) appoint an assistant attorney general as an administrative law judge pro tempore; or
(c)
(i) appoint an administrative law judge as an employee of the department; and
(ii) assign the administrative law judge responsibilities in addition to conducting an adjudicative proceeding.
(7)
(a) An administrative law judge:
(i) shall conduct an adjudicative proceeding;
(ii) may take any action that is not a dispositive action; and
(iii) shall submit to the executive director a proposed dispositive action, including:
(A) written findings of fact;
(B) written conclusions of law; and
(C) a recommended order.
(b) The executive director may:
(i) approve, approve with modifications, or disapprove a proposed dispositive action submitted to the executive director under Subsection (7)(a); or

(ii) return the proposed dispositive action to the administrative law judge for further action as directed.
(c) In making a decision regarding a dispositive action, the executive director may seek the advice of, and consult with:
(i) the assistant attorney general assigned to the department; or
(ii) a special master who:
(A) is appointed by the executive director; and
(B) is an expert in the subject matter of the proposed dispositive action.
(d) The executive director shall base a final dispositive action on the record of the proceeding before the administrative law judge.
(8) To conduct an adjudicative proceeding, an administrative law judge may:
(a) compel:
(i) the attendance of a witness; and
(ii) the production of a document or other evidence;
(b) administer an oath;
(c) take testimony; and
(d) receive evidence as necessary.
(9) A party may appear before an administrative law judge in person, through an agent or employee, or as provided by department rule.
(10)
(a) An administrative law judge or the executive director may not participate in an ex parte communication with a party to an adjudicative proceeding regarding the merits of the adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties.
(b) If an administrative law judge or the executive director receives an ex parte communication, the person who receives the ex parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information.
(11) Nothing in this section limits a party's right to an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 441, 2015 General Session

19-1-301.5 Permit review adjudicative proceedings.
(1) As used in this section:
(a) "Dispositive action" means a final agency action that:
(i) the executive director takes as part of a special adjudicative proceeding; and
(ii) is subject to judicial review, in accordance with Subsection (15).
(b) "Dispositive motion" means a motion that is equivalent to:
(i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);
(ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule 12(c); or
(iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.
(c) "Financial assurance determination" means a decision on whether a facility, site, plan, party, broker, owner, operator, generator, or permittee has met financial assurance or financial responsibility requirements as determined by the director of the Division of Waste Management and Radiation Control.
(d) "Party" means:

(i) the director who issued the permit order or financial assurance determination that is being challenged in the special adjudicative proceeding under this section;
(ii) the permittee;
(iii) the person who applied for the permit, if the permit was denied;
(iv) the person who is subject to a financial assurance determination; or
(v) a person granted intervention by the administrative law judge.
(e) "Permit" means any of the following issued under this title:
(i) a permit;
(ii) a plan;
(iii) a license;
(iv) an approval order; or
(v) another administrative authorization made by a director.
(f)
(i) "Permit order" means an order issued by a director that:
(A) approves a permit;
(B) renews a permit;
(C) denies a permit;
(D) modifies or amends a permit; or
(E) revokes and reissues a permit.
(ii) "Permit order" does not include an order terminating a permit.
(g) "Special adjudicative proceeding" means a proceeding under this section to resolve a challenge to a:
(i) permit order; or
(ii) financial assurance determination.
(2) This section governs special adjudicative proceedings.
(3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not apply to a special adjudicative proceeding under this section.
(4) If a public comment period was provided during the permit application process or the financial assurance determination process, a person who challenges an order, application, or determination may only raise an issue or argument during the special adjudicative proceeding that:
(a) the person raised during the public comment period; and
(b) was supported with information or documentation that is cited with reasonable specificity and sufficiently enables the director to fully consider the substance and significance of the issue.
(5)
(a) Upon request by a party, the executive director shall issue a notice of appointment appointing an administrative law judge, in accordance with Subsections 19-1-301(5) and (6), to conduct a special adjudicative proceeding under this section.
(b) The executive director shall issue a notice of appointment within 30 days after the day on which a party files a request.
(c) A notice of appointment shall include:
(i) the agency's file number or other reference number assigned to the special adjudicative proceeding;
(ii) the name of the special adjudicative proceeding; and
(iii) the administrative law judge's name, title, mailing address, email address, and telephone number.
(6)

(a) Only the following may file a petition for review of a permit order or financial assurance determination:
(i) a party; or
(ii) a person who is seeking to intervene under Subsection (7).
(b) A person who files a petition for review of a permit order or a financial assurance determination shall file the petition for review within 30 days after the day on which the permit order or the financial assurance determination is issued.
(c) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules allowing the extension of the filing deadline described in Subsection (6)(b).
(d) A petition for review shall:
(i) be served in accordance with department rule;
(ii) include the name and address of each person to whom a copy of the petition for review is sent;
(iii) if known, include the agency's file number or other reference number assigned to the special adjudicative proceeding;
(iv) state the date on which the petition for review is served;
(v) include a statement of the petitioner's position, including, as applicable:
(A) the legal authority under which the petition for review is requested;
(B) the legal authority under which the agency has jurisdiction to review the petition for review;
(C) each of the petitioner's arguments in support of the petitioner's requested relief;
(D) an explanation of how each argument described in Subsection (6)(d)(v)(C) was preserved;
(E) a detailed description of any permit condition to which the petitioner is objecting;
(F) any modification or addition to a permit that the petitioner is requesting;
(G) a demonstration that the agency's permit decision is based on a finding of fact or conclusion of law that is clearly erroneous;
(H) if the agency director addressed a finding of fact or conclusion of law described in Subsection (6)(d)(v)(G) in a response to public comment, a citation to the comment and response that relates to the finding of fact or conclusion of law and an explanation of why the director's response was clearly erroneous or otherwise warrants review; and
(I) a claim for relief.
(e) A person may not raise an issue or argument in a petition for review unless the issue or argument:
(i) was preserved in accordance with Subsection (4); or
(ii) was not reasonably ascertainable before or during the public comment period.
(f) To demonstrate that an issue or argument was preserved in accordance with Subsection (4), a petitioner shall include the following in the petitioner's petition for review:
(i) a citation to where the petitioner raised the issue or argument during the public comment period; and
(ii) for each document upon which the petitioner relies in support of an issue or argument, a description that:
(A) states why the document is part of the administrative record; and
(B) demonstrates that the petitioner cited the document with reasonable specificity in accordance with Subsection (4)(b).
(7)

(a) A person who is not a party may not participate in a special adjudicative proceeding under this section unless the person is granted the right to intervene under this Subsection (7).
(b) A person who seeks to intervene in a special adjudicative proceeding under this section shall, within 30 days after the day on which the permit order or the financial assurance determination being challenged was issued, file:
(i) a petition to intervene that:
(A) meets the requirements of Subsection 63G-4-207(1); and
(B) demonstrates that the person is entitled to intervention under Subsection (7)(d)(ii); and
(ii) a timely petition for review.
(c) In a special adjudicative proceeding to review a permit order, the permittee is a party to the special adjudicative proceeding regardless of who files the petition for review and does not need to file a petition to intervene under Subsection (7)(b).
(d) An administrative law judge shall grant a petition to intervene in a special adjudicative proceeding, if:
(i) the petition to intervene is timely filed; and
(ii) the petitioner:
(A) demonstrates that the petitioner's legal interests may be substantially affected by the special adjudicative proceeding;
(B) demonstrates that the interests of justice and the orderly and prompt conduct of the special adjudicative proceeding will not be materially impaired by allowing the intervention; and
(C) in the petitioner's petition for review, raises issues or arguments that are preserved in accordance with Subsection (4).
(e) An administrative law judge:
(i) shall issue an order granting or denying a petition to intervene in accordance with Subsection 63G-4-207(3)(a); and
(ii) may impose conditions on intervenors as described in Subsections 63G-4-207(3)(b) and (c).
(f) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules allowing the extension of the filing deadline described in Subsection (7)(b).
(8)
(a) Unless the parties otherwise agree, the schedule for a special adjudicative proceeding is as follows:
(i) the director shall file and serve the administrative record within 40 days after the day on which the executive director issues a notice of appointment, unless otherwise ordered by the administrative law judge;
(ii) any dispositive motion shall be filed and served within 15 days after the day on which the administrative record is filed and served;
(iii) the petitioner shall file and serve an opening brief of no more than 30 pages:
(A) within 30 days after the day on which the director files and serves the administrative record; or
(B) if a party files and serves a dispositive motion, within 30 days after the day on which the administrative law judge issues a decision on the dispositive motion, including a decision to defer the motion;
(iv) each party shall file and serve a response brief of no more than 15 pages within 15 days after the day on which the petitioner files and serves the opening brief;
(v) the petitioner may file and serve a reply brief of not more than 15 pages within 15 days after the day on which the response brief is filed and served; and

(vi) if the petitioner files and serves a reply brief, each party may file and serve a surreply brief of no more than five pages within five business days after the day on which the petitioner files and serves the reply brief.

(b)

(i) A reply brief may not raise an issue that was not raised in the response brief.

(ii) A surreply brief may not raise an issue that was not raised in the reply brief.

(9)

(a) An administrative law judge shall conduct a special adjudicative proceeding based only on the administrative record and not as a trial de novo.

(b) To the extent relative to the issues and arguments raised in the petition for review, the administrative record consists of the following items, if they exist:

(i)

(A) for review of a permit order, the permit application, draft permit, and final permit; or

(B) for review of a financial assurance determination, the proposed financial assurance determination from the owner or operator of the facility, the draft financial assurance determination, and the final financial assurance determination;

(ii) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;

(iii) the notice and record of each public comment period;

(iv) the notice and record of each public hearing, including oral comments made during the public hearing;

(v) written comments submitted during the public comment period;

(vi) responses to comments that are designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;

(vii) any information that is:

(A) requested by and submitted to the director; and

(B) designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;

(viii) any additional information specified by rule;

(ix) any additional documents agreed to by the parties; and

(x) information supplementing the record under Subsection (9)(c).

(c)

(i) There is a rebuttable presumption against supplementing the record.

(ii) A party may move to supplement the record described in Subsection (9)(b) with technical or factual information.

(iii) The administrative law judge may grant a motion to supplement the record described in Subsection (9)(b) with technical or factual information if the moving party proves that:

(A) good cause exists for supplementing the record;

(B) supplementing the record is in the interest of justice; and

(C) supplementing the record is necessary for resolution of the issues.

(iv) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules permitting further supplementation of the record.

(10)

(a) Except as otherwise provided by this section, the administrative law judge shall review and respond to a petition for review in accordance with Subsections 63G-4-201(3)(d) and (e), following the relevant procedures for formal adjudicative proceedings.

(b) The administrative law judge shall require the parties to file responsive briefs in accordance with Subsection (8).
(c) If an administrative law judge enters an order of default against a party, the administrative law judge shall enter the order of default in accordance with Section 63G-4-209.
(d) The administrative law judge, in conducting a special adjudicative proceeding:
(i) may not participate in an ex parte communication with a party to the special adjudicative proceeding regarding the merits of the special adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties; and
(ii) shall, upon receiving an ex parte communication, place the communication in the public record of the proceeding and afford all parties an opportunity to comment on the information.
(e) In conducting a special adjudicative proceeding, the administrative law judge may take judicial notice of matters not in the administrative record, in accordance with Utah Rules of Evidence, Rule 201.
(f) An administrative law judge may take any action in a special adjudicative proceeding that is not a dispositive action.
(11)
(a) A person who files a petition for review has the burden of demonstrating that an issue or argument raised in the petition for review has been preserved in accordance with Subsection (4).
(b) The administrative law judge shall dismiss, with prejudice, any issue or argument raised in a petition for review that has not been preserved in accordance with Subsection (4).
(12) In response to a dispositive motion, within 45 days after the day on which oral argument takes place, or, if there is no oral argument, within 45 days after the day on which the reply brief on the dispositive motion is due, the administrative law judge shall:
(a) submit a proposed dispositive action to the executive director recommending full or partial resolution of the special adjudicative proceeding, that includes:
(i) written findings of fact;
(ii) written conclusions of law; and
(iii) a recommended order; or
(b) if the administrative law judge determines that a full or partial resolution of the special adjudicative proceeding is not appropriate, issue an order that explains the basis for the administrative law judge's determination.
(13) For each issue or argument that is not dismissed or otherwise resolved under Subsection (11)(b) or (12), the administrative law judge shall:
(a) provide the parties an opportunity for briefing and oral argument in accordance with this section;
(b) conduct a review of the director's order or determination, based on the record described in Subsections (9)(b), (9)(c), and (10)(e); and
(c) within 60 days after the day on which the reply brief on the dispositive motion is due, submit to the executive director a proposed dispositive action, that includes:
(i) written findings of fact;
(ii) written conclusions of law; and
(iii) a recommended order.
(14)
(a) When the administrative law judge submits a proposed dispositive action to the executive director, the executive director may:
(i) adopt, adopt with modifications, or reject the proposed dispositive action; or

(ii) return the proposed dispositive action to the administrative law judge for further action as directed.

(b) On review of a proposed dispositive action, the executive director shall uphold all factual, technical, and scientific agency determinations that are not clearly erroneous based on the petitioner's marshaling of the evidence.

(c) In reviewing a proposed dispositive action during a special adjudicative proceeding, the executive director may take judicial notice of matters not in the record, in accordance with Utah Rules of Evidence, Rule 201.

(d) The executive director may use the executive director's technical expertise in making a determination.

(15)

(a) A party may seek judicial review in the Utah Court of Appeals of a dispositive action in a special adjudicative proceeding, in accordance with Sections 63G-4-401, 63G-4-403, and 63G-4-405.

(b) An appellate court shall limit its review of a dispositive action of a special adjudicative proceeding under this section to:

(i) the record described in Subsections (9)(b), (9)(c), (10)(e), and (14)(c); and

(ii) the record made by the administrative law judge and the executive director during the special adjudicative proceeding.

(c) During judicial review of a dispositive action, the appellate court shall:

(i) review all agency determinations in accordance with Subsection 63G-4-403(4), recognizing that the agency has been granted substantial discretion to interpret its governing statutes and rules; and

(ii) uphold all factual, technical, and scientific agency determinations that are not clearly erroneous based upon the petitioner's marshaling of the evidence.

(16)

(a) The filing of a petition for review does not:

(i) stay a permit order or a financial assurance determination; or

(ii) delay the effective date of a permit order or a portion of a financial assurance determination.

(b) A permit order or a financial assurance determination may not be stayed or delayed unless a stay is granted under this Subsection (16).

(c) The administrative law judge shall:

(i) consider a party's motion to stay a permit order or a financial assurance determination during a special adjudicative proceeding; and

(ii) within 45 days after the day on which the reply brief on the motion to stay is due, submit a proposed determination on the stay to the executive director.

(d) The administrative law judge may not recommend to the executive director a stay of a permit order or a financial assurance determination, or a portion of a permit order or a portion of a financial assurance determination, unless:

(i) all parties agree to the stay; or

(ii) the party seeking the stay demonstrates that:

(A) the party seeking the stay will suffer irreparable harm unless the stay is issued;

(B) the threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(C) the stay, if issued, would not be adverse to the public interest; and

(D) there is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits, which should be the subject of further adjudication.

(e) A party may appeal the executive director's decision regarding a stay of a permit order or a financial assurance determination to the Utah Court of Appeals, in accordance with Section 78A-4-103.

(17)

(a) Subject to Subsection (17)(c), the administrative law judge shall issue a written response to a non-dispositive motion within 45 days after the day on which the reply brief on the non-dispositive motion is due or, if the administrative law judge grants oral argument on the non-dispositive motion, within 45 days after the day on which oral argument takes place.

(b) If the administrative law judge determines that the administrative law judge needs more time to issue a response to a non-dispositive motion, the administrative law judge may issue a response after the deadline described in Subsection (17)(a) if, before the deadline expires, the administrative law judge gives notice to the parties that includes:

(i) the amount of additional time that the administrative law judge requires; and

(ii) the reason the administrative law judge needs the additional time.

(c) If the administrative law judge grants oral argument on a non-dispositive motion, the administrative law judge shall hold the oral argument within 30 days after the day on which the reply brief on the non-dispositive motion is due.

Amended by Chapter 348, 2016 General Session

19-1-302 Violation of laws and orders unlawful.

It is unlawful for any person:

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

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

Enacted by Chapter 112, 1991 General Session

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

(1)

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

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

(ii) in a criminal proceeding:

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

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

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

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

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

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

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

Amended by Chapter 324, 1995 General Session

19-1-304 Principal and branch offices of department.
(1) The principal office of the department shall be in Salt Lake County.
(2) The department may establish branch offices at other places in the state to furnish comprehensive and effective environmental programs and to coordinate with and assist local health officers.

Enacted by Chapter 112, 1991 General Session

19-1-305 Administrative enforcement proceedings -- Tolling of limitation period.
Issuing a notice of a violation, an order, or a notice of agency action under this title tolls the running of the period of limitation for commencing a civil action to assess or collect a penalty until the sooner of:
(1) the day on which the notice of violation, order, or agency action becomes final under Title 63G, Chapter 4, Administrative Procedures Act; or
(2) three years from the day on which the department issues a notice or order described in this section.

Amended by Chapter 382, 2008 General Session

19-1-306 Records of the department.
(1) Except as provided in this section, records of the department shall be subject to Title 63G, Chapter 2, Government Records Access and Management Act.
(2)
(a) The standards of the federal Freedom of Information Act, 5 U.S.C. Sec. 552, and not the standards of Subsections 63G-2-305(1) and (2), shall govern access to records of the department for which business confidentiality has been claimed under Section 63G-2-309, to the extent those records relate to a program:
(i) that is delegated, authorized, or for which primacy has been granted to the state;
(ii) for which the state is seeking delegation, authorization, or primacy; or
(iii) under the federal Comprehensive Environmental Response, Compensation, and Liability Act.
(b) The regulation of the United States Environmental Protection Agency interpreting the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2 on January 1, 1992, shall also apply to the records described in Subsection (1).
(3)
(a) The department may, upon request, make trade secret and confidential business records available to the United States Environmental Protection Agency insofar as they relate to a delegated program, to a program for which the state is seeking delegation, or to a program under the federal Comprehensive Environmental Response, Compensation and Liability Act.
(b) In the event a record is released to the United States Environmental Protection Agency under Subsection (3)(a), the department shall convey any claim of confidentiality to the United States Environmental Protection Agency and shall notify the person who submitted the information of its release.

(4) Trade secret and confidential business records under Subsection (2) shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except Subsections 63G-2-305(1) and (2).
(5) Records obtained from the United States Environmental Protection Agency and requested by that agency to be kept confidential shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except to the extent they conflict with this section.

Amended by Chapter 382, 2008 General Session

19-1-307 Evaluation of closure, postclosure, and perpetual care and maintenance for hazardous waste and radioactive waste treatment and disposal facilities -- Report.

(1)
(a) Beginning in 2006, the Waste Management and Radiation Control Board created in Section 19-1-106 shall direct an evaluation every five years of:
(i) the adequacy of the amount of financial assurance required for closure and postclosure care under 40 C.F.R. subpart H, Sections 264.140 through 264.151 submitted pursuant to a hazardous waste operation plan for a commercial hazardous waste treatment, storage, or disposal facility under Section 19-6-108; and
(ii) the adequacy of the amount of financial assurance or funds required for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c).
(b) The evaluation shall determine:
(i) whether the amount of financial assurance required is adequate for closure and postclosure care of hazardous waste treatment, storage, or disposal facilities;
(ii) whether the amount of financial assurance or funds required is adequate for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c); and
(iii) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial hazardous waste treatment, storage, or disposal facilities including:
(A) groundwater corrective action;
(B) differential settlement failure; or
(C) major maintenance of a cell or cells.
(c) The Waste Management and Radiation Control Board shall evaluate in 2006 whether financial assurance or funds are necessary for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility to protect human health and the environment.

(2)
(a) Beginning in 2006, the Waste Management and Radiation Control Board created in Section 19-1-106 shall direct an evaluation every five years of:
(i) the adequacy of the Radioactive Waste Perpetual Care and Maintenance Account created by Section 19-3-106.2; and
(ii) the adequacy of the amount of financial assurance required for closure and postclosure care of commercial radioactive waste treatment or disposal facilities under Subsection 19-3-104(11).

(b) The evaluation shall determine:
(i) whether the restricted account is adequate to provide for perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities;
(ii) whether the amount of financial assurance required is adequate to provide for closure and postclosure care of commercial radioactive waste treatment or disposal facilities;
(iii) the costs under Subsection 19-3-106.2(5)(b) of using the Radioactive Waste Perpetual Care and Maintenance Account during the period before the end of 100 years following final closure of the facility for maintenance, monitoring, or corrective action in the event that the owner or operator is unwilling or unable to carry out the duties of postclosure maintenance, monitoring, or corrective action; and
(iv) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities including:
(A) groundwater corrective action;
(B) differential settlement failure; or
(C) major maintenance of a cell or cells.
(3) The board under Subsections (1) and (2) shall submit a report on the evaluations to the Legislative Management Committee on or before October 1 of the year in which the report is due.

Amended by Chapter 451, 2015 General Session

Part 4
Clean Fuels and Vehicle Technology Program Act

19-1-401 Title.
This part is known as the "Clean Fuels and Vehicle Technology Program Act."

Amended by Chapter 136, 2006 General Session

19-1-402 Definitions.
As used in this part:
(1) "Clean fuel" means:
(a) propane, natural gas, or electricity; or
(b) other fuel that meets the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.
(2) "Clean vehicle" means a vehicle that:
(a) uses a clean fuel; or
(b) is an electric-hybrid vehicle.
(3) "Electric-hybrid vehicle" means a vehicle:
(a) primarily powered by an electric motor that draws current from:
(i) rechargeable storage batteries;
(ii) fuel cells; or
(iii) other sources of electric current; and
(b) that also operates on or is capable of operating on a nonelectrical source of power.
(4) "Fund" means the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403.

(5)
(a) "Government vehicle" means a motor vehicle:
(i) registered in Utah; and
(ii) owned and operated by:
(A) the state;
(B) a public trust authority;
(C) a school district;
(D) a county; or
(E) a municipality.
(b) "Government vehicle" includes a metropolitan rapid transit motor vehicle, bus, truck, law enforcement vehicle, or emergency vehicle.
(6) "Incremental cost" means the difference between the cost of the OEM vehicle and the same vehicle model manufactured without the clean fuel fueling system.
(7) "OEM vehicle" means a vehicle manufactured by the original vehicle manufacturer or its contractor as a clean vehicle.
(8) "Private sector business vehicle" means a motor vehicle registered in Utah that is owned and operated solely in the conduct of a private business enterprise.
(9) "Refueling equipment" means compressors when used separately, compressors used in combination with cascade tanks, and other equipment that constitute a central refueling system capable of dispensing vehicle fuel.

Amended by Chapter 295, 2014 General Session

19-1-403 Clean Fuels and Vehicle Technology Fund -- Contents -- Loans or grants made with fund money.
(1)
(a) There is created a revolving fund known as the Clean Fuels and Vehicle Technology Fund.
(b) The fund consists of:
(i) appropriations to the fund;
(ii) other public and private contributions made under Subsection (1)(c);
(iii) interest earnings on cash balances; and
(iv) all money collected for loan repayments and interest on loans.
(c) The department may accept contributions from other public and private sources for deposit into the fund.
(2)
(a) The department may make a loan or a grant with money available in the fund for:
(i) the conversion of a private sector business vehicle or a government vehicle to use a clean fuel, if certified by the Air Quality Board under Subsection 19-1-405(1)(a); or
(ii) the purchase of an OEM vehicle for use as a private sector business vehicle or government vehicle.
(b) The amount of a loan for any vehicle under Subsection (2)(a) may not exceed:
(i) the actual cost of the vehicle conversion;
(ii) the incremental cost of purchasing the OEM vehicle; or
(iii) the cost of purchasing the OEM vehicle if there is no documented incremental cost.
(c) The amount of a grant for any vehicle under Subsection (2)(a) may not exceed:
(i) 50% of the actual cost of the vehicle conversion for the vehicle for which a grant is requested; or

(ii) 50% of the incremental cost of purchasing an OEM vehicle for the vehicle for which a grant is requested.

(d)

(i) Subject to the availability of money in the fund, the department may make a loan or grant for the purchase of vehicle refueling equipment for a private sector business vehicle or a government vehicle.

(ii) The maximum amount loaned or granted per installation of refueling equipment may not exceed the actual cost of the refueling equipment.

(3) The department may:

(a) establish an application fee for a loan or grant from the fund by following the procedures and requirements of Section 63J-1-504; and

(b) reimburse itself for the costs incurred in administering the fund from:

(i) the fund; or

(ii) application fees established under Subsection (3)(a).

(4)

(a) The fund balance may not exceed $10,000,000.

(b) Interest on cash balances and repayment of loans in excess of the amount necessary to maintain the fund balance at $10,000,000 shall be deposited in the General Fund.

(5)

(a) Loans made from money in the fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan.

(b) The original loan documents shall be filed with the Division of Finance and a copy shall be filed with the department.

Amended by Chapter 369, 2016 General Session

19-1-403.3 Conversion to Alternative Fuel Grant Program Fund -- Contents -- Grants made with fund money.

(1)

(a) There is created an expendable special revenue fund known as the Conversion to Alternative Fuel Grant Program Fund.

(b) The fund consists of:

(i) appropriations to the fund;

(ii) other public and private contributions made under Subsection (1)(c);

(iii) fees established by the department, as described in Subsection (3)(a), and deposited into the fund; and

(iv) interest earnings on cash balances.

(c) The department may accept contributions from other public and private sources for deposit into the fund.

(2) The department may make a grant with money available in the fund to a person who installs conversion equipment on an eligible vehicle, as described in Sections 19-2-301 through 19-2-304.

(3) The department may:

(a) establish an application fee for a grant from the fund by following the procedures and requirements of Section 63J-1-504; and

(b) reimburse itself for the costs incurred in administering the fund from:

(i) the fund; or

(ii) application fees established under Subsection (3)(a).

(4)
(a) The fund balance may not exceed $10,000,000.
(b) Interest on cash balances in excess of the amount necessary to maintain the fund balance at $10,000,000 shall be deposited into the General Fund.

Enacted by Chapter 369, 2016 General Session

19-1-404 Department duties -- Rulemaking -- Loan repayment.
(1) The department shall:
(a) administer the fund created in Section 19-1-403 to encourage government officials and private sector business vehicle owners and operators to obtain and use clean fuel vehicles; and
(b) by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
(i) specifying the amount of money in the fund to be dedicated annually for grants;
(ii) limiting the amount of a grant given to any person claiming a tax credit under Section 59-7-605 or 59-10-1009 for the motor vehicle for which a grant is requested to assure that the sum of the tax credit and grant does not exceed:
(A) 50% of the incremental cost of the OEM vehicle; or
(B) 50% of the cost of conversion equipment;
(iii) limiting the number of motor vehicles per fleet operator that may be eligible for a grant in a year;
(iv) specifying criteria the department shall consider in prioritizing and awarding loans and grants;
(v) specifying repayment periods;
(vi) specifying procedures for:
(A) awarding loans and grants; and
(B) collecting loans; and
(vii) requiring all loan and grant applicants to:
(A) apply on forms provided by the department;
(B) agree in writing to use the clean fuel for which each vehicle is converted or purchased using loan or grant proceeds for a minimum of 70% of the vehicle miles traveled beginning from the time of conversion or purchase of the vehicle;
(C) agree in writing to notify the department if a vehicle converted or purchased using loan or grant proceeds becomes inoperable through mechanical failure or accident and to pursue a remedy outlined in department rules;
(D) provide reasonable data to the department on a vehicle converted or purchased with loan or grant proceeds; and
(E) submit a vehicle converted or purchased with loan or grant proceeds to inspections by the department as required in department rules and as necessary for administration of the loan and grant program.
(2)
(a) When developing repayment schedules for the loans, the department shall consider the projected savings from use of the clean vehicle.
(b) A repayment schedule may not exceed 10 years.
(c) The department shall make a loan from the fund for a private sector vehicle at an interest rate equal to the annual return earned in the state treasurer's Public Treasurer's Pool as determined the month immediately preceding the closing date of the loan.

(d) The department shall make a loan from the fund for a government vehicle with no interest rate.
(3) The Division of Finance shall:
(a) collect and account for the loans; and
(b) have custody of all loan documents, including all notes and contracts, evidencing the indebtedness of the fund.

Amended by Chapter 295, 2014 General Session

19-1-405 Air Quality Board duties -- Rulemaking.
(1) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Air Quality Board may make rules to:
(a) certify a motor vehicle on which conversion equipment has been installed if:
(i) before the installation of conversion equipment, the motor vehicle does not exceed the emission cut points for:
(A) a transient test driving cycle, as specified in 40 CFR 51, Appendix E to Subpart S; or
(B) an equivalent test for the make, model, and year of the motor vehicle; and
(ii) the motor vehicle's emissions of regulated pollutants, when operating with clean fuel, is less than the emissions were before the installation of conversion equipment;
(b) recognize a test or standard that demonstrates a reduction in emissions; or
(c) recognize a certification standard from another state.
(2) A reduction in emissions under Subsection (1)(a)(ii) is demonstrated by:
(a) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the Air Quality Board;
(b) testing the motor vehicle, before and after the installation of the conversion equipment, in accordance with 40 CFR 86, Control of Air Pollution from New and In-use Motor Vehicle Engines: Certification and Test Procedures, using all fuel the motor vehicle is capable of using; or
(c) any other test or standard recognized by the Air Quality Board in rule.

Amended by Chapter 295, 2014 General Session

19-1-406 Retrofit compressed natural gas vehicles -- Inspections, standards, and certification -- Compliance with other law -- Programs to coordinate.
(1) An owner of a retrofit compressed natural gas vehicle that is retrofit on or after July 1, 2010, may not operate the retrofit compressed natural gas vehicle before the owner has the retrofit compressed natural gas vehicle:
(a) inspected and certified as safe in accordance with relevant standards, including the National Fire Protection Association 52 Vehicular Gaseous Fuel Systems Code, by a CSA America CNG Fuel System Inspector; and
(b) tested to ensure that the retrofit compressed natural gas vehicle satisfies the emissions standards:
(i) if any, for the county in which the retrofit compressed natural gas vehicle is registered; or
(ii) for the county in the state with the most lenient emissions standards, if the retrofit compressed natural gas vehicle is registered in a county with no emissions standards.
(2) A person who performs a retrofit on a retrofit compressed natural gas vehicle shall certify to the owner of the retrofit compressed natural gas vehicle that the retrofit does not tamper with, circumvent, or otherwise affect the vehicle's on-board diagnostic system, if any.

(3)
(a) After the owner of a retrofit compressed natural gas vehicle that is retrofit on or after July 1, 2010, has the retrofit compressed natural gas vehicle inspected under Subsection (1), the owner shall have the retrofit inspected for safety by a CSA America CNG Fuel System Inspector:
(i) the sooner of:
(A) every three years after the retrofit; or
(B) every 36,000 miles after the retrofit; and
(ii) after any collision occurring at a speed of greater than five miles per hour.
(b) An inspector at a state-required safety inspection shall verify that a retrofit compressed natural gas vehicle is inspected in accordance with Subsection (3)(a).
(4)
(a) The Division of Air Quality may develop programs to coordinate amongst government agencies and interested parties in the private sector to facilitate:
(i) testing to ensure compliance with emissions and anti-tampering standards established in this section or by federal law; and
(ii) the retrofitting of vehicles to operate on compressed natural gas vehicles in a manner that provides for:
(A) safety;
(B) compliance with applicable law; and
(C) potential improvement in the air quality of this state.
(b) In developing a program under this Subsection (4), the Division of Air Quality shall:
(i) allow for testing using equipment widely available within the state, if possible; and
(ii) consult with relevant federal, state, and local government agencies and other interested parties.

Enacted by Chapter 236, 2010 General Session

Part 5
Engine Coolant Bittering Agent Act

19-1-501 Title.
This part is known as the "Engine Coolant Bittering Agent Act."

Enacted by Chapter 170, 2010 General Session

19-1-502 Definitions.
(1) "Bittering agent" means an aversive agent that renders engine coolant unpalatable.
(2) "Engine coolant" means:
(a) a substance or preparation, regardless of its origin, used as the cooling medium in the cooling system of an internal combustion engine to provide protection against freezing, overheating, and corrosion of the cooling system; or
(b) a product that is labeled to indicate or imply that it will prevent freezing or overheating of the cooling system of an internal combustion engine.

Enacted by Chapter 170, 2010 General Session

19-1-503 Requirements for engine coolant sold in state.

On or after January 1, 2011, a person may not sell engine coolant to a person in this state that is manufactured on or after January 1, 2011, if the engine coolant:

(1) contains more than 10% ethylene glycol; and

(2) does not contain:

(a) denatonium benzoate within the following amounts:

(i) a minimum of 30 parts per million; and

(ii) a maximum of 50 parts per million; or

(b) a similar bittering agent that renders the engine coolant unpalatable if it meets or exceeds the degree of aversion as compared to denatonium benzoate at a concentration of 30 parts per million.

Enacted by Chapter 170, 2010 General Session

19-1-504 Recordkeeping.

(1) A manufacturer or packager of engine coolant that sells the engine coolant to a person in this state shall maintain for at least three years a record of the following for a bittering agent used in the engine coolant in accordance with Section 19-1-503:

(a) the trade name;

(b) the scientific name; and

(c) the active ingredients.

(2) A manufacturer or packager shall make the information described in Subsection (1) available to the public upon request.

Enacted by Chapter 170, 2010 General Session

19-1-505 Liability limitation.

(1)

(a) Subject to the other provisions of this section, a person may not be held liable as described in Subsection (1)(b) if:

(i) the person is a manufacturer, processor, distributor, recycler, or seller of an engine coolant; and

(ii) the engine coolant at issue contains denatonium benzoate in a concentration described in Section 19-1-503.

(b) A person described in Subsection (1)(a) may not be held liable to any person for any of the following that results from the inclusion of denatonium benzoate in an engine coolant in the concentrations described in Section 19-1-503:

(i) personal injury;

(ii) death;

(iii) property damage;

(iv) damage to the environment, including natural resources; or

(v) economic loss.

(2) Subsection (1) does not apply to a liability to the extent that:

(a) the cause of the liability is unrelated to the inclusion of denatonium benzoate in an engine coolant; or

(b) the injury described in Subsection (1)(b) is the result of willful or wanton misconduct or gross negligence by a manufacturer, processor, distributor, recycler, or seller of engine coolant.

(3) Nothing in this section shall be construed to exempt any manufacturer or distributor of denatonium benzoate from any liability related to denatonium benzoate.

Enacted by Chapter 170, 2010 General Session

19-1-506 Preemption.

With respect to a retail container containing less than 55 gallons of engine coolant, a political subdivision of this state may not establish or enforce a prohibition, limitation, standard, or other requirement relating to the inclusion of a bittering agent in an engine coolant that differs from, or is in addition to, a requirement under this part.

Enacted by Chapter 170, 2010 General Session

19-1-507 Civil action.

(1) The attorney general or a person may bring a civil action in a court of competent jurisdiction to seek:
  (a) an injunction to enforce the part; and
  (b) if the action is brought by the attorney general, a civil penalty not to exceed $500 for each day the part is violated.
(2) In an action brought under this section, a court may:
  (a) order injunctive relief;
  (b) impose a civil penalty to the extent provided in Subsection (1);
  (c) award attorney fees and costs to the attorney general or person who brings the civil action, if the attorney general or person prevails; or
  (d) take a combination of actions under this Subsection (2).
(3) A civil penalty imposed under this section shall be deposited into the General Fund.

Enacted by Chapter 170, 2010 General Session

19-1-508 Exemptions.

This part does not apply to:
(1) the sale of a motor vehicle or a part of a motor vehicle that contains engine coolant; or
(2) a wholesale container of engine coolant that contains 55 gallons or more of engine coolant if it contains a conspicuous label indicating whether or not it contains a bittering agent.

Enacted by Chapter 170, 2010 General Session

Chapter 2
Air Conservation Act

Part 1
General Provisions

19-2-101 Short title -- Policy of state and purpose of chapter -- Support of local and regional programs -- Provision of coordinated statewide program.

(1) This chapter is known as the "Air Conservation Act."
(2) It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.
(3) Local and regional air pollution control programs shall be supported to the extent practicable as essential instruments to secure and maintain appropriate levels of air quality.
(4) The purpose of this chapter is to:
  (a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;
  (b) provide for an appropriate distribution of responsibilities among the state and local units of government;
  (c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and
  (d) provide a framework within which air quality may be protected and consideration given to the public interest at all levels of planning and development within the state.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-102 Definitions.

As used in this chapter:
(1) "Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.
(2) "Air pollutant source" means private and public sources of emissions of air pollutants.
(3) "Air pollution" means the presence of an air pollutant in the ambient air in the quantities, for a duration, and under the conditions and circumstances that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property, as determined by the rules adopted by the board.
(4) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
(5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, actinolite-tremolite, and libby amphibole.
(6) "Asbestos-containing material" means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos.
(7) "Asbestos inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material.
(8) "Board" means the Air Quality Board.
(9) "Clean school bus" means the same as that term is defined in 42 U.S.C. Sec. 16091.
(10) "Director" means the director of the Division of Air Quality.
(11) "Division" means the Division of Air Quality created in Section 19-1-105.
(12) "Friable asbestos-containing material" means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce to powder when dry.

(13) "Indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard.

Amended by Chapter 154, 2015 General Session

19-2-103 Members of board -- Appointment -- Terms -- Organization -- Per diem and expenses.

(1) The board consists of the following nine members:
- (a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:
  - (i) the executive director; or
  - (ii) an employee of the department designated by the executive director; and
- (b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:
  - (i) one representative who:
    - (A) is not connected with industry;
    - (B) is an expert in air quality matters; and
    - (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience;
  - (ii) two government representatives who do not represent the federal government;
  - (iii) one representative from the mining industry;
  - (iv) one representative from the fuels industry;
  - (v) one representative from the manufacturing industry;
  - (vi) one representative from the public who represents:
    - (A) an environmental nongovernmental organization; or
    - (B) a nongovernmental organization that represents community interests and does not represent industry interests; and
  - (vii) one representative from the public who is trained and experienced in public health.

(2) A member of the board shall:
- (a) be knowledgeable about air pollution matters, as evidenced by a professional degree, a professional accreditation, or documented experience;
- (b) be a resident of Utah;
- (c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
- (d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

(3) No more than five of the appointed members of the board shall belong to the same political party.

(4) A majority of the members of the board may not derive any significant portion of their income from persons subject to permits or orders under this chapter.

(5)
- (a) Members shall be appointed for a term of four years.
- (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(6) A member may serve more than one term.

(7) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.
(8) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(9) The board shall elect annually a chair and a vice chair from its members.
(10)
(a) The board shall meet at least quarterly.
(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.
(c) Three days' notice shall be given to each member of the board before a meeting.
(11) Five members constitute a quorum at a meeting, and the action of a majority of members present is the action of the board.
(12) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 154, 2015 General Session

19-2-104 Powers of board.
(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source;
(b) establishing air quality standards;
(c) requiring persons engaged in operations that result in air pollution to:
(i) install, maintain, and use emission monitoring devices, as the board finds necessary;
(ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air pollutant; and
(iii) provide access to records relating to emissions which cause or contribute to air pollution;
(d)
(i) implementing:
(A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;
(B) 40 C.F.R. Part 763, Asbestos; and
(C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos; and
(ii) reviewing and approving asbestos management plans submitted by local education agencies under the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;
(e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;
(f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;
(g) establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements;

(h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2);

(i) implementing lead-based paint training, certification, and performance requirements in accordance with 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406; and

(j) to implement the requirements of Section 19-2-107.5.

(2) When implementing Subsection (1)(h) the board shall take into consideration:

(a) the impact of the business on overall air quality; and

(b) the need of the business to use automobiles in order to carry out its business purposes.

(3)

(a) The board may:

(i) hold a hearing that is not an adjudicative proceeding relating to any aspect of, or matter in, the administration of this chapter;

(ii) recommend that the director:

(A) issue orders necessary to enforce the provisions of this chapter;

(B) enforce the orders by appropriate administrative and judicial proceedings;

(C) institute judicial proceedings to secure compliance with this chapter; or

(D) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, or interested persons or groups; and

(iii) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of a person who:

(A) receives relevant asbestos training, as defined by rule; and

(B) has acquired a minimum of 1,000 hours of asbestos project monitoring related work experience.

(b) The board shall:

(i) to ensure compliance with applicable statutes and regulations:

(A) review a settlement negotiated by the director in accordance with Subsection 19-2-107(2)(b)(viii) that requires a civil penalty of $25,000 or more; and

(B) approve or disapprove the settlement;

(ii) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(iii) meet the requirements of federal air pollution laws;

(iv) by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish work practice and certification requirements for persons who:

(A) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections if:

(I) the contract work is done on a site other than a residential property with four or fewer units; or

(II) the contract work is done on a residential property with four or fewer units where a tested sample contained greater than 1% of asbestos;

(B) conduct work described in Subsection (3)(b)(iv)(A) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;

(C) conduct asbestos inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or
(D) conduct lead-based paint inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;
(v) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited as an inspector, management planner, abatement project designer, asbestos abatement contractor and supervisor, or an asbestos abatement worker;
(vi) establish certification procedures and requirements for certification of the conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in Section 59-7-605 or 59-10-1009;
(vii) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Control Act, Subchapter IV - Lead Exposure Reduction, to be accredited as an inspector, risk assessor, supervisor, project designer, abatement worker, renovator, or dust sampling technician; and
(viii) assist the State Board of Education in adopting school bus idling reduction standards and implementing an idling reduction program in accordance with Section 41-6a-1308.
(4) A rule adopted under this chapter shall be consistent with provisions of federal laws, if any, relating to control of motor vehicles or motor vehicle emissions.
(5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.
(6)
(a) The board may not require testing for asbestos or related materials on a residential property with four or fewer units, unless:
(i) the property's construction was completed before January 1, 1981; or
(ii) the testing is for:
(A) a sprayed-on or painted on ceiling treatment that contained or may contain asbestos fiber;
(B) asbestos cement siding or roofing materials;
(C) resilient flooring products including vinyl asbestos tile, sheet vinyl products, resilient flooring backing material, whether attached or unattached, and mastic;
(D) thermal-system insulation or tape on a duct or furnace; or
(E) vermiculite type insulation materials.
(b) A residential property with four or fewer units is subject to an abatement rule made under Subsection (1) or (3)(b)(iv) if:
(i) a sample from the property is tested for asbestos; and
(ii) the sample contains asbestos measuring greater than 1%.
(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-2-107 or 19-2-108:
(a) a permit;
(b) a license;
(c) a registration;
(d) a certification; or
(e) another administrative authorization made by the director.
(8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

(9) Notwithstanding Subsection (7), the board may exercise all authority granted to the board by a federally enforceable state implementation plan.

Amended by Chapter 154, 2015 General Session

19-2-105 Duties of board.

The board, in conjunction with the governing body of each county identified in Section 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the inspection and maintenance program developed under Section 41-6a-1643 including issues relating to:

(1) the implementation of a standardized inspection and maintenance program;
(2) out-of-state registration of vehicles used in Utah;
(3) out-of-county registration of vehicles used within the areas required to have an inspection and maintenance program;
(4) use of the farm truck exemption;
(5) mechanic training programs;
(6) emissions standards; and
(7) emissions waivers.

Amended by Chapter 360, 2012 General Session

19-2-105.3 Clean fuel requirements for fleets.

(1) As used in this section:
  (a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
  (b) "Clean fuel" means:
    (i) propane, compressed natural gas, or electricity;
    (ii) other fuel the board determines annually on or before July 1 is at least as effective as fuels under Subsection (1)(b)(i) in reducing air pollution; and
    (iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.
  (c) "Fleet" means 10 or more vehicles:
    (i) owned or operated by a single entity as defined by board rule; and
    (ii) capable of being fueled or that are fueled at a central location.
  (d) "Fleet" does not include motor vehicles that are:
    (i) held for lease or rental to the general public;
    (ii) held for sale or used as demonstration vehicles by motor vehicle dealers;
    (iii) used by motor vehicle manufacturers for product evaluations or tests;
    (iv) authorized emergency vehicles as defined in Section 41-6a-102;
    (v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;
    (vi) special mobile equipment as defined in Section 41-1a-102;
    (vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000 pounds;
    (viii) regularly used by employees to drive to and from work, parked at the employees' personal residences when they are not at their employment, and not practicably fueled at a central location;
    (ix) owned, operated, or leased by public transit districts; or
    (x) exempted by board rule.
(2)
  (a) After evaluation of reasonably available pollution control strategies, and as part of the state implementation plan demonstrating attainment of the national ambient air quality standards,

the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:
(i) necessary to demonstrate attainment of the national ambient air quality standards in an area where they are required; and
(ii) reasonably cost effective when compared to other similarly beneficial control strategies for demonstrating attainment of the national ambient air quality standards.
(b) A vehicle retrofit to operate on compressed natural gas in accordance with Section 19-1-406 qualifies as a clean fuel vehicle under this section.
(3) After evaluation of reasonably available pollution control strategies, and as part of a state implementation plan demonstrating only maintenance of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:
(a) necessary to demonstrate maintenance of the national ambient air quality standards in an area where they are required; and
(b) reasonably cost effective as compared with other similarly beneficial control strategies for demonstrating maintenance of the national ambient air quality standards.
(4) Rules the board makes under this section may include:
(a) dates by which fleets are required to convert to clean fuels under the provisions of this section;
(b) definitions of fleet owners or operators;
(c) definitions of vehicles exempted from this section by rule;
(d) certification requirements for persons who install clean fuel conversion equipment, including testing and certification standards regarding installers; and
(e) certification fees for installers, established under Section 63J-1-504.
(5) Implementation of this section and rules made under this section are subject to the reasonable availability of clean fuel in the local market as determined by the board.

Amended by Chapter 154, 2015 General Session

19-2-106 Rulemaking authority and procedure.
(1)
(a) In carrying out the duties of Section 19-2-104, the board may make rules for the purpose of administering a program under the federal Clean Air Act different than the corresponding federal regulations which address the same circumstances if:
(i) the board holds a public comment period, as described in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and a public hearing; and
(ii) the board finds that the different rule will provide reasonable added protections to public health or the environment of the state or a particular region of the state.
(b) The board shall consider the differences between an industry that continuously produces emissions and an industry that episodically produces emissions, and make rules that reflect those differences.
(2) The findings described in Subsection (1)(a)(ii) shall be:
(a) in writing; and
(b) based on evidence, studies, or other information contained in the record that relates to the state of Utah and type of source involved.
(3) In making rules, the board may incorporate by reference corresponding federal regulations.

Amended by Chapter 80, 2015 General Session

19-2-107 Director -- Appointment -- Powers.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2)

(a) The director shall:

(i) prepare and develop comprehensive plans for the prevention, abatement, and control of air pollution in Utah;

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

(iii) review plans, specifications, or other data relative to air pollution control equipment or any part of the air pollution control equipment;

(iv) under the direction of the executive director, represent the state in all matters relating to interstate air pollution, including interstate compacts and similar agreements;

(v) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(vi) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(vii) encourage local units of government to handle air pollution within their respective jurisdictions on a cooperative basis and provide technical and consulting assistance to them;

(viii) determine by means of field studies and sampling the degree of air contamination and air pollution in all parts of the state;

(ix) monitor the effects of the emission of air pollutants from motor vehicles on the quality of the outdoor atmosphere in all parts of Utah and take appropriate responsive action;

(x) collect and disseminate information relating to air contamination and air pollution and conduct educational and training programs relating to air contamination and air pollution;

(xi) assess and collect noncompliance penalties as required in Section 120 of the federal Clean Air Act, 42 U.S.C. Section 7420;

(xii) comply with the requirements of federal air pollution laws;

(xiii) subject to the provisions of this chapter, enforce rules through the issuance of orders, including:

(A) prohibiting or abating discharges of wastes affecting ambient air;

(B) requiring the construction of new control facilities or any parts of new control facilities or the modification, extension, or alteration of existing control facilities or any parts of new control facilities; or

(C) adopting other remedial measures to prevent, control, or abate air pollution; and

(xiv) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.

(b) The director may:

(i) employ full-time, temporary, part-time, and contract employees necessary to carry out this chapter;

(ii) subject to the provisions of this chapter, authorize an employee or representative of the department to enter at reasonable time and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible air pollution;

(iii) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air pollution and its causes, effects, prevention, abatement, and control, as advisable and necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;
(iv) collect and disseminate information relating to air pollution and the prevention, control, and abatement of it;
(v) cooperate with studies and research relating to air pollution and its control, abatement, and prevention;
(vi) subject to Subsection (3), upon request, consult concerning the following with a person proposing to construct, install, or otherwise acquire an air pollutant source in Utah:
(A) the efficacy of proposed air pollution control equipment for the source; or
(B) the air pollution problem that may be related to the source;
(vii) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter;
(viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise a civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter; or
(ix) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to state or federal authorities for tax purposes that air pollution control equipment has been certified in conformity with Title 19, Chapter 12, Pollution Control Act.
(3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the requirements of this chapter, the rules adopted under this chapter, or any other provision of law.

Amended by Chapter 154, 2015 General Session

19-2-107.5 Solid fuel burning.
(1) The division shall create a:
(a) public awareness campaign, in consultation with representatives of the solid fuel burning industry, the healthcare industry, and members of the clean air community, on best wood burning practices and the effects of wood burning on air quality, specifically targeting nonattainment areas; and
(b) program to assist an individual to convert a dwelling to a natural gas, propane, or wood pellet heating source or a wood burning stove certified by the United States Environmental Protection Agency, as funding allows, if the individual:
(i) lives in a dwelling where a wood burning stove is the sole source of heat; and
(ii) is on the list of registered sole heating source homes.
(2)
(a) The division may not impose a burning ban prohibiting burning during a specified seasonal period of time.
(b) Notwithstanding Subsection (2)(a), the division shall:
(i) allow burning during local emergencies and utility outages; and
(ii) provide for exemptions, through registration with the division, for:
(A) devices that are sole sources of heat; or
(B) locations where natural gas service is limited or unavailable.
(3) The division may seek private donations and federal sources of funding to supplement any funds appropriated by the Legislature to fulfill Subsection (1)(b).

Amended by Chapter 416, 2015 General Session

19-2-107.7 Water heater regulations.

(1) As used in this section:
  (a) "Natural gas-fired water heater" means a device that heats water by the combustion of natural gas to a thermostatically-controlled temperature not exceeding 210 degrees Fahrenheit for use external to the vessel at pressures not exceeding 160 pounds per square inch gauge.
  (b) "Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy.
(2) A person may not sell or purchase a natural gas-fired water heater that is manufactured after July 1, 2018 with the intent to install it in Utah if the natural gas-fired water heater exceeds the applicable nitrogen oxide emission rate limit set in Title 15A, State Construction and Fire Codes Act.
(3) A manufacturer in Utah shall display the model number and nitrogen oxide emission rate of a water heater complying with this section on:
  (a) the shipping carton for the water heater; and
  (b) the permanent rating plate of each water heater unit.
(4) This section does not apply to a water heater unit that:
  (a) uses a fuel other than natural gas;
  (b) is used in a recreational vehicle; or
  (c) is manufactured in Utah for shipment and use outside of Utah.

Enacted by Chapter 247, 2016 General Session

19-2-108 Notice of construction or modification of installations required -- Authority of director to prohibit construction -- Hearings -- Limitations on authority of director -- Inspections authorized.

(1) Notice shall be given to the director by a person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air pollutants discharged, so that the installation may be expected to be a source or indirect source of air pollution, or by a person planning to install an air cleaning device or other equipment intended to control emission of air pollutants.
(2)
  (a) The director may require, as a condition precedent to the construction, modification, installation, or establishment of the air pollutant source or indirect source, the submission of plans, specifications, and other information as he finds necessary to determine whether the proposed construction, modification, installation, or establishment will be in accord with applicable rules in force under this chapter.
  (b) If within 90 days after the receipt of plans, specifications, or other information required under this subsection, the director determines that the proposed construction, installation, or establishment or any part of it will not be in accord with the requirements of this chapter or applicable rules or that further time, not exceeding three extensions of 30 days each, is required by the director to adequately review the plans, specifications, or other information, he shall issue an order prohibiting the construction, installation, or establishment of the air pollutant source or sources in whole or in part.

(3) In addition to any other remedies but prior to invoking any such other remedies, a person aggrieved by the issuance of an order either granting or denying a request for the construction of a new installation, shall, upon request, in accordance with the rules of the department, be entitled to a special adjudicative proceeding conducted by an administrative law judge as provided by Section 19-1-301.5.
(4) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted under Subsection (1) shall be maintained in good working order.
(5) This section does not authorize the director to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.
(6)
(a) An authorized officer, employee, or representative of the director may enter and inspect any property, premise, or place on or at which an air pollutant source is located or is being constructed, modified, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and the rules adopted under it.
(b)
(i) A person may not refuse entry or access to an authorized representative of the director who requests entry for purposes of inspection and who presents appropriate credentials.
(ii) A person may not obstruct, hamper, or interfere with an inspection.
(c) If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Amended by Chapter 154, 2015 General Session
Amended by Chapter 441, 2015 General Session

19-2-109 Air quality standards -- Hearings on adoption -- Orders of director -- Adoption of emission control requirements.
(1)
(a) The board, in adopting standards of quality for ambient air, shall conduct public hearings.
(b) Notice of any public hearing for the consideration, adoption, or amendment of air quality standards shall specify the locations to which the proposed standards apply and the time, date, and place of the hearing.
(c) The notice shall be:
(i)
(A) published at least twice in any newspaper of general circulation in the area affected; and
(B) published on the Utah Public Notice Website created in Section 63F-1-701, at least 20 days before the public hearing; and
(ii) mailed at least 20 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the director has reason to believe will be affected by the standards.
(d) The adoption of air quality standards or any modification or changes to air quality standards shall be by order of the director following formal action of the board with respect to the standards.
(e) The order shall be published:
(i) in a newspaper of general circulation in the area affected; and
(ii) as required in Section 45-1-101.
(2)

(a) The board may establish emission control requirements by rule that in its judgment may be necessary to prevent, abate, or control air pollution that may be statewide or may vary from area to area, taking into account varying local conditions.
(b) In adopting these requirements, the board shall give notice and conduct public hearings in accordance with the requirements in Subsection (1).

Amended by Chapter 360, 2012 General Session

19-2-109.1 Operating permit required -- Emissions fee -- Implementation.

(1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:
(a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
(b) "EPA" means the federal Environmental Protection Agency.
(c) "Operating permit" means a permit issued by the director to sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.
(d) "Program" means the air pollution operating permit program established under this section to comply with Title V of the 1990 Clean Air Act.
(e) "Regulated pollutant" means the same as that term is defined in Title V of the 1990 Clean Air Act and implementing federal regulations.
(2) A person may not operate a source of air pollution required to have a permit under Title V of the 1990 Clean Air Act without having obtained an operating permit from the director under procedures the board establishes by rule.
(3)
(a) Operating permits issued under this section shall be for a period of five years unless the director makes a written finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five years is necessary to protect the public health and the environment of the state.
(b) The director may issue, modify, or renew an operating permit only after providing public notice, an opportunity for public comment, and an opportunity for a public hearing.
(c) The director shall, in conformity with the 1990 Clean Air Act and implementing federal regulations, revise the conditions of issued operating permits to incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990 Clean Air Act, if the remaining period of the permit is three or more years.
(d) The director may terminate, modify, revoke, or reissue an operating permit for cause.
(4)
(a) The board shall establish a proposed annual emissions fee that conforms with Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources required to obtain a permit. The emissions fee established under this section is in addition to fees assessed under Section 19-2-108 for issuance of an approval order.
(b) In establishing the fee the board shall comply with the provisions of Section 63J-1-504 that require a public hearing and require the established fee to be submitted to the Legislature for its approval as part of the department's annual appropriations request.
(c) The fee shall cover all reasonable direct and indirect costs required to develop and administer the program and the small business assistance program established under Section 19-2-109.2. The director shall prepare an annual report of the emissions fees collected and the costs covered by those fees under this Subsection (4).
(d) The fee shall be established uniformly for all sources required to obtain an operating permit under the program and for all regulated pollutants.

(e) The fee may not be assessed for emissions of any regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.
(f) An emissions fee may not be assessed for any amount of a regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.
(5) Emissions fees shall be based on actual emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.
(6) If the owner or operator of a source subject to this section fails to timely pay an annual emissions fee, the director may:
(a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually; or
(b) revoke the operating permit.
(7) The owner or operator of a source subject to this section may contest an emissions fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (7).
(a) The owner or operator shall pay the fee under protest prior to being entitled to a hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to contest the fee or penalty under this section.
(b) A request for a hearing under this Subsection (7) shall be made after payment of the emissions fee and within six months after the emissions fee was due.
(8) To reinstate an operating permit revoked under Subsection (6) the owner or operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.
(9) All emissions fees and penalties collected by the department under this section shall be deposited in the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section 19-2-109.2.
(10) Failure of the director to act on an operating permit application or renewal is a final administrative action only for the purpose of obtaining judicial review by any of the following persons to require the director to take action on the permit or its renewal without additional delay:
(a) the applicant;
(b) a person who participated in the public comment process; or
(c) a person who could obtain judicial review of that action under applicable law.

Amended by Chapter 154, 2015 General Session

19-2-109.2 Small business assistance program.
(1) The division shall establish a small business stationary source technical and environmental compliance assistance program that conforms with Title V of the 1990 Clean Air Act to assist small businesses to comply with state and federal air pollution laws.
(2) There is created the Compliance Advisory Panel to advise and monitor the program created in Subsection (1). The seven panel members are:
(a) two members who are not owners or representatives of owners of small business stationary air pollution sources, selected by the governor to represent the general public;
(b) four members who are owners or who represent owners of small business stationary sources selected by leadership of the Utah Legislature as follows:

(i) one member selected by the majority leader of the Senate;
(ii) one member selected by the minority leader of the Senate;
(iii) one member selected by the majority leader of the House of Representatives; and
(iv) one member selected by the minority leader of the House of Representatives; and
(c) one member selected by the executive director to represent the Division of Air Quality, Department of Environmental Quality.
(3)
(a) Except as required by Subsection (3)(b), as terms of current panel members expire, the department shall appoint each new member or reappointed member to a four-year term.
(b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of panel members are staggered so that approximately half of the panel is appointed every two years.
(4) Members may serve more than one term.
(5) Members shall hold office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.
(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(7) Every two years, the panel shall elect a chair from its members.
(8)
(a) The panel shall meet as necessary to carry out its duties. Meetings may be called by the chair, the director, or upon written request of three of the members of the panel.
(b) Three days' notice shall be given to each member of the panel prior to a meeting.
(9) Four members constitute a quorum at a meeting, and the action of the majority of members present is the action of the panel.
(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 154, 2015 General Session

19-2-109.3 Public access to information.

A copy of each permit application, compliance plan, emissions or compliance monitoring report, certification, and each operating permit issued under this chapter shall be made available to the public in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

19-2-110 Violations -- Notice to violator -- Corrective action orders -- Conference, conciliation, and persuasion by director -- Hearings.

(1) Whenever the director has reason to believe that a violation of any provision of this chapter or any rule issued under it has occurred, the director may serve written notice of the violation upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute the violation, and may include an order that necessary corrective action be taken within a reasonable time.

(2) Nothing in this chapter prevents the director from making efforts to obtain voluntary compliance through warning, conference, conciliation, persuasion, or other appropriate means.
(3) Hearings may be held before an administrative law judge as provided by Section 19-1-301.

Amended by Chapter 360, 2012 General Session

19-2-112 Generalized condition of air pollution creating emergency -- Sources causing imminent danger to health -- Powers of executive director -- Declaration of emergency.

(1)
(a) Title 63G, Chapter 4, Administrative Procedures Act, and any other provision of law to the contrary notwithstanding, if the executive director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the executive director, with the concurrence of the governor, shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air pollutants.
(b) The order shall fix a place and time, not later than 24 hours after its issuance, for a hearing to be held before the governor.
(c) Not more than 24 hours after the commencement of this hearing, and without adjournment of it, the governor shall affirm, modify, or set aside the order of the executive director.

(2)
(a) In the absence of a generalized condition of air pollution referred to in Subsection (1), but if the executive director finds that emissions from the operation of one or more air pollutant sources is causing imminent danger to human health or safety, the executive director may commence adjudicative proceedings under Section 63G-4-502.
(b) Notwithstanding Section 19-1-301 or 19-1-301.5, the executive director may conduct the emergency adjudicative proceeding in place of an administrative law judge.

(3) Nothing in this section limits any power that the governor or any other officer has to declare an emergency and act on the basis of that declaration.

Amended by Chapter 154, 2015 General Session

19-2-113 Variances -- Judicial review.

(1)
(a) A person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.
(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.
(3) A variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:
(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known

and available, and subject to the taking of any substitute or alternate measures that the board may prescribe;

(b)

(i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and

(ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or

(c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of a kind other than that provided for in Subsection (3)(a) or (b), it may not be granted for more than one year.

(4)

(a) A variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.

(b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.

(c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.

(d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.

(5)

(a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.

(b) A person aggrieved by the board's decision may obtain judicial review.

(c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air pollutant source is situated.

(6)

(a) The board may review a variance during the term for which it was granted.

(b) The review procedure is the same as that for an original application.

(c) The variance may be revoked upon a finding that:

(i) the nature or amount of emission has changed or increased; or

(ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to a person or property.

Amended by Chapter 154, 2015 General Session

19-2-114 Activities not in violation of chapter or rules.

The following are not a violation of this chapter or of a rule made under it:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and
(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index for the area where the burn is to occur is above 500.

Amended by Chapter 154, 2015 General Session

19-2-115 Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, the terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.
(2)
  (a) A person who violates this chapter, or any rule, order, or permit issued or made under this chapter is subject in a civil proceeding to a penalty not to exceed $10,000 per day for each violation.
  (b) Subsection (2)(a) also applies to rules made under the authority of Section 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.
  (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the amounts specified in that section and shall be used in accordance with that section.
(3) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine of not more than $25,000 per day of violation if that person knowingly violates any of the following under this chapter:
  (a) an applicable standard or limitation;
  (b) a permit condition; or
  (c) a fee or filing requirement.
(4) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation who knowingly:
  (a) makes any false material statement, representation, or certification, in any notice or report required by permit; or
  (b) renders inaccurate any monitoring device or method required to be maintained by this chapter or applicable rules made under this chapter.
(5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty under Section 19-2-109.1.
(6) A person who willfully violates Section 19-2-120 is guilty of a class A misdemeanor.
(7) A person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the director that the person is violating the requirement, knowingly violates an order issued under Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule made under this chapter is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and a fine of not more than $25,000 per day of violation in the case of the first offense, and not more than $50,000 per day of violation in the case of subsequent offenses.
(8)
  (a) As used in this section:
    (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C. Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).

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

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

(b)

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

(A) releases into the ambient air any hazardous air pollutant; and

(B) places another person in imminent danger of death or serious bodily injury.

(ii) As used in this Subsection (8)(b), "person" does not include an employee who is carrying out the employee's normal activities and who is not a part of senior management personnel or a corporate officer.

(c) A person is guilty of a second degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than $50,000 per day of violation if that person:

(i) knowingly releases into the ambient air any hazardous air pollutant; and

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

(d) If a person is an organization, it shall, upon conviction of violating Subsection (8)(c), be subject to a fine of not more than $1,000,000.

(e)

(i) A defendant who is an individual is considered to have acted knowingly under Subsections (8)(c) and (d), if:

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

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

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

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

(f)

(i) It is an affirmative defense to prosecution under this Subsection (8) that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

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

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

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.

(9)

(a) Except as provided in Subsection (9)(b), and unless prohibited by federal law, all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.
(c) The department shall regulate reimbursements by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
(i) define qualifying environmental enforcement activities; and
(ii) define qualifying extraordinary expenses.

Amended by Chapter 360, 2012 General Session

19-2-116 Injunction or other remedies to prevent violations -- Civil actions not abridged.

(1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of the rules adopted under it or any orders made under it by injunction or other appropriate remedy. The director has the power to institute and maintain in the name of the state any and all enforcement proceedings.
(2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding for this purpose.
(3)
(a) In addition to any other remedy created in this chapter, the director may initiate an action for appropriate injunctive relief:
(i) upon failure of any person to comply with:
(A) any provision of this chapter;
(B) any rule adopted under this chapter; or
(C) any final order made by the board, the director, or the executive director; and
(ii) when it appears necessary for the protection of health and welfare.
(b) The attorney general shall bring injunctive relief actions on request.
(c) A bond is not required.

Amended by Chapter 360, 2012 General Session

19-2-117 Attorney general as legal advisor to board -- Duties of attorney general and county attorneys.

(1) Except as provided in Section 63G-7-902, the attorney general is the legal advisor to the board and the director and shall defend them or any of them in all actions or proceedings brought against them or any of them.
(2) The county attorney in the county in which a cause of action arises may, upon request of the board or the director, bring an action, civil or criminal, to abate a condition which exists in violation of, or to prosecute for the violation of or to enforce, this chapter or the standards, orders, or rules of the board or the director issued under this chapter.
(3) The director may bring an action and be represented by the attorney general.
(4) In the event a person fails to comply with a cease and desist order of the board or the director that is not subject to a stay pending administrative or judicial review, the director may initiate an action for, and is entitled to, injunctive relief to prevent any further or continued violation of the order.

Amended by Chapter 154, 2015 General Session

19-2-118 Violation of injunction evidence of contempt.

Failure to comply with the terms of any injunction issued under this chapter is prima facie evidence of contempt which is punishable as for other civil contempts.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-119 Civil or criminal remedies not excluded -- Actionable rights under chapter -- No liability for acts of God or other catastrophes.

(1) Existing civil or criminal remedies for a wrongful action that is a violation of the law are not excluded by this chapter.
(2) Except as provided in Sections 19-1-301 and 19-1-301.5, and rules implementing those provisions, persons other than the state or the board do not acquire actionable rights by virtue of this chapter.
(3) The liabilities imposed for violation of this chapter are not imposed for a violation caused by an act of God, war, strike, riot, or other catastrophe.

Amended by Chapter 154, 2015 General Session

19-2-120 Information required of owners or operators of air pollutant sources.

The owner or operator of a stationary air pollutant source in the state shall furnish to the director the reports required by rules made in accordance with Section 19-2-104 and any other information the director finds necessary to determine whether the source is in compliance with state and federal regulations and standards. The information shall be correlated with applicable emission standards or limitations and shall be available to the public during normal business hours at the office of the division.

Amended by Chapter 154, 2015 General Session

19-2-121 Ordinances of political subdivisions authorized.

Any political subdivision of the state may enact and enforce ordinances to control air pollution that are consistent with this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-122 Cooperative agreements between political subdivisions and department.

(1) A political subdivision of the state may enter into and perform, with other political subdivisions of the state or with the department, contracts and agreements as they find proper for establishing, planning, operating, and financing air pollution programs.
(2) The agreements may provide for an agency to:
  (a) supervise and operate an air pollution program;
  (b) prescribe the agency's powers and duties; and
  (c) fix the compensation of the agency's members and employees.

Amended by Chapter 154, 2015 General Session

Part 2
Clean Air Retrofit, Replacement, and Off-road Technology Program

19-2-201 Title.

This part is known as the "Clean Air Retrofit, Replacement, and Off-road Technology Program."

Enacted by Chapter 295, 2014 General Session

19-2-202 Definitions.

As used in this part:

(1) "Board" means the Air Quality Board.

(2) "Certified" means certified by the United States Environmental Protection Agency or the California Air Resources Board to meet appropriate emission standards.

(3) "Cost" means the total reasonable cost of a project eligible for a grant under the fund, including the cost of labor.

(4) "Director" means the director of the Division of Air Quality.

(5) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).

(6) "Eligible equipment" means equipment with engines, including stationary generators and pumps, operated and, if applicable, permitted in Utah.

(7) "Eligible vehicle" means a vehicle operated and, if applicable, registered in Utah that is:

(a) a medium-duty or heavy-duty transit bus;

(b) a school bus as defined in Section 53-3-102;

(c) a medium-duty or heavy-duty truck with a gross vehicle weight rating of at least 16,001 GVWR;

(d) a locomotive; or

(e) another type of vehicle identified by the board in rule as being a significant potential source of air pollution, as defined in Section 19-2-102.

(8) "Verified" means verified by the United States Environmental Protection Agency or the California Air Resources Board to reduce air emissions and meet durability requirements.

Amended by Chapter 321, 2016 General Session

19-2-203 Grants and programs -- Conditions.

(1) The director may make grants for implementing:

(a) verified technologies for eligible vehicles or equipment; and

(b) certified vehicles, engines, or equipment.

(2)

(a) The division may develop programs, including exchange, rebate, or low-cost purchase programs, to encourage replacement of:

(i) landscaping and maintenance equipment with equipment that is lower in emissions; and

(ii) other equipment or products identified by the board in rule as being a significant potential source of air pollution, as defined in Subsection 19-2-102(3).

(b) The division may enter into agreements with local health departments to administer the programs described in Subsection (2)(a).

(3) As a condition for receiving the grant, a person receiving a grant under Subsection (1) or receiving a grant under this Subsection (3) shall agree to:

(a) provide information to the division about the vehicles, equipment, or technology acquired with the grant proceeds;

(b) allow inspections by the division to ensure compliance with the terms of the grant;

(c) permanently disable replaced vehicles, engines, and equipment from use; and

(d) comply with the conditions for the grant.
(4) Grants and programs under Subsections (1) and (2) may be administered using a rebate program.
(5) Grants issued under this section may not exceed the actual cost of the project.

Enacted by Chapter 295, 2014 General Session

19-2-204 Duties and authorities -- Rulemaking.
(1) The board may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
(a) specifying the amount of money to be dedicated annually for grants;
(b) specifying criteria the director shall consider in prioritizing and awarding grants, including:
(i) a preference for awarding a grant to an individual who has already secured some other source of funding; and
(ii) a limitation on the types of vehicles that are eligible for funds;
(c) specifying the terms of a grant or exchange under Subsections 19-2-203(2), (3), and (4);
(d) specifying the procedures to be used in the grant and exchange programs authorized in Subsections 19-2-203(2), (3), and (5); and
(e) requiring all grant applicants to apply on forms provided by the division.
(2) The division shall:
(a) administer funds to encourage vehicle and equipment owners and operators to reduce emissions from vehicles and equipment;
(b) provide forms for application for a grant or exchange under Subsection 19-2-203(2) or (3); and
(c) provide information about which vehicles, engines, or equipment are certified and which technology is verified as provided in this part.
(3) The division may inspect vehicles, equipment, or technology for which a grant was made to ensure compliance with the terms of the grant.

Enacted by Chapter 295, 2014 General Session

Part 3
Conversion to Alternative Fuel Grant Program

19-2-301 Title.
This part is known as the "Conversion to Alternative Fuel Grant Program."

Enacted by Chapter 381, 2015 General Session

19-2-302 Definitions.
As used in this part:
(1) "Air quality standards" means vehicle emission standards equal to or greater than the standards established in bin 4 in Table S04-1 of 40 C.F.R. 86.1811-04(c)(6).
(2) "Alternative fuel" means:
(a) propane, natural gas, or electricity; or
(b) other fuel that the board determines, by rule, to be:

(i) at least as effective in reducing air pollution as the fuels listed in Subsection (2)(a); or
(ii) substantially more effective in reducing air pollution as the fuel for which the engine was originally designed.
(3) "Board" means the Air Quality Board.
(4) "Clean fuel grant" means a grant awarded under this part from the Conversion to Alternative Fuel Grant Program Fund created in Section 19-1-403.3 for reimbursement for a portion of the incremental cost of an OEM vehicle or the cost of conversion equipment.
(5) "Conversion equipment" means equipment designed to:
(a) allow an eligible vehicle to operate on an alternative fuel; and
(b) reduce an eligible vehicle's emissions of regulated pollutants, as demonstrated by:
(i) certification of the conversion equipment by the Environmental Protection Agency or by a state or country that has certification standards that are recognized, by rule, by the board;
(ii) testing the eligible vehicle, before and after the installation of the equipment, in accordance with 40 C.F.R. Part 86, Control of Emissions from New and In-Use Highway Vehicles and Engines, using all fuel the motor vehicle is capable of using;
(iii) for a retrofit natural gas vehicle that is retrofit in accordance with Section 19-1-406, satisfying the emission standards described in Section 19-1-406; or
(iv) any other test or standard recognized by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(6) "Cost" means the total reasonable cost of a conversion kit and the paid labor, if any, required to install it.
(7) "Director" means the director of the Division of Air Quality.
(8) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).
(9) "Eligible vehicle" means a:
(a) commercial vehicle, as defined in Section 41-1a-102;
(b) farm tractor, as defined in Section 41-1a-102; or
(c) motor vehicle, as defined in Section 41-1a-102.

Amended by Chapter 369, 2016 General Session

19-2-303 Grants and programs -- Conditions.
(1) The director may make grants from the Conversion to Alternative Fuel Grant Program Fund created in Section 19-1-403.3 to a person who installs conversion equipment on an eligible vehicle as described in this part.
(2) A person who installs conversion equipment on an eligible vehicle:
(a) may apply to the division for a grant to offset the cost of installation; and
(b) shall pass along any savings on the cost of conversion equipment to the owner of the eligible vehicle being converted in the amount of grant money received.
(3) As a condition for receiving the grant, a person who installs conversion equipment shall agree to:
(a) provide information to the division about the eligible vehicle to be converted with the grant proceeds;
(b) allow inspections by the division to ensure compliance with the terms of the grant; and
(c) comply with the conditions for the grant.
(4) A grant issued under this section may not exceed the lesser of 50% of the cost of the conversion system and associated labor, or $2,500, per converted eligible vehicle.

Amended by Chapter 369, 2016 General Session

19-2-304 Duties and authorities -- Rulemaking.

(1) The board may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
  (a) specifying the amount of money to be dedicated annually for grants under this part;
  (b) specifying criteria the director shall consider in prioritizing and awarding grants, including a limitation on the types of vehicles that are eligible for funds;
  (c) specifying the minimum qualifications of a person who:
    (i) installs conversion equipment on an eligible vehicle; and
    (ii) receives a grant from the division;
  (d) specifying the terms of a grant; and
  (e) requiring all grant applicants to apply on forms provided by the division.
(2) The division shall:
  (a) administer the Conversion to Alternative Fuel Grant Program Fund to encourage eligible vehicle owners to reduce emissions from eligible vehicles; and
  (b) provide information about which conversion technology meets the requirements of this part.
(3) The division may inspect vehicles for which a grant was made to ensure compliance with the terms of the grant.

Amended by Chapter 369, 2016 General Session

19-2-305 Limitation on applying for a tax credit.

An owner of an eligible vehicle who receives the savings on the cost of conversion equipment, as described in Subsection 19-2-303(2)(b), may not claim a tax credit for the conversion under Section 59-7-605 or 59-10-1009 unless the savings are less than the tax credit authorized by those sections, in which case the owner may claim a tax credit in the amount of the difference.

Enacted by Chapter 381, 2015 General Session

Chapter 3
Radiation Control Act

Part 1
General Provisions

19-3-101 Short title.

This chapter is known as the "Radiation Control Act."

Enacted by Chapter 112, 1991 General Session

19-3-102 Definitions.

As used in this chapter:
(1) "Board" means the Waste Management and Radiation Control Board created under Section 19-1-106.
(2)

(a) "Broker" means a person who performs one or more of the following functions for a generator:
(i) arranges for transportation of the radioactive waste;
(ii) collects or consolidates shipments of radioactive waste; or
(iii) processes radioactive waste in some manner.
(b) "Broker" does not include a carrier whose sole function is to transport the radioactive waste.
(3) "Byproduct material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).
(4) "Class B and class C low-level radioactive waste" has the same meaning as in 10 CFR 61.55.
(5) "Director" means the director of the Division of Waste Management and Radiation Control.
(6) "Division" means the Division of Waste Management and Radiation Control, created in Subsection 19-1-105(1)(d).
(7) "Generator" means a person who:
(a) possesses any material or component:
(i) that contains radioactivity or is radioactively contaminated; and
(ii) for which the person foresees no further use; and
(b) transfers the material or component to:
(i) a commercial radioactive waste treatment or disposal facility; or
(ii) a broker.
(8)
(a) "High-level nuclear waste" means spent reactor fuel assemblies, dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and defense-related wastes.
(b) "High-level nuclear waste" does not include medical or institutional wastes, naturally-occurring radioactive materials, or uranium mill tailings.
(9)
(a) "Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release.
(b) "Low-level radioactive waste" does not include waste containing more than 100 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.
(10) "Radiation" means ionizing and nonionizing radiation, including gamma rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.
(11) "Radioactive" means any solid, liquid, or gas which emits radiation spontaneously from decay of unstable nuclei.

Amended by Chapter 451, 2015 General Session

19-3-103.7 Prohibition of certain radioactive wastes.

No entity may accept in the state or apply for a license to accept in the state for commercial storage, decay in storage, treatment, incineration, or disposal:
(1) class B or class C low-level radioactive waste; or
(2) radioactive waste having a higher radionuclide concentration than the highest radionuclide concentration allowed under licenses existing on February 25, 2005, that have met all the requirements of Section 19-3-105.

Amended by Chapter 10, 2005 General Session

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

(1) As used in this section:
  (a) "Decommissioning" includes financial assurance.
  (b) "Source material" and "byproduct material" have the same definitions as in the Atomic Energy Act of 1954, 42 U.S.C. Sec. 2014, as amended.
(2) The division may require the registration or licensing of radiation sources that constitute a significant health hazard.
(3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.
(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules:
  (a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;
  (b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government;
  (c) to establish certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities; and
  (d) as necessary regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material to establish requirements for:
    (i) the licensing, operation, decontamination, and decommissioning, including financial assurances; and
    (ii) the reclamation of sites, structures, and equipment used in conjunction with the activities described in this Subsection (4).
(5)
  (a) On and after January 1, 2003, a fee is imposed for the regulation of source and byproduct material and the disposal of byproduct material at uranium mills or commercial waste facilities, as provided in this Subsection (5).
  (b) On and after January 1, 2003, through March 30, 2003:
    (i) $6,667 per month for uranium mills or commercial sites disposing of or reprocessing byproduct material; and
    (ii) $4,167 per month for those uranium mills the director has determined are on standby status.
  (c) On and after March 31, 2003, through June 30, 2003, the same fees as in Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation on or before March 30, 2003.
  (d) If the Nuclear Regulatory Commission does not grant the amendment for state agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and are not required to be paid until on and after the later date of:
    (i) October 1, 2003; or
    (ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation.
  (e) For the payment periods beginning on and after July 1, 2003, the department shall establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the restrictions under Subsection (5)(d).
  (f) The division shall deposit fees it receives under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.
(6)

(a) The division shall assess fees for registration, licensing, and inspection of radiation sources under this section.
(b) The division shall comply with the requirements of Section 63J-1-504 in assessing fees for licensure and registration.

(7)
(a) Except as provided in Subsection (8), and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.
(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

(8)
(a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (7) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.
(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(9)
(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall by rule:
(i) authorize independent qualified experts to conduct inspections required under this chapter of x-ray facilities registered with the division; and
(ii) establish qualifications and certification procedures necessary for independent experts to conduct these inspections.
(b) Independent experts under this Subsection (9) are not considered employees or representatives of the division or the state when conducting the inspections.

(10)
(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities, subject to the prohibition imposed by Section 19-3-103.7.
(b) Subject to Subsection 19-3-105(10), any facility under Subsection (10)(a) for which a radioactive material license is required by this section shall comply with those criteria.
(c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

(11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules that establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities.

(12) The rules described in Subsection (11) shall include the following provisions:
(a) the financial assurance shall be based on an annual calculation and shall include the costs of closure and postclosure care of radioactive waste land disposal facilities in all areas subject to the licensed or permitted portions of the facility;
(b) financial assurance for closing the areas within the disposal embankments shall be limited to the cost of closing areas where waste has been disposed; and

(c) at the option of the licensee or permittee, the financial assurance requirements shall be based on:
(i) an annual calculation using the current edition of RS Means Facilities Construction Cost Data or using a process, including an indirect cost multiplier, previously agreed to between the licensee or permittee and the director; or
(ii)
(A) for an initial financial assurance determination and for each financial assurance determination every five years thereafter, a competitive site-specific bid for closure and postclosure care of the facility at least once every five years; and
(B) for each year between a financial assurance determination as described in Subsection (12)(c)(ii)(A), an annual inflation adjustment to the financial assurance determination using the Gross Domestic Product Implicit Price Deflator of the Bureau of Economic Analysis, United States Department of Commerce, calculated by dividing the latest annual deflator by the deflator for the previous year.
(13) Subject to the financial assurance requirements described in Subsections (11) and (12), if the director and the licensee or permittee do not agree on a final financial assurance determination made by the director, the licensee or permittee may appeal the determination in:
(a) an arbitration proceeding governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act, with the costs of the arbitration to be split equally between the licensee or permittee and the division, if both the licensee or permittee and the director agree in writing to arbitration; or
(b) a special adjudicative proceeding under Section 19-1-301.5.

Amended by Chapter 441, 2015 General Session
Amended by Chapter 451, 2015 General Session

19-3-105 Definitions -- Legislative and gubernatorial approval required for radioactive waste license -- Exceptions -- Application for new, renewed, or amended license.
(1) As used in this section:
(a) "Alternate feed material" has the same definition as provided in Section 59-24-102.
(b) "Approval application" means an application by a radioactive waste facility regulated under this chapter or Title 19, Chapter 5, Water Quality Act, for a permit, license, registration, certification, or other authorization.
(c)
(i) "Class A low-level radioactive waste" means:
(A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and
(B) radium-226 up to a maximum radionuclide concentration level of 10,000 picocuries per gram.
(ii) "Class A low-level radioactive waste" does not include:
(A) uranium mill tailings;
(B) naturally occurring radioactive materials; or
(C) the following radionuclides if classified as "special nuclear material" under the Atomic Energy Act of 1954, 42 U.S.C. 2014:
(I) uranium-233; and
(II) uranium-235 with a radionuclide concentration level greater than the concentration limits for specific conditions and enrichments established by an order of the Nuclear Regulatory Commission:
(Aa) to ensure criticality safety for a radioactive waste facility in the state; and

(Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special nuclear material exemption order.

(d)

(i) "Radioactive waste facility" or "facility" means a facility that receives, transfers, stores, decays in storage, treats, or disposes of radioactive waste:

(A) commercially for profit; or

(B) generated at locations other than the radioactive waste facility.

(ii) "Radioactive waste facility" does not include a facility that receives:

(A) alternate feed material for reprocessing; or

(B) radioactive waste from a location in the state designated as a processing site under 42 U.S.C. 7912(f).

(e) "Radioactive waste license" or "license" means a radioactive material license issued by the director under Subsection 19-3-108(2)(d), to own, construct, modify, or operate a radioactive waste facility.

(2) The provisions of this section are subject to the prohibition under Section 19-3-103.7.

(3) Subject to Subsection (8), a person may not own, construct, modify, or operate a radioactive waste facility without:

(a) having received a radioactive waste license for the facility;

(b) meeting the requirements established by rule under Section 19-3-104;

(c) the approval of the governing body of the municipality or county responsible for local planning and zoning where the radioactive waste is or will be located; and

(d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the approval of the governor and the Legislature.

(4) Subject to Subsection (8), a new radioactive waste license application, or an application to renew or amend an existing radioactive waste license, is subject to the requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

(a) specifies a different geographic site than a previously submitted application;

(b) would cost 50% or more of the cost of construction of the original radioactive waste facility or the modification would result in an increase in capacity or throughput of a cumulative total of 50% of the total capacity or throughput which was approved in the facility license as of January 1, 1990, or the initial approval facility license if the initial license approval is subsequent to January 1, 1990; or

(c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of radioactive waste having a higher radionuclide concentration limit than allowed, under an existing approved license held by the facility, for the specific type of waste to be received, transferred, stored, decayed in storage, treated, or disposed of.

(5) The requirements of Subsection (4)(c) do not apply to an application to renew or amend an existing radioactive waste license if:

(a) the radioactive waste facility requesting the renewal or amendment has received a license prior to January 1, 2004; and

(b) the application to renew or amend its license is limited to a request to approve the receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level radioactive waste.

(6) A radioactive waste facility which receives a new radioactive waste license after May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license application, renewal, or amendment that requests approval to receive, transfer, store, decay in storage,

treat, or dispose of radioactive waste not previously approved under an existing license held by the facility.

(7) If the board finds that approval of additional radioactive waste license applications, renewals, or amendments will result in inadequate oversight, monitoring, or licensure compliance and enforcement of existing and any additional radioactive waste facilities, the board shall suspend acceptance of further applications for radioactive waste licenses. The board shall report the suspension to the Legislative Management Committee.

(8) The requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(10) do not apply to:

(a) a radioactive waste license that is in effect on December 31, 2006, including all amendments to the license that have taken effect as of December 31, 2006;

(b) a license application for a facility in existence as of December 31, 2006, unless the license application includes an area beyond the facility boundary approved in the license described in Subsection (8)(a); or

(c) an application to renew or amend a license described in Subsection (8)(a), unless the renewal or amendment includes an area beyond the facility boundary approved in the license described in Subsection (8)(a).

(9)

(a) The director shall review an approval application to determine whether the application complies with the requirements of this chapter and the rules of the board.

(b) Within 60 days after the day on which the director receives an approval application described in Subsection (10)(a)(ii) or (iii), the director shall:

(i) determine whether the application is complete and contains all the information necessary to process the application for approval; and

(ii)

(A) issue a notice of completeness to the applicant; or

(B) issue a notice of deficiency to the applicant and list the additional information necessary to complete the application.

(c) The director shall review information submitted in response to a notice of deficiency within 30 days after the day on which the director receives the information.

(10) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) categorize approval applications as follows:

(i) approval applications that:

(A) are administrative in nature;

(B) require limited scrutiny by the director; and

(C) do not require public input;

(ii) approval applications that:

(A) require substantial scrutiny by the director;

(B) require public input; and

(C) are not described in Subsection (10)(a)(iii); and

(iii) approval applications for:

(A) the granting or renewal of a radioactive waste license;

(B) the granting or renewal of a groundwater permit issued by the director for a radioactive waste facility;

(C) an amendment to a radioactive waste license, or a groundwater permit, that allows the design and approval of a new disposal cell;

(D) an amendment to a radioactive waste license or groundwater discharge permit for a radioactive waste facility to eliminate groundwater monitoring; and

(E) a radioactive waste facility closure plan;
(b) provide time periods for the director to review, and approve or deny, an application described in Subsection (10)(a) as follows:
(i) for applications categorized under Subsection (10)(a)(i), within 30 days after the day on which the director receives the application;
(ii) for applications categorized under Subsection (10)(a)(ii), within 180 days after the day on which the director receives the application;
(iii) for applications categorized under Subsection (10)(a)(iii), as follows:
(A) for a new radioactive waste license, within 540 days after the day on which the director receives the application;
(B) for a new groundwater permit issued by the director for a radioactive waste facility consistent with the provisions of Title 19, Chapter 5, Water Quality Act, within 540 days after the day on which the director receives the application;
(C) for a radioactive waste license renewal, within 365 days after the day on which the director receives the application;
(D) for a groundwater permit renewal issued by the director for a radioactive waste facility, within 365 days after the day on which the director receives the application;
(E) for an amendment to a radioactive waste license, or a groundwater permit, that allows the design and approval of a new disposal cell, within 365 days after the day on which the director receives the application;
(F) for an amendment to a radioactive waste license, or a groundwater discharge permit, for a radioactive waste facility to eliminate groundwater monitoring, within 365 days after the day on which the director receives the application; and
(G) for a radioactive waste facility closure plan, within 365 days after the day on which the director receives the application;
(c) toll the time periods described in Subsection (10)(b):
(i) while an owner or operator of a facility responds to the director's request for information;
(ii) during a public comment period; or
(iii) while the federal government reviews the application; and
(d) require the director to prepare a detailed written explanation of the basis for the director's approval or denial of an approval application.

Amended by Chapter 451, 2015 General Session

19-3-106 Fee for commercial radioactive waste disposal or treatment.
(1)
(a) An owner or operator of a commercial radioactive waste treatment or disposal facility that receives radioactive waste shall pay a fee as provided in Subsection (1)(b).
(b)
(i) On or after July 1, 2010, but on or before June 30, 2011, the fee is equal to the sum of the following amounts:
(A) 30 cents per cubic foot of radioactive waste, other than 11e.(2) byproduct material, received at the facility for disposal or treatment; and
(B) $1 per curie of radioactive waste, other than 11e.(2) byproduct material, received at the facility for disposal or treatment.
(ii) On or after July 1, 2011, the fee shall be established by the department in accordance with Section 63J-1-504.

(iii) In the development of a fee schedule prepared under Subsection (1)(b)(ii), the department may conduct by no later than July 1, 2011, a review of the program costs and indirect costs of regulating radioactive waste in the state.
(iv) In addition to the process required by Section 63J-1-504, the department shall establish a fee that:
(A) is a flat fee, not based on the amount of waste treated or disposed of;
(B) provides for reasonable and timely oversight by the department; and
(C) adequately meets the needs of industry and the department, including allowing for the department to employ qualified personnel to appropriately oversee industry regulation.
(2)
(a) The portion of the fee required under Subsection (1)(b)(i)(A) shall be calculated by multiplying the total cubic feet of waste, computed to the first decimal place, received during the calendar month by 30 cents.
(b) The portion of the fee required in Subsection (1)(b)(i)(B) shall be calculated by multiplying the total curies of waste, computed to the first decimal place, received during the calendar month by $1.
(3)
(a) The owner or operator shall remit the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.
(b) The department shall deposit the fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.
(c) The owner or operator shall submit to the department with the payment of the fee under this Subsection (3) a completed form as prescribed by the department that provides information the department requires to verify the amount of waste received and the fee amount for which the owner or operator is liable.
(4) The Legislature shall appropriate to the department money to cover the cost of radioactive waste disposal supervision.
(5) Radioactive waste that is subject to a fee under this section is not subject to a fee under Section 19-6-119.

Amended by Chapter 17, 2010 General Session

19-3-106.2 Fee for perpetual care and maintenance of commercial radioactive waste disposal facilities -- Radioactive Waste Perpetual Care and Maintenance Account created -- Contents -- Use of restricted account money -- Evaluation.

(1) As used in this section, "perpetual care and maintenance" means perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, as required by applicable laws, rules, and license requirements beginning 100 years after the date of final closure of the facility.
(2)
(a) On and after July 1, 2002, the owner or operator of an active commercial radioactive waste treatment or disposal facility shall pay an annual fee of $400,000 to provide for the perpetual care and maintenance of the facility.
(b) The owner or operator shall remit the fee to the department on or before July 1 of each year.
(3) The department shall deposit fees received under Subsection (2) into the Radioactive Waste Perpetual Care and Maintenance Account created in Subsection (4).
(4)

(a) There is created a restricted account within the General Fund known as the "Radioactive Waste Perpetual Care and Maintenance Account" to finance perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities, excluding sites within those facilities used for the disposal of byproduct material.
(b) The sources of revenue for the restricted account are:
(i) the fee imposed under this section; and
(ii) investment income derived from money in the restricted account.
(c)
(i) The revenues for the restricted account shall be segregated into subaccounts for each commercial radioactive waste treatment or disposal facility covered by the restricted account.
(ii) Each subaccount shall contain:
(A) the fees paid by each owner or operator of a commercial radioactive waste treatment or disposal facility; and
(B) the associated investment income.
(5) The Legislature may appropriate money from the Radioactive Waste Perpetual Care and Maintenance Account for:
(a) perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, beginning 100 years after the date of final closure of the facility; or
(b) maintenance or monitoring of, or implementing corrective action at, a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, before the end of 100 years after the date of final closure of the facility, if:
(i) the owner or operator is unwilling or unable to carry out postclosure maintenance, monitoring, or corrective action; and
(ii) the financial surety arrangements made by the owner or operator, including any required under applicable law, are insufficient to cover the costs of postclosure maintenance, monitoring, or corrective action.
(6) The money appropriated from the Radioactive Waste Perpetual Care and Maintenance Account for the purposes specified in Subsection (5)(a) or(b) at a particular commercial radioactive waste treatment or disposal facility may be appropriated only from the subaccount established under Subsection (4)(c) for the facility.
(7) The attorney general shall bring legal action against the owner or operator or take other steps to secure the recovery or reimbursement of the costs of maintenance, monitoring, or corrective action, including legal costs, incurred pursuant to Subsection (5)(b).
(8) The board shall direct an evaluation of the adequacy of the restricted account as required under Section 19-1-307.
(9) This section does not apply to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Amended by Chapter 278, 2010 General Session

19-3-106.4 Generator site access permits.
(1) A generator or broker may not transfer radioactive waste to a commercial radioactive waste treatment or disposal facility in the state without first obtaining a generator site access permit from the director.
(2) The director may grant a generator site access permit to a generator or broker if:

(a) the Nuclear Regulatory Commission or the agreement state where the generator's or broker's facility is located has the jurisdiction to regulate the generator's or broker's handling, packaging, or transporting of radioactive materials; or
(b) the generator or broker agrees to grant the division reasonable access to its facilities for the inspection and verification of radioactive waste using Nuclear Regulatory Commission approved accountability guidelines.
(3) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing a generator site access permit program.
(4)
(a) Except as provided in Subsection (4)(b), the division shall establish fees for generator site access permits in accordance with Section 63J-1-504.
(b) On and after July 1, 2001, through June 30, 2002, the fees are:
(i) $1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per year;
(ii) $500 for generators transferring less than 1,000 cubic feet of radioactive waste per year; and
(iii) $5,000 for brokers.
(c) The division shall deposit fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.
(5) This section does not apply to a generator or broker transferring radioactive waste to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Amended by Chapter 58, 2015 General Session

19-3-107 State radioactive waste plan.
(1) The board shall prepare a state plan for management of radioactive waste by July 1, 1993.
(2) The plan shall:
(a) provide an estimate of radioactive waste capacity needed in the state for the next 20 years;
(b) assess the state's ability to minimize waste and recycle;
(c) evaluate radioactive waste treatment and disposal options, as well as radioactive waste needs and existing capacity;
(d) evaluate facility siting, design, and operation;
(e) review funding alternatives for radioactive waste management; and
(f) address other radioactive waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-109 Civil penalties -- Appeals.
(1) A person who violates a provision of this part, a rule or order issued under the authority of this part, or the terms of a license, permit, or registration certificate issued under the authority of this part is subject to a civil penalty not to exceed $10,000 for each violation.
(2) The director may assess and make a demand for payment of a penalty under this section and may compromise or remit that penalty.
(3) In order to make demand for payment of a penalty assessed under this section, the director shall issue a notice of agency action, specifying, in addition to the requirements for notices of agency action contained in Title 63G, Chapter 4, Administrative Procedures Act:
(a) the date, facts, and nature of each act or omission charged;

(b) the provision of the statute, rule, order, license, permit, or registration certificate that is alleged to have been violated;
(c) each penalty that the director proposes to impose, together with the amount and date of effect of that penalty; and
(d) that failure to pay the penalty or respond may result in a civil action for collection.
(4) A person notified according to Subsection (3) may request an adjudicative proceeding.
(5) Upon request by the director, the attorney general may institute a civil action to collect a penalty imposed under this section.
(6)
(a) Except as provided in Subsection (6)(b), the department shall deposit all money collected from civil penalties imposed under this section into the General Fund.
(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.
(c) The department shall regulate reimbursements by making rules that:
(i) define qualifying environmental enforcement activities; and
(ii) define qualifying extraordinary expenses.

Amended by Chapter 330, 2013 General Session

19-3-110 Criminal penalties.
(1) Any person who knowingly violates any provision of Sections 19-3-104 through 19-3-113 or lawful orders or rules adopted by the department under those sections shall in a criminal proceeding:
(a) for the first violation, be guilty of a class B misdemeanor; and
(b) for a subsequent similar violation within two years, be guilty of a third degree felony.
(2) In addition, a person is liable for any expense incurred by the department in removing or abating any violation.
(3) Conviction under Sections 19-3-104 through 19-3-113 does not relieve the person convicted from civil liability for any act which was also a violation of the public health laws.

Amended by Chapter 271, 1998 General Session

19-3-111 Impounding of radioactive material.
(1) The director may impound the radioactive material of any person if:
(a) the material poses an imminent threat or danger to the public health or safety; or
(b) that person is violating:
(i) any provision of Sections 19-3-104 through 19-3-113;
(ii) any rules or orders enacted or issued under the authority of those sections; or
(iii) the terms of a license, permit, or registration certificate issued under the authority of those sections.
(2) Before any dispositive action may be taken with regard to impounded radioactive materials, the director shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act and Section 19-1-301.

Amended by Chapter 360, 2012 General Session

19-3-112 Notification by the department to certain persons of release of radiation from Nevada Test Site -- Notification to certain news outlets.

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

Amended by Chapter 55, 2011 General Session

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

Renumbered and Amended by Chapter 112, 1991 General Session

Part 2
Interstate Compact on Low-Level Radioactive Waste

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

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

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-201.1 Definitions.

As used in this compact:

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

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

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

(4)

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

(b) "Low-level waste" does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

Enacted by Chapter 314, 2001 General Session

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

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

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

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

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

(d) assurance that inspections of the carriers which transport the waste are conducted by proper authorities, and appropriate enforcement action taken for violations; and
(e) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that the violations do not recur including the inspection of every individual low-level waste shipment by that generator.
(2) Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this compact.
(3) Nothing in this section limits any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this section.

Renumbered and Amended by Chapter 112, 1991 General Session

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

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of that party state's own low-level waste, shall accept low-level waste generated in any party state if the waste has been packaged and transported according to applicable laws and regulations.
(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Section 19-3-204.
(3) Until Subsection (2) takes effect, facilities located in any party state may accept low-level waste generated outside of any of the party states only if the waste is accompanied by a certificate of compliance issued by an official of the state in which the waste shipment originated. The certificate shall be in the form required by the host state, and shall contain at least the following:
(a) the generator's name and address;
(b) a description of the contents of the low-level waste container;
(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his or her agent or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations;
(d) additional requirements imposed by the host state; and
(e) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of the waste during shipment or after the waste reaches the facility.
(4)
(a) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that may be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any party state as the host of the facilities on a permanent basis.
(b) Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.
(5)

(a) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to the facilities by generators within other party states.
(b) Nothing in this compact prevents any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of the facilities, so long as the action by a host state is applied equally to all generators within the region comprised of the party states.
(6) Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, maintenance, and contingency requirements are met including adequate bonding.

Renumbered and Amended by Chapter 112, 1991 General Session

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

(1) The governor of each party state shall designate one state official as the person responsible for administration of this compact. The officials so designated shall together comprise the northwest low-level waste compact committee.
(2) The committee shall meet as required to consider matters arising under this compact.
(3) The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in the regulations.
(4) Notwithstanding any provision of Section 19-3-203 to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on terms and conditions the committee considers appropriate. However, a two-thirds vote of all members is required, including the affirmative vote of the member of any party state in which a facility affected by the arrangement is located, for the committee to enter into an arrangement.

Renumbered and Amended by Chapter 112, 1991 General Session

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

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact becomes effective upon enactment into law by that party, but it is not initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.
(2) After the compact has initially taken effect under Subsection (1), any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

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

Renumbered and Amended by Chapter 112, 1991 General Session

19-3-206 Direction to compact committee member.

The Utah compact committee member designated under Section 19-3-204 may not bring to the committee for approval and shall vote to disapprove any arrangement under Subsection 19-3-204(4) for a facility to receive class B or class C low-level radioactive waste for commercial storage, decay in storage, treatment, incineration, or disposal within the state.

Enacted by Chapter 10, 2005 General Session

Part 3
Placement of High Level Nuclear Waste

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

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

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

(a)

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

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

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

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

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

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

(c) decay in storage;

(d) treatment; and

(e) disposal.

(4)

(a) Upon satisfaction of the requirements of Subsection (2)(a), for each category listed in Subsection (3), or satisfaction of the requirements under Subsection (2)(b), the governor, with the concurrence of the attorney general, shall certify in writing to the executive director of the

Department of Environmental Quality that all of the requirements have been met, and that any necessary state licensing processes may begin.

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

(5)

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

(b)

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

(A) under nuclear industry self-insurance;

(B) under federal insurance requirements; and

(C) in federal money.

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

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

(6)

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

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

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

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

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

(7)

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

(i) a cooperative;

(ii) a local district authorized by Title 17B, Limited Purpose Local Government Entities - Local Districts;

(iii) a special service district under Title 17D, Chapter 1, Special Service District Act;

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

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

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

(b)
(i) Subsection (7)(a) shall be strictly interpreted. Any political subdivision authorized and formed under the laws of the state on or after March 15, 2001, which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility is formed in violation of Subsection (7)(a).
(ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political subdivision are considered to have knowingly violated a provision of this part, and the penalties of Section 19-3-312 apply.

(8)
(a) An organization may not be formed for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:
(i) the satisfaction of the conditions in Subsection (4); and
(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.
(b) A foreign organization may not be registered to do business in the state for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:
(i) the satisfaction of the conditions in Subsection (4); and
(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.
(c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:
(i) the formation of a new organization or registration of a foreign organization within the state, any of whose purposes are to provide goods, services, or municipal-type services to a storage facility or transfer facility may not be licensed or registered in the state, and the local or foreign organization is void and does not have authority to operate within the state;
(ii) any organization which is formed or registered on or after March 15, 2001, and which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility has been formed or registered in violation of Subsection (8)(a) or (b) respectively; and
(iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the organization or the principals of the foreign organization, are considered to have knowingly violated a provision of this part, and are subject to the penalties in Section 19-3-312.

(9)
(a)
(i) Any contract or agreement to provide any goods, services, or municipal-type services to any organization engaging in, or attempting to engage in the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state are declared to be against the greater public interest, health, and welfare of the state, by promoting an activity which has the great potential to cause extreme public harm.
(ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or informal, are declared to be void from inception, agreement, or execution as against public policy.
(b)
(i) Any contract or other agreement to provide goods, services, or municipal-type services to storage or transfer facilities may not be executed within the state.
(ii) Any contract or other agreement, existing or executed on or after March 15, 2001, is considered void from the time of agreement or execution.

(10)

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

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

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

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

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

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

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

(d)

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

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

(11)

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

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

(i) educational services and facilities;

(ii) health care services and facilities;

(iii) programs of economic development;

(iv) utilities;

(v) sewer;

(vi) street lighting;

(vii) roads and other infrastructure; and

(viii) oversight and staff support for the program.

(12) It is the intent of the Legislature that this part does not prohibit or interfere with a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Utah Constitution Article I, Sec. 15, by an organization attempting to site a storage facility

or transfer facility within the borders of the state for the placement of high-level nuclear waste or greater than class C radioactive waste.

Amended by Chapter 212, 2012 General Session

19-3-302 Legislative intent.

(1)

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

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

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

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

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

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

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

(7)

(a) This part is not intended to modify existing state requirements for obtaining environmental approvals, permits, and licenses, including surface and groundwater permits and air quality permits, when the permits are necessary under state and federal law to construct and operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility.
(b) Any source of air pollution proposed to be located within the state, including sources located within the boundaries of an Indian reservation, which will potentially or actually have a direct and significant impact on ambient air within the state, is required to obtain an approval order and permit from the state under Section 19-2-108.
(c) Any facility which will potentially or actually have a significant impact on the state's surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if located within the boundaries of an Indian reservation.
(8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and disposal of high-level nuclear waste and greater than class C radioactive waste within the state is an ultra-hazardous activity which carries with it the risk that any release of waste may result in enormous economic and human injury.

Amended by Chapter 297, 2011 General Session

19-3-303 Definitions.

As used in this part:
(1) "Final judgment" means a final ruling or judgment, including any supporting opinion, that determines the rights of the parties and concerning which all appellate remedies have been exhausted or the time for appeal has expired.
(2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.
(3) "Greater than class C radioactive waste" means low-level radioactive waste that has higher concentrations of specific radionuclides than allowed for class C waste.
(4) "Gross value of the contract" means the totality of the consideration received for any goods, services, or municipal-type services delivered or rendered in the state without any deduction for expense paid or accrued with respect to it.
(5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.
(6) "Municipal-type services" includes, but is not limited to:
(a) fire protection service;
(b) waste and garbage collection and disposal;
(c) planning and zoning;
(d) street lighting;
(e) life support and paramedic services;
(f) water;
(g) sewer;
(h) electricity;
(i) natural gas or other fuel; or
(j) law enforcement.
(7) "Organization" means a corporation, limited liability company, partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise, whether or not for profit.
(8) "Placement" means transportation, transfer, storage, decay in storage, treatment, or disposal.

(9) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.
(10) "Rule" means a rule made by the department under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(11) "Service" or "services" means any work or governmental program which provides a benefit.
(12) "Storage facility" means any facility which stores, holds, or otherwise provides for the emplacement of waste regardless of the intent to recover that waste for subsequent use, processing, or disposal.
(13) "Transfer facility" means any facility which transfers waste from and between transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal transfer points.
(14) "Waste" or "wastes" means high-level nuclear waste and greater than class C radioactive waste.

Amended by Chapter 382, 2008 General Session

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

Enacted by Chapter 348, 1998 General Session

19-3-305 Application for license.
The application for a construction and operating license shall contain information required by department rules, which shall include:
(1) results of studies adequate to:
(a) identify the presence of any groundwater aquifers in the area of the proposed site;
(b) assess the quality of the groundwater of all aquifers identified in the area of the proposed site;
(c) provide reports on the monitoring of vadose zone and other near surface groundwater;
(d) provide reports on hydraulic conductivity tests; and

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

Enacted by Chapter 348, 1998 General Session

19-3-306 Information and findings required for approval by the department.

The department may not issue a construction and operating license unless information in the application:
(1) demonstrates the availability and adequacy of emergency services, including medical, security, and fire response, and environmental cleanup capabilities both at and in the region of the proposed site and for areas involved in the transport of wastes within the state;
(2) establishes financial assurance for operation and closure of the facility and for responding to emergency conditions in transportation and at the facility as required by department rules, including proof the applicant:
(a) possesses substantial resources that are sufficient to respond to any reasonably foreseeable injury or loss resulting from operation of the facility; and
(b) will maintain these resources throughout the term of the facility;
(3) provides evidence the wastes will not cause or contribute to an increase in mortality, an increase in illness, or pose a present or potential hazard to human health or the environment;

(4) provides evidence the personnel employed at the facility have appropriate and sufficient education and training for the safe and adequate handling of the wastes;
(5) demonstrates the public benefits of the proposed facility, including the lack of other available sites or methods for the management of the waste that would be less detrimental to the public health or safety or to the quality of the environment;
(6) demonstrates the technical feasibility of the proposed waste management technology;
(7) demonstrates conformance with federal laws, regulations, and guidelines for a waste facility;
(8) demonstrates conclusively that any facility is temporary and provides identified plans and alternatives for closure of the facility with an enforceable schedule and identified dates for closure, including evidence that:
  (a) an identified party has irrevocably agreed to accept the waste at the end of the temporary storage period; and
  (b) the waste will be moved to another facility;
(9) demonstrates that:
  (a) the applicant is not a limited liability company, limited partnership, or other entity with limited liability; and
  (b) the applicant and its officers and directors and those principals or other entities that are participating in and associated with the applicant regarding the facility are willing to accept unlimited strict liability, consistent with federal law, for any financial losses or human losses or injuries resulting from operation of any proposed facility;
(10) provides evidence the applicant has posted a cash bond in the amount of at least two billion dollars or in a greater amount as determined by department rule to be necessary to adequately respond to any reasonably foreseeable releases or losses, or the closure of the facility;
(11) provides evidence the applicant and its officers and directors, the owners or entities responsible for the generation of the waste, principals, and any other entities participating in or associated with the applicant, including landowners, lessors, and contractors, consent in writing to the jurisdiction of the state courts of Utah for any claims, damages, private rights of action, state enforcement actions, or other proceedings relating to the construction, operation, and compliance of the proposed facility; and
(12) demonstrates that any person or entity which sends wastes to a facility shall remain the owner of and responsible for the waste and its ultimate disposal and is willing to accept unlimited, strict liability, consistent with federal law, for any financial or human losses, liabilities, or injuries resulting from the wastes for the entire time period the waste is at the facility.

Enacted by Chapter 348, 1998 General Session

19-3-307 Siting criteria.
(1) The department may not issue a construction and operating license to any waste transfer, storage, decay in storage, treatment, or disposal facility unless the facility location meets the siting criteria under Subsection (2).
(2) The facility may not be located:
  (a) within or underlain by:
    (i) national, state, or county parks; monuments or recreation areas; designated wilderness or wilderness study areas; or wild and scenic river areas;
    (ii) ecologically or scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;
    (iii) 100-year flood plains;
    (iv) areas 200 feet from Holocene faults;

(v) underground mines, salt domes, or salt beds;
(vi) dam failure flood areas;
(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;
(viii) farmlands classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;
(ix) areas within five miles of existing permanent dwellings, residential areas, or other habitable structures, including schools, churches, or historic structures;
(x) areas within five miles of surface waters, including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;
(xi) areas within 1,000 feet of archeological sites regarding which adverse impacts cannot reasonably be mitigated;
(xii) recharge zones of aquifers containing groundwater which has a total dissolved solids content of less than 10,000 mg/l; or
(xiii) drinking water source protection areas;
(b) in areas:
(i) above or underlain by aquifers that:
(A) contain groundwater which has a total dissolved solids content of less than 500 mg/l; and
(B) do not exceed state groundwater standards for pollutants;
(ii) above or underlain by aquifers containing groundwater which has a total dissolved solids content between 3,000 and 10,000 mg/l, when the distance from the surface to the groundwater is less than 100 feet;
(iii) of extensive withdrawal of water, gas, or oil;
(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;
(v) above or underlain by karst terrains; or
(vi) where air space use and ground transportation routes present incompatible risks and uses; or
(c) within a distance to existing drinking water wells and watersheds for public water supplies of five years groundwater travel time plus 1,000 feet.
(3) An applicant for a license may request from the department an exemption from any of the siting criteria stated in this section upon demonstration that the modification would be protective of and have no adverse impacts on the public health and the environment.

Enacted by Chapter 348, 1998 General Session

19-3-308 Application fee and annual fees.
(1)
(a) Any application for a waste transfer, storage, decay in storage, treatment, or disposal facility shall be accompanied by an initial fee of $5,000,000.
(b) The applicant shall subsequently pay an additional fee to cover the costs to the state associated with review of the application, including costs to the state and the state's contractors for permitting, technical, administrative, legal, safety, and emergency response reviews, planning, training, infrastructure, and other impact analyses, studies, and services required to evaluate a proposed facility.
(2) For the purpose of funding the state oversight and inspection of any waste transfer, storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure, including

providing for state Department of Environmental Quality, state Department of Transportation, state Department of Public Safety, and other state agencies' technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law enforcement, and emergency resources necessary to respond to these facilities, the owner or operator shall pay to the state a fee as established by department rule under Section 63J-1-504, to be assessed:

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

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

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

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

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

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

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

Amended by Chapter 297, 2011 General Session

19-3-309 Restricted accounts.

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

(2)

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

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

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

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

(3)

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

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

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

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

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

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

Amended by Chapter 107, 2001 General Session

19-3-310 Benefits agreement.

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

(2)

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

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

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

Enacted by Chapter 348, 1998 General Session

19-3-311 Length of license.

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

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

Enacted by Chapter 348, 1998 General Session

19-3-312 Enforcement -- Penalties.

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

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

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

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

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

(6)

(a) This section does not impose a civil or criminal penalty on any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.
(b) Subsection (6)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.
(c) A member of any Utah-based nonprofit trade association is not exempt from any civil or criminal liability or penalty due to membership in the association.

Amended by Chapter 107, 2001 General Session

19-3-313 Reciprocity.

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

Enacted by Chapter 348, 1998 General Session

19-3-314 Local jurisdiction.

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

Enacted by Chapter 348, 1998 General Session

19-3-315 Transportation requirements.

(1) A person may not transport wastes in the state, including on highways, roads, rail, by air, or otherwise, without:
(a) having received approval from the state Department of Transportation; and
(b) having demonstrated compliance with rules of the state Department of Transportation.
(2) The Department of Transportation may:
(a) make rules requiring a transport and route approval permit, weight restrictions, tracking systems, and state escort; and
(b) assess appropriate fees as established under Section 63J-1-504 for each shipment of waste, consistent with the requirements and limitations of federal law.
(3) The Department of Environmental Quality shall establish any other transportation rules as necessary to protect the public health, safety, and environment.
(4) Unless expressly authorized by the governor, with the concurrence of the Legislature, an easement or other interest in property may not be granted upon any lands within the state for a right of way for any carrier transportation system that:
(a) is not a class I common or contract rail carrier organized and doing business prior to January 1, 1999; and
(b) transports high level nuclear waste or greater than class C radioactive waste to a storage facility within the state.

Amended by Chapter 183, 2009 General Session

19-3-316 Cost recovery.

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

Enacted by Chapter 348, 1998 General Session

19-3-317 Severability.

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

Enacted by Chapter 348, 1998 General Session

19-3-318 No limitation of liability regarding businesses involved in high level radioactive waste.

(1) As used in this section:
  (a) "Controlling interest" means:
    (i) the direct or indirect possession of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting interests, by contract, or otherwise; or
    (ii) the direct or indirect possession of a 10% or greater equity interest in an organization.
  (b) "Equity interest holder" means a shareholder, member, partner, limited partner, trust beneficiary, or other person whose interest in an organization:
    (i) is in the nature of an ownership interest;
    (ii) entitles the person to participate in the profits and losses of the organization; or
    (iii) is otherwise of a type generally considered to be an equity interest.
  (c) "Organization" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise or activity, whether or not for profit.
  (d) "Parent organization" means an organization with a controlling interest in another organization.
  (e)
    (i) "Subject activity" means:
      (A) to arrange for or engage in the transportation or transfer of high level nuclear waste or greater than class C radioactive waste to or from a storage facility in the state; or
      (B) to arrange for or engage in the operation or maintenance of a storage facility or a transfer facility for that waste.
    (ii) "Subject activity" does not include the transportation of high level nuclear waste or greater than class C radioactive waste by a class I railroad that was doing business in the state as a common or contract carrier by rail prior to January 1, 1999.
  (f) "Subsidiary organization" means an organization in which a parent organization has a controlling interest.
(2)
  (a) The Legislature enacts this section because of the state's compelling interest in the transportation, transfer, and storage of high level nuclear waste and greater than class C radioactive waste in this state. Legislative intent supporting this section is further described in Section 19-3-302.
  (b) Limited liability for equity interest holders is a privilege, not a right, under the law and is meant to benefit the state and its citizens. An organization engaging in subject activities has

significant potential to affect the health, welfare, or best interests of the state and should not have limited liability for its equity interest holders. To shield equity interest holders from the debts and obligations of an organization engaged in subject activities would have the effect of attracting capital to enterprises whose goals are contrary to the state's interests.

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

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

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

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

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

(5)

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

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

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

Enacted by Chapter 190, 1999 General Session

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

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

(2)

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

(b) Due to these concerns, the state has established a restricted account under Subsection 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to in this section as the compensation account. One of the purposes of this account

is to partially or wholly compensate workers for these potential costs, as funds are available and appropriated for these purposes.

(3)

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

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

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

(4)

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

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

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

(b)

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

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

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

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

(b) that employee's family or beneficiaries.

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

(7)

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

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

(8)

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

(b) Payments under this section are in addition to any other payments or benefits allowed by state or federal law, notwithstanding provisions in Title 34A, Chapter 2, Workers' Compensation Act, regarding workers' compensation.
(c) Payments or obligations to pay under this section may not exceed funds appropriated for these purposes by the Legislature.
(9)
(a) Any fee or payment imposed under this section does not apply to any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.
(b) Subsection (9)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.
(c) A member of any Utah-based nonprofit trade association is not exempt from any fee or payment under this section due to membership in the association.

Enacted by Chapter 107, 2001 General Session

19-3-320 Efforts to prevent siting of any nuclear waste facility to include economic development study regarding Native American reservation lands within the state.
(1) It is the intent of the Legislature that the department, in its efforts to prevent the siting of a nuclear waste facility within the exterior borders of the state, include in its work the study under Subsection (2) and the report under Subsection (3).
(2) It is the intent of the Legislature that the Department of Environmental Quality, in coordination with the office of the governor, and in cooperation with the Departments of Heritage and Arts, Human Services, Health, Workforce Services, Agriculture and Food, Natural Resources, and Transportation, the State Board of Education, and the Board of Regents:
(a) study the needs and requirements for economic development on the Native American reservations within the state; and
(b) prepare, on or before November 30, 2001, a long-term strategic plan for economic development on the reservations.
(3) It is the intent of the Legislature that this plan, prepared under Subsection (2)(b), shall be distributed to the governor and the members of the Legislature on or before December 31, 2001.

Amended by Chapter 144, 2016 General Session

Chapter 4
Safe Drinking Water Act

19-4-101 Short title.
This chapter is known as the "Safe Drinking Water Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-4-102 Definitions.

As used in this chapter:

(1) "Board" means the Drinking Water Board appointed under Section 19-4-103.

(2) "Contaminant" means a physical, chemical, biological, or radiological substance or matter in water.

(3) "Director" means the director of the Division of Drinking Water.

(4) "Division" means the Division of Drinking Water, created in Subsection 19-1-105(1)(b).

(5)

(a) "Groundwater source" means an underground opening from or through which groundwater flows or is pumped from a subsurface water-bearing formation.

(b) "Groundwater source" includes:

(i) a well;

(ii) a spring;

(iii) a tunnel; or

(iv) an adit.

(6) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water system.

(7)

(a) "Public water system" means a system providing water for human consumption and other domestic uses that:

(i) has at least 15 service connections; or

(ii) serves an average of 25 individuals daily for at least 60 days of the year.

(b) "Public water system" includes:

(i) a collection, treatment, storage, or distribution facility under the control of the operator and used primarily in connection with the system; and

(ii) a collection, pretreatment, or storage facility used primarily in connection with the system but not under the operator's control.

(8) "Retail water supplier" means a person that:

(a) supplies water for human consumption and other domestic uses to an end user; and

(b) has more than 500 service connections.

(9) "Supplier" means a person who owns or operates a public water system.

(10) "Wholesale water supplier" means a person that provides most of that person's water to a retail water supplier.

Amended by Chapter 360, 2012 General Session

19-4-103 Drinking Water Board -- Members -- Organization -- Meetings -- Per diem and expenses.

(1) The board consists of the following nine members:

(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:

(i) the executive director; or

(ii) an employee of the department designated by the executive director; and

(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:

(i) one representative who is a Utah-licensed professional engineer with expertise in civil or sanitary engineering;

(ii) two representatives who are elected officials from a municipal government that is involved in the management or operation of a public water system;
(iii) one representative from an improvement district, a water conservancy district, or a metropolitan water district;
(iv) one representative from an entity that manages or operates a public water system;
(v) one representative from:
(A) the state water research community; or
(B) an institution of higher education that has comparable expertise in water research to the state water research community;
(vi) one representative from the public who represents:
(A) an environmental nongovernmental organization; or
(B) a nongovernmental organization that represents community interests and does not represent industry interests; and
(vii) one representative from the public who is trained and experienced in public health.
(2) A member of the board shall:
(a) be knowledgeable about drinking water and public water systems, as evidenced by a professional degree, a professional accreditation, or documented experience;
(b) represent different geographical areas within the state insofar as practicable;
(c) be a resident of Utah;
(d) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
(e) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).
(3) No more than five appointed members of the board shall be from the same political party.
(4)
(a) As terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
(c)
(i) Notwithstanding Subsection (4)(a), the term of a board member who is appointed before May 1, 2013, shall expire on April 30, 2013.
(ii) On May 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.
(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(6) Each member holds office until the expiration of the member's term, and until a successor is appointed, but not for more than 90 days after the expiration of the term.
(7) The board shall elect annually a chair and a vice chair from its members.
(8)
(a) The board shall meet at least quarterly.
(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.
(c) Reasonable notice shall be given to each member of the board before any meeting.
(9) Five members constitute a quorum at any meeting and the action of the majority of the members present is the action of the board.

(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 360, 2012 General Session

19-4-104 Powers of board.
(1)
(a) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(i) establishing standards that prescribe the maximum contaminant levels in any public water system and provide for monitoring, record-keeping, and reporting of water quality related matters;
(ii) governing design, construction, operation, and maintenance of public water systems;
(iii) granting variances and exemptions to the requirements established under this chapter that are not less stringent than those allowed under federal law;
(iv) protecting watersheds and water sources used for public water systems; and
(v) governing capacity development in compliance with Section 1420 of the federal Safe Drinking Water Act, 42 U.S.C. Sec. 300f et seq.;
(b) The board may:
(i) order the director to:
(A) issue orders necessary to enforce the provisions of this chapter;
(B) enforce the orders by appropriate administrative and judicial proceedings; or
(C) institute judicial proceedings to secure compliance with this chapter;
(ii)
(A) hold a hearing that is not an adjudicative proceeding relating to the administration of this chapter; or
(B) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding; or
(iii) request and accept financial assistance from other public agencies, private entities, and the federal government to carry out the purposes of this chapter.
(c) The board shall:
(i) require the submission to the director of plans and specifications for construction of, substantial addition to, or alteration of public water systems for review and approval by the board before that action begins and require any modifications or impose any conditions that may be necessary to carry out the purposes of this chapter;
(ii) advise, consult, cooperate with, provide technical assistance to, and enter into agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies, municipalities, local health departments, educational institutions, and others necessary to carry out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of local jurisdictions;
(iii) develop and implement an emergency plan to protect the public when declining drinking water quality or quantity creates a serious health risk and issue emergency orders if a health risk is imminent;
(iv) require a certified operator of a public water supplier to verify by signature and certification number, or a professional engineer performing the duties of a certified water operator to

verify by signature and stamp, the accuracy of any data on water use and water supply submitted by the public water supplier to the division; and

(v) meet the requirements of federal law related or pertaining to drinking water.

(2)

(a) The board may adopt and enforce standards and establish fees for certification of operators of any public water system.

(b) The board may not require certification of operators for a water system serving a population of 800 or less except:

(i) to the extent required for compliance with Section 1419 of the federal Safe Drinking Water Act, 42 U.S.C. Sec. 300f et seq.; and

(ii) for a system that is required to treat its drinking water.

(c) The certification program shall be funded from certification and renewal fees.

(3) Routine extensions or repairs of existing public water systems that comply with the rules and do not alter the system's ability to provide an adequate supply of water are exempt from the provisions of Subsection (1)(c)(i).

(4)

(a) The board may adopt and enforce standards and establish fees for certification of persons engaged in administering cross connection control programs or backflow prevention assembly training, repair, and maintenance testing.

(b) The certification program shall be funded from certification and renewal fees.

(5) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Amended by Chapter 58, 2016 General Session

19-4-105 Rulemaking authority and procedure.

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

(2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing, and based on evidence in the record, that the corresponding federal regulation is not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

Renumbered and Amended by Chapter 112, 1991 General Session

19-4-106 Director -- Appointment -- Authority.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2) The director shall:

(a) develop programs to promote and protect the quality of the public drinking water supplies of the state;

(b) advise, consult, and cooperate with other agencies of this and other states, the federal government, and with other groups, political subdivisions, and industries in furtherance of the purpose of this chapter;

(c) review plans, specifications, and other data pertinent to proposed or expanded water supply systems to ensure proper design and construction; and
(d) subject to the provisions of this chapter, enforce rules made by the board through the issuance of orders which may be subsequently revoked, which rules may require:
(i) discontinuance of use of unsatisfactory sources of drinking water;
(ii) suppliers to notify the public concerning the need to boil water; or
(iii) suppliers in accordance with existing rules, to take remedial actions necessary to protect or improve an existing water system; and
(e) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.
(3) The director may authorize employees or agents of the department, after reasonable notice and presentation of credentials, to enter any part of a public water system at reasonable times to inspect the facilities and water quality records required by board rules, conduct sanitary surveys, take samples, and investigate the standard of operation and service delivered by public water systems.

Amended by Chapter 360, 2012 General Session

19-4-107 Notice of violation of rule or order -- Action by attorney general.
(1) Upon discovery of any violation of a rule or order of the board, the board or the director shall promptly notify the supplier of the violation, state the nature of the violation, and issue an order requiring correction of that violation or the filing of a request for variance or exemption by a specific date.
(2) The attorney general shall, upon request of the director, commence an action for an injunction or other relief relative to the order.

Amended by Chapter 360, 2012 General Session

19-4-108 Supplier -- Variance or exemption -- Failure to comply -- Violation of chapter -- Public notice.
When a supplier has a variance or exemption granted, has failed to comply with the terms of a variance or exemption, or has been finally determined to have committed a violation of this chapter, the supplier shall provide public notice of that fact as provided by the rules of the board.

Renumbered and Amended by Chapter 112, 1991 General Session

19-4-109 Violations -- Penalties -- Reimbursement for expenses.
(1) Any person that violates any rule or order made or issued pursuant to this chapter is subject to a civil penalty of not more than $1,000 per day for each day of violation. The board may assess and make a demand for payment of a penalty under this section by directing the director to issue a notice of agency action under Title 63G, Chapter 4, Administrative Procedures Act.
(2)
(a) Any person that willfully violates any rule or order made or issued pursuant to this chapter, or that willfully fails to take any corrective action required by such an order, is guilty of a class B misdemeanor and subject to a fine of not more than $5,000 per day for each day of violation.
(b) In addition, the person is subject, in a civil proceeding, to a penalty of not more than $5,000 per day for each day of violation.
(3)

(a) Except as provided in Subsection (3)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.
(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.
(c) The department shall regulate reimbursements by making rules that:
(i) define qualifying environmental enforcement activities; and
(ii) define qualifying extraordinary expenses.

Amended by Chapter 360, 2012 General Session

19-4-110 Local jurisdiction over water supply systems.

Nothing in this chapter alters the authority of local jurisdictions to control water supply systems within the local jurisdiction provided that any local laws, ordinances, or rules and regulations are not inconsistent with this chapter and rules made under authority of this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

19-4-111 Fluoride added to or removed from water -- Election or shareholder vote required.

(1) As used in this section:
(a) "Corporate public water system" means a public water system that is owned by a corporation engaged in distributing water only to its shareholders.
(b) "Corporation" is as defined in Section 16-4-102.
(c) "Fluoride" means a chemical compound that contains the fluoride ion and is used to fluoridate drinking water, including:
(i) fluorosilicic acid;
(ii) sodium fluorosilicate; or
(iii) sodium fluoride.
(d) "Fluoride supplier" means a person who:
(i) manufactures, distributes, or packages or repackages fluoride;
(ii) is NSF/ANSI Standard 60 certified;
(iii) has evidence of the person's NSF/ANSI Standard 60 certification displayed on the website of a certification body accredited by the International Accreditation Forum, including:
(A) NSF;
(B) the Underwriter Laboratory; or
(C) the Water Quality Association; and
(iv) provides fluoride in compliance with applicable NSF/ANSI Standard 60 certification requirements.
(e) "Removal" means ceasing to add fluoride to a public water supply, the addition having been previously approved by the voters of a political subdivision.
(2)
(a) Except as provided in Subsection (7) or Subsection 19-4-104(1)(a)(i), public water supplies, whether state, county, municipal, or district, may not have fluoride added to or removed from the water supply without the approval of a majority of voters in an election in the area affected.
(b) An election shall be held:
(i) upon the filing of an initiative petition requesting the action in accordance with state law governing initiative petitions;

(ii) in the case of a municipal, local district, special service district, or county water system that is functionally separate from any other water system, upon the passage of a resolution by the legislative body or local district or special service district board representing the affected voters, submitting the question to the affected voters at a municipal general election; or

(iii) in a county of the first or second class, upon the passage of a resolution by the county legislative body to place an opinion question relating to all public water systems within the county, except as provided in Subsection (3), on the ballot at a general election.

(3) If a majority of voters on an opinion question under Subsection (2)(b)(iii) approve the addition of fluoride to or the removal of fluoride from the public water supplies within the county, the local health departments shall require the addition of fluoride to or the removal of fluoride from all public water supplies within that county other than those systems:

(a) that are functionally separate from any other public water systems in that county; and

(b) where a majority of the voters served by the public water system voted against the addition or removal of fluoride on the opinion question under Subsection (2)(b)(iii).

(4) Nothing contained in this section prohibits the addition of chlorine or other water purifying agents.

(5) Any political subdivision that, prior to November 2, 1976, decided to and was adding fluoride to the drinking water is considered to have complied with Subsection (2).

(6) In an election held pursuant to Subsection (2)(b)(i), (ii), or (iii), where a majority of the voters approve the addition of fluoride to or the removal of fluoride from the public water supplies, no election to consider adding fluoride to or removing fluoride from the public water supplies shall be held for a period of four years from the date of approval by the majority of voters beginning with elections held in November 2000.

(7)

(a) A supplier may not add fluoride to or remove fluoride from a corporate public water system unless the majority of the votes cast by the shareholders of the corporate public water system authorize the supplier to add or remove the fluoride.

(b) If a corporate public water system's shareholders do not vote to add fluoride under Subsection (7)(a), the supplier shall annually provide notice to a person who receives water from the corporate public water system of the average amount of fluoride in the water.

(c) A vote of the corporate public water system's shareholders under Subsection (7)(a) does not require a supplier of another public water system, including a public water system that provides water to the corporate public water system, to add fluoride to or remove fluoride from the public water system.

(8) If a local health department requires a public water system to add fluoride to public drinking water supplies under Subsection (3), the public water system shall fluoridate the public drinking water supplies with fluoride manufactured, distributed, packaged, and, if applicable, repackaged by a fluoride supplier who has provided copies of the original, dated documents used to obtain and maintain NSF/ANSI Standard 60 certification to:

(a) the local health department that oversees the public water system; and

(b) the division.

(9) A public water system described in Subsection (8) shall obtain, for each quantity of fluoride acquired to fluoridate public drinking water supplies, a batch-specific certificate of analysis that represents the complete composition of the formulation of the undiluted raw fluoride substance, in percent or parts by weight, for each chemical and contaminant in the batch.

(10) A local health department shall:

(a) order the temporary removal of fluoride from a public water system within the boundaries of the local health department if the public water system:

(i) violates Subsection (8) or (9); or
(ii) is unable to fluoridate public drinking water supplies in accordance with Subsections (8) and (9); and
(b) review and maintain the certification documents submitted to the local health department under Subsection (8).
(11) A public water system described in Subsection (8) shall:
(a) review and maintain certificates of analysis obtained under Subsection (9); and
(b) upon request of a member of the public, provide a copy of a certificate of analysis obtained under Subsection (9) to the member of the public.
(12) A local health department may order the temporary removal of fluoride from a public water system within the boundaries of the local health department if the public water system violates a provision of Subsection (11).
(13) If a local health department orders the removal of fluoride from a public water system under Subsection (10)(a) or (12), the local health department shall:
(a) issue a public notice regarding the temporary removal of fluoride from the public water system; and
(b) when the public water system demonstrates its ability to fluoridate in accordance with Subsections (8), (9), and (11), revoke the removal requirement.
(14) The division shall review and maintain the certification documents submitted to the division under Subsection (8).

Amended by Chapter 321, 2013 General Session

19-4-111.1 Provision of fluoridated water -- Request of resident.

A public water system in a county of the first or second class whose entire water inventory is fluoridated may supply water to a residence or business in a municipality that is located in two counties, one that has approved fluoridation and one that has not approved fluoridation in accordance with Section 19-4-111 if:
(1) the owner requests that the public water system supply water to the residence or business;
(2) no reasonable alternative water supply exists; and
(3) the owner's request can be fulfilled without affecting other residences or businesses in the municipality or county that has not approved fluoridation.

Amended by Chapter 321, 2013 General Session

19-4-111.2 Provision of fluoridated water -- Emergency circumstances.
(1) A public water system that is simultaneously supplying water to a municipality or county that approved fluoridation in accordance with Section 19-4-111 and a municipality or county that has not approved fluoridation may provide water from its fluoridated inventory to a municipality or county that has not approved fluoridation if:
(a) as a result of a short-term emergency, the only water available is from the public water system's fluoridated inventory;
(b) the public water system ceases providing fluoridated water to the municipality or county that has not approved fluoridation in accordance with Section 19-4-111 in a time consistent with repair times following best industrial practice; and
(c) where feasible, provide prompt notice to the affected area.
(2)

(a) A resident of an affected area that does not wish to receive fluoridated water during an emergency may contact the public water system to have delivery of fluoridated water to their residence or business terminated.
(b) The resident shall determine when to resume delivery of water and shall contact the public water system to have delivery of water resumed.

Amended by Chapter 321, 2013 General Session

19-4-112 Limit on authority of department and board to control irrigation facilities -- Precautions relating to nonpotable water systems.

(1) Except as provided in this section and in Section 19-5-104, nothing contained in this chapter authorizes the department or board to:
(a) exercise administrative control over water used solely for irrigation purposes, whether conveyed in pipes, ditches, canals, or by other facilities; or
(b) adopt rules relating to the construction, operation, and maintenance of facilities for conveying irrigation water to the place of use.
(2) Where nonpotable water is conveyed in pipelines under pressure in areas served by a potable water system, the following precautions shall be observed:
(a) a distinctive coloring or other marking on all exposed portions of the nonpotable system shall be used;
(b) potable and nonpotable water system service lines and extensions shall be completely separated and shall be installed in separate trenches;
(c) all hydrants and sprinkling system control valves shall be operated by a removable key so that it is not possible to turn on the hydrant or valve without a key;
(d) there shall be no cross connection between the potable and nonpotable water systems;
(e) the nonpotable system may not be extended into any building except greenhouses or other buildings for plant and animal production; and
(f) no connection in the nonpotable water system shall be made except by the persons responsible for its management.

Amended by Chapter 297, 2011 General Session

19-4-113 Water source protection ordinance required.

(1)
(a) Before May 3, 2010, a first or second class county shall:
(i) adopt an ordinance in compliance with this section after:
(A) considering the rules established by the board to protect a watershed or water source used by a public water system;
(B) consulting with a wholesale water supplier or retail water supplier whose drinking water source is within the county's jurisdiction;
(C) considering the effect of the proposed ordinance on:
(I) agriculture production within an agricultural protection area created under Title 17, Chapter 41, Agriculture and Industrial Protection Areas; and
(II) a manufacturing, industrial, or mining operation within the county's jurisdiction; and
(D) holding a public hearing in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and
(ii) file a copy of the ordinance with the board.

(b) A municipality in a first or second class county may adopt an ordinance that a first or second class county is required to adopt by this section by following the procedures and requirements of this section.

(2)

(a) A county ordinance adopted in accordance with this section applies to the incorporated and unincorporated areas of the county unless a municipality adopts an ordinance in accordance with this section.

(b) A municipal ordinance adopted in accordance with this section supercedes, within the municipality's jurisdiction, a county ordinance adopted in accordance with this section.

(3) An ordinance required or authorized by this section at a minimum shall:

(a) designate a drinking water source protection zone in accordance with Subsection (4) for a groundwater source that is:

(i) used by a public water system; and

(ii) located within the county's or municipality's jurisdiction;

(b) contain a zoning provision regulating the storage, handling, use, or production of a hazardous or toxic substance within a drinking water source protection zone designated under Subsection (3)(a); and

(c) authorize a retail water supplier or wholesale water supplier to seek enforcement of the ordinance provision required by Subsections (3)(a) and (b) in a district court located within the county or municipality if the county or municipality:

(i) notifies the retail water supplier or wholesale water supplier within 10 days of receiving notice of a violation of the ordinance that the county or municipality will not seek enforcement of the ordinance; or

(ii) does not seek enforcement within two days of a notice of violation of the ordinance when the violation may cause irreparable harm to the groundwater source.

(4) A county shall designate a drinking water source protection zone required by Subsection (3)(a) within:

(a) a 100 foot radius from the groundwater source; and

(b) a 250 day groundwater time of travel to the groundwater source if the supplier calculates the time of travel in the public water system's drinking water source protection plan in accordance with board rules.

(5) A zoning provision required by Subsection (3)(b) is not subject to Subsection 17-41-402(3).

(6) An ordinance authorized by Section 10-8-15 supercedes an ordinance required or authorized by this section to the extent that the ordinances conflict.

(7) The board shall:

(a) provide information, guidelines, and technical resources to a county or municipality preparing and implementing an ordinance in accordance with this section; and

(b) report to the Natural Resources, Agriculture, and Environment Interim Committee before November 30, 2010 on:

(i) compliance with this section's requirement to adopt an ordinance to protect a public drinking water source; and

(ii) the effectiveness of the ordinance in retaining state primacy in regulating drinking water.

Amended by Chapter 173, 2009 General Session

Chapter 5

Water Quality Act

19-5-101 Short title.

This chapter is known as the "Water Quality Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-5-102 Definitions.

As used in this chapter:

(1) "Agriculture discharge":
  (a) means the release of agriculture water from the property of a farm, ranch, or feed lot that:
    (i) pollutes a surface body of water, including a stream, lake, pond, marshland, watercourse, waterway, river, ditch, and other water conveyance system of the state;
    (ii) pollutes the ground water of the state; or
    (iii) constitutes a significant nuisance on urban land; and
  (b) does not include:
    (i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land that is not part of a body of water; or
    (ii) a release into a normally dry water conveyance to an active body of water, unless the release reaches the water of a lake, pond, stream, marshland, river, or other active body of water.
(2) "Agriculture water" means:
  (a) water used by a farmer, rancher, or feed lot for the production of food, fiber, or fuel;
  (b) return flows from irrigated agriculture; and
  (c) agricultural storm water runoff.
(3) "Board" means the Water Quality Board created in Section 19-1-106.
(4) "Commission" means the Conservation Commission, created in Section 4-18-104.
(5) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
(6) "Director" means the director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the jurisdiction of the Division of Waste Management and Radiation Control, the director of the Division of Waste Management and Radiation Control.
(7) "Discharge" means the addition of any pollutant to any waters of the state.
(8) "Discharge permit" means a permit issued to a person who:
  (a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or
  (b) generates or manages sewage sludge.
(9) "Disposal system" means a system for disposing of wastes and includes sewerage systems and treatment works.
(10) "Division" means the Division of Water Quality, created in Subsection 19-1-105(1)(e).
(11) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter, which apply to discharges.
(12) "Point source":
  (a) means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding

operation, or vessel or other floating craft, from which pollutants are or may be discharged; and
(b) does not include return flows from irrigated agriculture.
(13) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.
(14) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.
(15) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.
(16) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.
(17) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.
(18) "Total maximum daily load" means a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards.
(19) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.
(20) "Underground injection" means the subsurface emplacement of fluids by well injection.
(21) "Underground wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the board and the executive director.
(22) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
(23) "Waters of the state":
(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and
(b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Amended by Chapter 451, 2015 General Session

19-5-103 Water Quality Board -- Members of board -- Appointment -- Terms -- Organization -- Meetings -- Per diem and expenses.
(1) The board consists of the following nine members:
(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:
(i) the executive director; or
(ii) an employee of the department designated by the executive director; and
(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:
(i) one representative who:
(A) is an expert and has relevant training and experience in water quality matters;

(B) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience; and
(C) represents local and special service districts in the state;
(ii) two government representatives who do not represent the federal government;
(iii) one representative from the mineral industry;
(iv) one representative from the manufacturing industry;
(v) one representative who represents agricultural and livestock interests;
(vi) one representative from the public who represents:
(A) an environmental nongovernmental organization; or
(B) a nongovernmental organization that represents community interests and does not represent industry interests; and
(vii) one representative from the public who is trained and experienced in public health.
(2) A member of the board shall:
(a) be knowledgeable about water quality matters, as evidenced by a professional degree, a professional accreditation, or documented experience;
(b) be a resident of Utah;
(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).
(3) No more than five of the appointed members may be from the same political party.
(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate.
(5)
(a) A member shall be appointed for a term of four years and is eligible for reappointment.
(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
(c)
(i) Notwithstanding Subsection (5)(a), the term of a board member who is appointed before March 1, 2013, shall expire on February 28, 2013.
(ii) On March 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.
(6) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, not to exceed 90 days after the formal expiration of the term.
(7) The board shall:
(a) organize and annually select one of its members as chair and one of its members as vice chair;
(b) hold at least four regular meetings each calendar year; and
(c) keep minutes of its proceedings which are open to the public for inspection.
(8) The chair may call a special meeting upon the request of three or more members of the board.
(9) Each member of the board and the director shall be notified of the time and place of each meeting.
(10) Five members of the board constitute a quorum for the transaction of business, and the action of a majority of members present is the action of the board.
(11) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;

(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 234, 2015 General Session

19-5-104 Powers and duties of board.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules that:
(a) taking into account Subsection (6):
(i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:
(A) requirements pertaining to applications for loans;
(B) requirements for determination of eligible projects;
(C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;
(D) a priority schedule for awarding loans, in which the board may consider, in addition to water pollution control needs, any financial needs relevant, including per capita cost, in making a determination of priority; and
(E) requirements for determination of the amount of the loan;
(ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;
(iii) set effluent limitations and standards subject to Section 19-5-116;
(iv) implement or effectuate the powers and duties of the board; and
(v) protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;
(b) govern inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for underground injections, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:
(i) injection may result in the presence of any contaminant in underground water that supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and
(ii) the presence of the contaminant may:
(A) result in the public water system not complying with any national primary drinking water standards; or
(B) otherwise adversely affect the health of persons;
(c) govern sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements; and
(d) notwithstanding the provisions of Section 19-4-112, govern design and construction of irrigation systems that:
(i) convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes; and
(ii) are constructed after May 4, 1998.
(2)

(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political subdivisions.
(b) In establishing certification rules under Subsection (2)(a), the board shall:
(i) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;
(ii) allow operators until three years after the date of adoption of the rules to obtain initial certification;
(iii) allow a new operator one year from the date the operator is hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;
(iv) issue certification upon application and without testing, at a grade level comparable to the grade of current certification to operators who are currently certified under the voluntary certification plan for wastewater works operators as recognized by the board; and
(v) issue a certification upon application and without testing that is valid only at the treatment works or sewerage system where that operator is currently employed if the operator:
(A) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;
(B) has been employed at least 10 years in the operation of that treatment works or sewerage system before March 16, 1991; and
(C) demonstrates to the board the operator's capability to operate the treatment works or sewerage system at which the operator is currently employed by providing employment history and references as required by the board.
(3) The board shall:
(a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;
(b) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;
(c) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;
(d) meet the requirements of federal law related to water pollution;
(e) establish and conduct a continuing planning process for control of water pollution, including the specification and implementation of maximum daily loads of pollutants;
(f)
(i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;
(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;
(g)
(i) review all total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;
(ii) disapprove, approve, or approve with conditions all staff total daily maximum load recommendations; and
(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected; and
(h) to ensure compliance with applicable statutes and regulations:

(i) review a settlement negotiated by the director in accordance with Subsection 19-5-106(2)(k) that requires a civil penalty of $25,000 or more; and
(ii) approve or disapprove the settlement.
(4) The board may:
(a) order the director to issue, modify, or revoke orders:
(i) prohibiting or abating discharges;
(ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;
(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; or
(iv) requiring compliance with this chapter and with rules made under this chapter;
(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, or interstate agencies, or with affected groups, political subdivisions, or industries to further the purposes of this chapter; or
(c) delegate the authority to issue an operating permit to a local health department.
(5) In performing the duties listed in Subsections (1) through (4), the board shall give priority to pollution that results in a hazard to the public health.
(6) The board shall take into consideration the availability of federal grants:
(a) in determining eligible project costs; and
(b) in establishing priorities pursuant to Subsection (1)(a)(i).
(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-5-106:
(a) a permit;
(b) a license;
(c) a registration;
(d) a certification; or
(e) another administrative authorization made by the director.
(8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Amended by Chapter 360, 2012 General Session

19-5-104.5 Legislative approval.
(1) Before sending a board-approved report, strategy, or recommendation that will recommend a total maximum daily load end point and implementation strategy to the EPA for review and approval, the Water Quality Board shall submit the report, strategy, or recommendation:
(a) for review to the Natural Resources, Agriculture, and Environment Interim Committee if the report, strategy, or recommendation will require a public or private expenditure in excess of $10,000,000 but less than $100,000,000 for compliance; or
(b) for approval to the Legislature if the strategy will require a public or private expenditure of $100,000,000 or more.
(2) In reviewing a report, strategy, or recommendation, the Natural Resources, Agriculture, and Environment Interim Committee may:
(a) suggest additional areas of consideration; or
(b) recommend the report, strategy, or recommendation be re-evaluated by the Water Quality Board.

Enacted by Chapter 304, 2011 General Session

19-5-105 Rulemaking authority and procedure.

(1) Except as provided in Subsections (2) and (3), no rule that the board makes for the purpose of the state administering a program under the federal Clean Water Act or the federal Safe Drinking Water Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(3) The board may make rules related to agriculture water more stringent than the corresponding federal regulations if the commission approves.

Amended by Chapter 155, 2011 General Session

19-5-105.3 Independent peer review of a proposal.

(1) As used in this section:

(a) "Challenging party" means a person who has or is seeking a permit in accordance with this chapter and chooses to use the independent peer review process described in this section to challenge a proposal.

(b) "Independent peer review" is a review conducted:

(i) in accordance with this section;

(ii) by experts having technical expertise in the proposal being reviewed; and

(iii) by individuals who are not:

(A) currently conducting research funded by the division or the challenging party;

(B) employed by an entity that is regulated under this chapter;

(C) a spouse or family member of someone who is employed by the division or the challenging party; or

(D) an active, participatory member of a non-profit organization that advocates positions with the division or the Legislature.

(c) "Proposal" means any science-based initiative proposed by the division on or after January 1, 2016, that would financially impact a challenging party and that would:

(i) change water quality standards;

(ii) develop or modify total maximum daily load requirements;

(iii) modify wasteloads or other regulatory requirements for permits; or

(iv) change rules or other regulatory guidance.

(d) "Study" means a written analysis conducted by or otherwise relied upon by the division in support of a proposal.

(e) "Technology based nutrient effluent limits" are maximum nutrient limitations based on the availability of technology to achieve the limitations, rather than on a water quality standard or a total maximum daily load standard.

(2) The director shall initiate an independent peer review when the following conditions are met:

(a) a challenging party challenges in writing a study or the technical or scientific data upon which a proposal is based and requests an independent peer review;
(b) if the independent peer review is related to examining a technology based nutrient effluent limit, the challenging party provides written notice to the division requesting an independent peer review before the technology based nutrient effluent limit is adopted into a permit issued by the division;
(c) if the independent peer review is not related to examining a technology based nutrient effluent limit, the challenging party provides written notice to the division requesting an independent peer review related to a proposal before the proposal has been adopted by the division or the board;
(d) the challenging party agrees to provide the funding to pay for the independent peer review; and
(e) the challenging party would be substantially impacted by the adoption of the proposal.
(3) The director shall ensure that the independent peer review is completed within one year from the date the peer review panel described in Subsection (5) is selected.
(4)
(a) If there is more than one challenging party challenging a study or the technical or scientific data upon which a proposal is based, the challenges will be consolidated into one independent peer review.
(b) If challenges are consolidated into one independent peer review, the challenging parties will be responsible for allocating the costs of the independent peer review among the challenging parties.
(5)
(a) When an independent peer review is conducted, there shall be appointed to a peer review panel a minimum of three independent experts who are mutually agreeable to both the division and the challenging party.
(b) Any additional independent experts appointed to the panel shall be mutually agreeable to both the division and the challenging party.
(c) If an independent peer review panel has not been appointed within 60 days of the day on which the director receives a written request for an independent peer review, a three-person panel shall be selected as follows:
(i) one independent expert selected by the division;
(ii) one independent expert selected by the challenging party or, if more than one challenge has been consolidated as described in Subsection (4), one independent expert selected and mutually agreed to by the challenging parties; and
(iii) one independent expert mutually agreeable to the independent experts described in Subsections (5)(c)(i) and (ii).
(6)
(a) An independent peer review panel shall conduct its review in general accordance with the guidance contained in the United States Environmental Protection Agency's Peer Review Handbook.
(b) As part of an independent peer review, the independent peer review panel shall allow for written public comment on the proposal being reviewed prior to issuing a written report.
(7) An independent peer review panel shall prepare a final written report that:
(a) includes the findings of each member of the panel;
(b) is supported by the majority of the panel;
(c) includes an analysis of the panel's confidence, certainty, and major data gaps, if any, related to the scientific basis behind the proposal; and

(d) includes one of the following findings:
(i) the proposal is scientifically defensible;
(ii) the proposal is not scientifically defensible; or
(iii) the proposal is scientifically defensible with conditions developed by the panel.
(8) In addition to the requirements described in Subsection (7), if an independent peer review panel is examining a technology based nutrient effluent limit for a specified downstream water body or a series of hydrologically connected water bodies, the panel's written report shall find one of the following:
(a) the technology based nutrient effluent limit is scientifically necessary to protect the designated beneficial uses of the specified downstream water body or the series of hydrologically connected water bodies; or
(b) the technology based nutrient effluent limit is not scientifically necessary to protect the designated beneficial uses of the specified downstream water body or the series of hydrologically connected water bodies.
(9) The findings and any conditions of an independent peer review panel shall be incorporated into a proposal as needed to ensure the scientific accuracy of the proposal.
(10) A proposal reviewed by an independent peer review panel that is found scientifically defensible or scientifically defensible with conditions may be forwarded to the board or to the director for further consideration and action as applicable.
(11) If technology based nutrient effluent limits in a proposal are found by an independent peer review to not be scientifically necessary to protect a specified downstream water body or series of hydrologically connected water bodies, the challenging party shall be granted a variance by the division exempting compliance with the technology based effluent limitation.

Enacted by Chapter 340, 2016 General Session

19-5-105.5 Agriculture water.
(1)
(a) The board shall draft any rules relating to agriculture water in cooperation with the commission.
(b) The commission shall advise the board before the board may adopt rules relating to agriculture water.
(2) A program or rule adopted by the board for agriculture production or irrigation water shall:
(a) be consistent with the federal Clean Water Act; and
(b) if possible, be developed in a voluntary cooperative program with the agriculture producer associations and the commission.
(3)
(a) The board's authority to regulate a discharge is subject to Subsection (3)(b) relating to an agriculture discharge.
(b)
(i) A person responsible for an agriculture discharge shall mitigate the resulting damage in a reasonable manner, as approved by the director after consulting with the commission chair.
(ii) A penalty imposed on an agriculture discharge shall be proportionate to the seriousness of the resulting harm, as determined by the director in consultation with the commission chair.
(iii) An agriculture producer may not be held liable for an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures, as the board defines by rule, to prevent an agriculture discharge.

Amended by Chapter 360, 2012 General Session

19-5-105.6 Agriculture Certificate of Environmental Stewardship.

(1) As used in this section:
(a) "Agriculture operation" means a farm, ranch, or animal feeding operation.
(b) "Approved agriculture environmental stewardship program" means a program:
(i) created under Section 4-18-107;
(ii) that is approved by the board; and
(iii) that includes practices and other requirements sufficient to prevent violations of the Utah Pollutant Discharge Elimination System program, statute, or rules.
(c) "Certified agriculture operation" means an agriculture operation that has current certification under an approved agriculture certificate of environmental stewardship program and that is in compliance with the requirements of that certification.
(2)
(a) The division may not require a certified agriculture operation to implement additional or different practices to control nonpoint source discharges for the purpose of meeting total maximum daily load requirements.
(b) If the division implements additional or different best management practices to control nonpoint source discharges, those best management practices shall be effective on a certified agriculture operation upon the expiration of the operation's certificate, as described in Subsection 4-18-107(4).
(3) Notwithstanding Subsection (2), a certified agriculture operation may be required to undertake projects or additional best management practices for the purpose of meeting the total maximum daily load requirements under the following conditions:
(a) the certified agriculture operation has nonpoint source discharges to surface waters in an impaired watershed that is covered by an approved total maximum daily load;
(b) the board, in consultation with the Conservation Commission, has determined that the best management practice or project is necessary to restore water quality in the affected watershed; and
(c) the project or best management practice is funded:
(i) at least 75% by the state, federal government sources, or private sources other than the certified agriculture operation; or
(ii) at least 90% by the state, federal government sources, or private sources other than the certified agriculture operation if the director, commissioner of the Department of Agriculture and Food, and director of the Utah State University Extension service, or their designees, determine by majority vote that the requirements of Subsection (3)(b) pose a serious financial hardship to the certified agriculture operation.
(4) The division shall consider an agriculture operation's compliance with certification under an approved agriculture environmental stewardship program as a mitigating factor for any penalty purposes.

Enacted by Chapter 383, 2014 General Session

19-5-106 Director -- Appointment -- Duties.

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.
(2) The director shall:

(a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;
(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;
(c) develop programs for the management of sewage sludge;
(d) subject to the provisions of this chapter, enforce rules made by the board through the issuance of orders, which orders may include:
(i) prohibiting or abating discharges of wastes into the waters of the state;
(ii) requiring the construction of new control facilities or any parts of them or the modification, extension, or alteration of existing control facilities or any parts of them, or the adoption of other remedial measures to prevent, control, or abate water pollution; or
(iii) prohibiting any other violation of this chapter or rules made under this chapter;
(e) review plans, specifications, or other data relative to pollution control systems or any part of the systems provided for in this chapter;
(f) issue construction or operating permits for the installation or modification of treatment works or any parts of the treatment works;
(g) after public notice and opportunity for public hearing, issue, continue in effect, renew, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to:
(i) control the management of sewage sludge; or
(ii) prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;
(h) meet the requirements of federal law related to water pollution;
(i) under the direction of the executive director, represent the state in all matters pertaining to water pollution, including interstate compacts and other similar agreements;
(j) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution; and
(k) subject to Subsection 19-5-104(3)(h), settle or compromise any civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter.
(3) The director may:
(a) employ full-time employees as necessary to carry out the provisions of this chapter;
(b) subject to the provisions of this chapter, authorize any employee or representative of the department to enter, at reasonable times and upon reasonable notice, in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible water pollution;
(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;
(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;
(e) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to any state or federal authorities for tax purposes only if the construction, installation, or acquisition of any facility, land, building, machinery, equipment, or any part of them conforms with this chapter;
(f) cooperate with any person in studies and research regarding water pollution and its control, abatement, and prevention;

(g) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution; or
(h) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.

Amended by Chapter 360, 2012 General Session

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

(1)
(a) Except as provided in this chapter or rules made under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution.
(b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.
(2)
(a) A person may not generate, store, treat, process, use, transport, dispose, or otherwise manage sewage sludge, except in compliance with this chapter and rules made under it.
(b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.
(3) It is unlawful for any person, without first securing a permit from the director, to:
(a) make any discharge or manage sewage sludge not authorized under an existing valid discharge permit; or
(b) construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works, or construct, install, or operate any establishment or extension or modification of or addition to any treatment works, the operation of which would probably result in a discharge.

Amended by Chapter 360, 2012 General Session

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

(1) The board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for and require the submission of plans, specifications, and other information to the director in connection with the issuance of discharge permits.
(2) Each discharge permit shall have a fixed term not exceeding five years. Upon expiration of a discharge permit, a new permit may be issued by the director as authorized by the board after notice and an opportunity for public hearing and upon condition that the applicant meets or will meet all applicable requirements of this chapter, including the conditions of any permit granted by the board.
(3) The board may require notice to the director of the introduction of pollutants into publicly-owned treatment works and identification to the director of the character and volume of any pollutant of any significant source subject to pretreatment standards under Subsection 307(b) of the federal Clean Water Act. The director shall provide in the permit for compliance with pretreatment standards.
(4) The director may impose as conditions in permits for the discharge of pollutants from publicly-owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under this chapter or the rules adopted under it.

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

Amended by Chapter 360, 2012 General Session

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

(1) Any permit issued under this chapter may be revoked, modified, or suspended in whole or in part for cause including:
  (a) violation of any condition of the permit;
  (b) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
  (c) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
(2) For purposes of Subsection (1)(c), "condition" does not include statutory or regulatory effluent limitations enacted or adopted during the permit term, other than for toxic pollutants.

Amended by Chapter 114, 1995 General Session

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

(1) The governor may identify and designate by boundary, or make a determination not to designate, areas within the state which, as a result of urban-industrial concentration or other factors, have substantial water quality control problems, and designate planning agencies and waste treatment management agencies for these areas.
(2) The board may group the waters of the state into classes according to their present most reasonable uses, and after public hearing, upgrade and reclassify from time to time the waters of the state to the extent that it is practical and in the public interest.
(3)
  (a) The board may establish standards of quality for each classification consistent with most reasonable present and future uses of the waters, and the standards may be modified or changed from time to time.
  (b) Prior to classifying waters, setting quality standards or modifying or repealing them the board shall conduct public hearings for the consideration, adoption, or amendment of the classifications of waters and standards of purity and quality.
  (c) The notice shall specify the waters concerning which a classification is sought to be made for which standards are sought to be adopted and the time, date, and place of the hearing.
  (d) The notice shall be:
    (i) published:
      (A) at least twice in a newspaper of general circulation in the area affected; and
      (B) as required in Section 45-1-101; and
    (ii) mailed at least 30 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the board has reason to believe will be affected by the classification and the setting of standards.
(4)
  (a) The adoption of standards of quality for the waters of the state and classification of the waters or any modification or change in classification shall be effectuated by an order of the board which shall be published:

(i) in a newspaper of general circulation in the area affected; and
(ii) as required in Section 45-1-101.
(b) In classifying waters and setting standards of water quality, adopting rules, or making any modification or change in classification or standards, the board shall allow and announce a reasonable time, not exceeding statutory deadlines contained in the federal Clean Water Act, for persons discharging wastes into the waters of the state to comply with the classification or standards and may, after public hearing if requested by the permittee, set and revise schedules of compliance and include these schedules within the terms and conditions of permits for the discharge of pollutants.
(5) Any discharge in accord with classification or standards authorized by a permit is not pollution for the purpose of this chapter.

Amended by Chapter 388, 2009 General Session

19-5-111 Notice of violations -- Hearings.
(1) Whenever the director determines there are reasonable grounds to believe that there has been a violation of this chapter or any order of the director or the board, the director may give written notice to the alleged violator specifying the provisions that have been violated and the facts that constitute the violation.
(2) The notice shall require that the matters complained of be corrected.
(3) The notice may order the alleged violator to appear before an administrative law judge as provided by Section 19-1-301 at a time and place specified in the notice and answer the charges.

Amended by Chapter 360, 2012 General Session

19-5-112 Hearings conducted by an administrative law judge -- Decisions on denial or revocation of permit conducted by executive director.
(1) Except as provided by Subsection (2), an administrative law judge shall conduct hearings authorized by Section 19-5-111 in accordance with Section 19-1-301.
(2)
(a) An administrative law judge shall conduct, on the executive director's behalf, a hearing regarding an appeal of a permit decision for which the state has assumed primacy under the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.
(b) The decision of the executive director is final and binding on all parties unless stayed or overturned on appeal.

Amended by Chapter 360, 2012 General Session

19-5-113 Power of director to enter property for investigation -- Records and reports required of owners or operators.
(1) The director or the director's authorized representative has, after presentation of credentials, the authority to enter at reasonable times upon any private or public property for the purpose of:
(a) sampling, inspecting, or investigating matters or conditions relating to pollution or the possible pollution of any waters of the state, effluents or effluent sources, monitoring equipment, or sewage sludge; and
(b) reviewing and copying records required to be maintained under this chapter.
(2)

(a) The board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that require a person managing sewage sludge, or the owner or operator of a disposal system, including a system discharging into publicly owned treatment works, to:
  (i) establish and maintain reasonable records and make reports relating to the operation of the system or the management of the sewage sludge;
  (ii) install, use, and maintain monitoring equipment or methods;
  (iii) sample, and analyze effluents or sewage sludges; and
  (iv) provide other information reasonably required.
(b) The records, reports, and information shall be available to the public except as provided in Subsection 19-1-306(2) or Subsections 63G-2-305(1) and (2), Government Records Access and Management Act, as appropriate, for other than effluent information.

Amended by Chapter 360, 2012 General Session

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

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

Amended by Chapter 360, 2012 General Session

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

(1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in Section 76-2-103.
(2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed $10,000 per day of violation.
(3)
  (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding $25,000 per day who, with criminal negligence:
    (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);
    (ii) violates Section 19-5-113;
    (iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or
    (iv) manages sewage sludge in violation of this chapter or rules adopted under it.
  (b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed $50,000 per day of violation who knowingly:
    (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);
    (ii) violates Section 19-5-113;
    (iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or
    (iv) manages sewage sludge in violation of this chapter or rules adopted under it.
(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding $10,000 per day of violation if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it; or
(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter.
(5)
(a) As used in this section:
(i) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.
(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than $250,000 if that person:
(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and
(ii) knows at that time that the person is placing another person in imminent danger of death or serious bodily injury.
(c) If a person is an organization, it shall, upon conviction of violating Subsection (5)(b), be subject to a fine of not more than $1,000,000.
(d)
(i) A defendant who is an individual is considered to have acted knowingly if:
(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and
(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.
(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.
(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.
(e)
(i) It is an affirmative defense to prosecution under this Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:
(A) an occupation, a business, or a profession; or
(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.
(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.
(6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.
(7)
(a) The director may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.
(8)
(a) The attorney general is the legal advisor for the board and the director and shall defend them in all actions or proceedings brought against them.
(b) The county attorney or district attorney as appropriate under Section 17-18a-202 or 17-18a-203 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the director, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the director issued under this chapter.
(c) The director may initiate any action under this section and be represented by the attorney general.
(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the director may initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.
(10) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.
(11)
(a) Except as provided in Subsection (11)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.
(b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.
(c) The department shall regulate reimbursements by making rules that:
(i) define qualifying environmental enforcement activities; and
(ii) define qualifying extraordinary expenses.

Amended by Chapter 237, 2013 General Session

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

Unless required to meet instream water quality standards or federal requirements established under the federal Water Pollution Control Act, the board may not establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen Demand (BOD), Total Suspended Solids (SS), Coliforms, and pH for domestic or municipal sewage which are more stringent than the following:
(1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.
(2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on effluent samples collected during any 30-day period may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.
(3) Coliform: The geometric mean of total coliforms and fecal coliform bacteria in effluent samples collected during any 30-day period may not exceed either 2000/100 ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any seven-day period may not exceed 2500/100 ml for total coliforms or 250/100 for fecal coliforms.
(4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.

Amended by Chapter 297, 2011 General Session

19-5-117 Purpose and construction of chapter.

(1) It is the purpose of this chapter to provide:
  (a) additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the state; and
  (b) sufficient authority to allow the state to meet federal requirements for the state's assumption of primacy under the federal Water Pollution Control Act, as amended by the Water Quality Act of 1987, 33 U.S.C. Section 1251 et seq.
(2) Nothing in this chapter:
  (a) abridges or alters rights of action or remedies in equity or under common or statutory law, criminal or civil; or
  (b) estops the state or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under common or statutory law to suppress nuisances or to abate pollution.

Amended by Chapter 79, 1996 General Session

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

This chapter does not repeal any laws relating to the pollution of waters or any conservation laws, but is auxiliary and supplementary to them except to the extent that the laws are in direct conflict with this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

19-5-119 State permits not required where federal government has primary responsibility.

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

Renumbered and Amended by Chapter 112, 1991 General Session

19-5-120 Sewage permit program fee.

(1) The department may assess a fee established under Section 63J-1-504 against persons required to obtain a permit under Section 19-5-108 for the management of sewage sludge, to be applied to the costs of administering the sewage permit program required by this chapter.
(2) In establishing the fee for each sludge disposal permit holder, the department shall take into account the proportionate size of the population served by the permit holder.
(3) All proceeds from the fee shall be applied to the administering of the sewage permit program required by this chapter.

Amended by Chapter 281, 2013 General Session

19-5-121 Underground wastewater disposal systems -- Certification required to design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules -- Fees.

(1) As used in this section, "maintain" does not include the pumping of an underground wastewater disposal system.
(2)

(a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002, a person may not design, inspect, maintain, or conduct percolation or soil tests for an underground wastewater disposal system, without first obtaining certification from the board.
(b) An individual is not required to obtain certification from the board to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.
(c) The board shall make rules allowing an uncertified individual to conduct percolation or soil tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:
(i) has the capability of properly conducting the tests; and
(ii) is supervised by a certified individual when conducting the tests.
(3)
(a) The board shall adopt and enforce rules for the certification and recertification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.
(b)
(i) The rules shall specify requirements for education and training and the type and duration of experience necessary to obtain certification.
(ii) The rules shall recognize the following in meeting the requirements for certification:
(A) the experience of a contractor licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who has five or more years of experience installing underground wastewater disposal systems;
(B) the experience of an environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act; or
(C) the educational background of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.
(iii) If eligibility for certification is based on experience, the applicant for certification shall show proof of experience.
(4) The department may establish fees in accordance with Section 63J-1-504 for the testing and certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

Amended by Chapter 297, 2011 General Session

19-5-122 Underground wastewater disposal systems -- Fee imposed on new systems.
(1) Beginning July 1, 2001, a one-time fee is imposed on each new underground wastewater disposal system installed.
(2)
(a) From July 1, 2001 through June 30, 2002, the fee shall be $25.
(b) Beginning July 1, 2002, the fee shall be established by the department in accordance with Section 63J-1-504.
(3)

(a) The fee shall be paid when plans and specifications for the construction of a new underground wastewater disposal system are approved by the local health department or the Department of Environmental Quality.
(b) A local health department shall remit the fee revenue to the Division of Finance quarterly.
(4) The fee revenue shall be:
(a) deposited into the Underground Wastewater Disposal Restricted Account created in Section 19-5-123; and
(b) used to pay for costs of underground wastewater disposal system training programs.

Amended by Chapter 183, 2009 General Session

19-5-123 Underground Wastewater Disposal System Restricted Account created -- Contents -- Use of account money.
(1) The Underground Wastewater Disposal System Restricted Account is created within the General Fund.
(2) The contents of the account shall consist of:
(a) revenue from fees collected under Sections 19-5-121 and 19-5-122; and
(b) interest and earnings on account money.
(3) Money in the account shall be appropriated by the Legislature to the department for costs of training, testing, and certifying individuals who design, inspect, maintain, or conduct percolation or soils tests for underground wastewater disposal systems.

Enacted by Chapter 274, 2001 General Session

19-5-124 Phosphorus limit for household dishwashing detergent.
(1) As used in this section, "household dishwashing detergent" means a substance used:
(a) to clean an item commonly used for preparing food, eating, or drinking; and
(b) by an individual for a personal, family, or household purpose.
(2) Except as provided by Subsection (3), a person may not sell a household dishwashing detergent that contains 0.5% or more phosphorus by weight on or after July 1, 2010.
(3) This section does not apply to a dishwashing detergent designed and used for a commercial or industrial purpose.

Enacted by Chapter 81, 2008 General Session

Chapter 6
Hazardous Substances

Part 1
Solid and Hazardous Waste Act

19-6-101 Short title.
This part is known as the "Solid and Hazardous Waste Act."

Renumbered and Amended by Chapter 112, 1991 General Session

Superseded 1/16/2017

19-6-102 Definitions.

As used in this part:

(1) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.

(2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.

(3)

(a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or disposal.

(b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" does not include a facility that:

(i) receives waste for recycling;

(ii) receives waste to be used as fuel, in compliance with federal and state requirements; or

(iii) is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(4) "Construction waste or demolition waste":

(a) means waste from building materials, packaging, and rubble resulting from construction, demolition, remodeling, and repair of pavements, houses, commercial buildings, and other structures, and from road building and land clearing; and

(b) does not include: asbestos; contaminated soils or tanks resulting from remediation or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar hazardous or potentially hazardous materials.

(5) "Demolition waste" has the same meaning as the definition of construction waste in this section.

(6) "Director" means the director of the Division of Waste Management and Radiation Control.

(7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

(8) "Division" means the Division of Waste Management and Radiation Control, created in Subsection 19-1-105(1)(d).

(9) "Generation" or "generated" means the act or process of producing nonhazardous solid or hazardous waste.

(10) "Hazardous waste" means a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(11) "Health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for people with an intellectual disability, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.

(12) "Household waste" means any waste material, including garbage, trash, and sanitary wastes in septic tanks, derived from households, including single-family and multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.
(13) "Infectious waste" means a solid waste that contains or may reasonably be expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.
(14) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.
(15) "Mixed waste" means any material that is a hazardous waste as defined in this chapter and is also radioactive as defined in Section 19-3-102.
(16) "Modification plan" means a plan under Section 19-6-108 to modify a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.
(17) "Operation plan" or "nonhazardous solid or hazardous waste operation plan" means a plan or approval under Section 19-6-108, including:
(a) a plan to own, construct, or operate a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste;
(b) a closure plan;
(c) a modification plan; or
(d) an approval that the director is authorized to issue.
(18) "Permittee" means a person who is obligated under an operation plan.
(19)
(a) "Solid waste" means any garbage, refuse, sludge, including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.
(b) "Solid waste" does not include any of the following wastes unless the waste causes a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:
(i) certain large volume wastes, such as inert construction debris used as fill material;
(ii) drilling muds, produced waters, and other wastes associated with the exploration, development, or production of oil, gas, or geothermal energy;
(iii) solid wastes from the extraction, beneficiation, and processing of ores and minerals; or
(iv) cement kiln dust.
(20) "Storage" means the actual or intended containment of solid or hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of the waste.
(21) "Transportation" means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.
(22) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume.

(23) "Underground storage tank" means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991 et seq.

Amended by Chapter 42, 2015 General Session
Amended by Chapter 451, 2015 General Session

Effective 1/16/2017
19-6-102 Definitions.
As used in this part:
(1) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.
(2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.
(3)
(a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or disposal.
(b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" does not include a facility that:
(i) receives waste for recycling;
(ii) receives waste to be used as fuel, in compliance with federal and state requirements; or
(iii) is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.
(4) "Construction waste or demolition waste":
(a) means waste from building materials, packaging, and rubble resulting from construction, demolition, remodeling, and repair of pavements, houses, commercial buildings, and other structures, and from road building and land clearing; and
(b) does not include: asbestos; contaminated soils or tanks resulting from remediation or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar hazardous or potentially hazardous materials.
(5) "Demolition waste" has the same meaning as the definition of construction waste in this section.
(6) "Director" means the director of the Division of Waste Management and Radiation Control.
(7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.
(8) "Division" means the Division of Waste Management and Radiation Control, created in Subsection 19-1-105(1)(d).
(9) "Generation" or "generated" means the act or process of producing nonhazardous solid or hazardous waste.
(10) "Hazardous waste" means a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(11) "Health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for people with an intellectual disability, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.

(12) "Household waste" means any waste material, including garbage, trash, and sanitary wastes in septic tanks, derived from households, including single-family and multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(13) "Infectious waste" means a solid waste that contains or may reasonably be expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.

(14) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(15) "Mixed waste" means any material that is a hazardous waste as defined in this chapter and is also radioactive as defined in Section 19-3-102.

(16) "Modification plan" means a plan under Section 19-6-108 to modify a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.

(17) "Operation plan" or "nonhazardous solid or hazardous waste operation plan" means a plan or approval under Section 19-6-108, including:

(a) a plan to own, construct, or operate a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

(b) a closure plan;

(c) a modification plan; or

(d) an approval that the director is authorized to issue.

(18) "Permittee" means a person who is obligated under an operation plan.

(19)

(a) "Solid waste" means any garbage, refuse, sludge, including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

(b) "Solid waste" does not include any of the following wastes unless the waste causes a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

(i) certain large volume wastes, such as inert construction debris used as fill material;

(ii) drilling muds, produced waters, and other wastes associated with the exploration, development, or production of oil, gas, or geothermal energy;

(iii) solid wastes from the extraction, beneficiation, and processing of ores and minerals;

(iv) cement kiln dust; or

(v) metal that is:

(A) purchased as a valuable commercial commodity; and

(B) not otherwise hazardous waste or subject to conditions of the federal hazardous waste regulations, including the requirements for recyclable materials found at 40 C.F.R. 261.6.

(20) "Solid waste management facility" means the same as that term is defined in Section 19-6-502.

(21) "Storage" means the actual or intended containment of solid or hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of the waste.

(22) "Transportation" means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.

(23) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume.

(24) "Underground storage tank" means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991 et seq.

Amended by Chapter 1, 2016 Special Session 4

19-6-102.1 Treatment and disposal -- Exclusions.

As used in Subsections 19-6-104(3)(e)(ii)(B), 19-6-108(3)(b), 19-6-108(3)(c)(ii)(B), 19-6-119(1)(a), and 19-3-103.5(2)(f)(i) and (ii), the term "treatment and disposal" specifically excludes the recycling, use, reuse, or reprocessing of fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; waste from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust, including recycle, reuse, use, or reprocessing for road sanding, sand blasting, road construction, railway ballast, construction fill, aggregate, and other construction-related purposes.

Amended by Chapter 451, 2015 General Session

19-6-102.6 Legislative participation in landfill siting disputes.

(1)

(a) Upon the Legislature's receipt of a written request by a county governing body or a member of the Legislature whose district is involved in a landfill siting dispute, the president of the Senate and the speaker of the House shall appoint a committee as described under Subsection (2) and volunteers under Subsection (3) to actively seek an acceptable location for a municipal landfill if there is a dispute between two or more counties regarding the proposed site of a municipal landfill.

(b) The president and the speaker shall consult with the legislators appointed under this subsection regarding their appointment of members of the committee under Subsection (2), and volunteers under Subsection (3).

(2) The committee shall consist of the following members, appointed jointly by the president and the speaker:

(a) two members from the Senate:

(i) one member from the county where the proposed landfill site is located; and

(ii) one member from the other county involved in the dispute, but if more than one other county is involved, still only one senator from one of those counties;

(b) two members from the House:

(i) one member from the county where the proposed landfill site is located; and

(ii) one member from the other county involved in the dispute, but if more than one other county is involved, still only one representative from one of those counties;
(c) one individual whose current principal residence is within a community located within 20 miles of any exterior boundary of the proposed landfill site, but if no community is located within 20 miles of the community, then an individual whose current residence is in the community nearest the proposed landfill site;
(d) two resident citizens from the county where the proposed landfill site is located; and
(e) three resident citizens from the other county involved in the dispute, but if more than one other county is involved, still only three citizen representatives from those counties.
(3) Two volunteers shall be appointed under Subsection (1). The volunteers shall be individuals who agree to assist, as requested, the committee members who represent the interests of the county where the proposed landfill site is located.
(4)
(a) Funding and staffing for the committee shall be provided jointly and equally by the Senate and the House.
(b) The Department of Environmental Quality shall, at the request of the committee and as funds are available within the department's existing budget, provide support in arranging for committee hearings to receive public input and secretarial staff to make a record of those hearings.
(5) The committee shall:
(a) appoint a chair from among its members; and
(b) meet as necessary, but not less often than once per month, until its work is completed.
(6) The committee shall report in writing the results of its work and any recommendations it may have for legislative action to the interim committees of the Legislature as directed by the Legislative Management Committee.
(7)
(a) All action by the division, the director, or the division board of the Department of Environmental Quality regarding any proposed municipal landfill site, regarding which a request has been submitted under Subsection (1), is tolled for one year from the date the request is submitted, or until the committee completes its work under this section, whichever occurs first. This Subsection (7) also tolls the time limits imposed by Subsection 19-6-108(13).
(b) This Subsection (7) applies to any proposed landfill site regarding which the department has not granted final approval on or before March 21, 1995.
(c) As used in this Subsection (7), "final approval" means final agency action taken after conclusion of proceedings under Sections 63G-4-207 through 63G-4-405.
(8) This section does not apply to a municipal solid waste facility that is, on or before March 23, 1994:
(a) operating under an existing permit or the renewal of an existing permit issued by the local health department or other authority granted by the Department of Environmental Quality; or
(b) operating under the approval of the local health department, regardless of whether a formal permit has been issued.

Amended by Chapter 360, 2012 General Session

19-6-103 Waste Management and Radiation Control Board -- Members -- Terms -- Organization -- Meetings -- Per diem and expenses.
(1) The board consists of the following 12 members:

(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:
(i) the executive director; or
(ii) an employee of the department designated by the executive director; and
(b) the following 11 voting members appointed by the governor with the consent of the Senate:
(i) one representative who is:
(A) not connected with industry; and
(B) a Utah-licensed professional engineer;
(ii) two government representatives who do not represent the federal government;
(iii) one representative from the manufacturing, mining, or fuel industry;
(iv) one representative from the private solid or hazardous waste disposal industry;
(v) one representative from the private hazardous waste recovery industry;
(vi) one representative from the radioactive waste management industry;
(vii) one representative from the uranium milling industry;
(viii) one representative from the public who represents:
(A) an environmental nongovernmental organization; or
(B) a nongovernmental organization that represents community interests and does not represent industry interests;
(ix) one representative from the public who is trained and experienced in public health and a licensed:
(A) medical doctor; or
(B) dentist; and
(x) one representative who is:
(A) a medical physicist or a health physicist; or
(B) a professional employed in the field of radiation safety.
(2) A member of the board shall:
(a) be knowledgeable about solid and hazardous waste matters and radiation safety and protection as evidenced by a professional degree, a professional accreditation, or documented experience;
(b) be a resident of Utah;
(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department in accordance with Subsection 19-1-201(1)(d)(i)(B).
(3) No more than six of the appointed members may be from the same political party.
(4)
(a) Members shall be appointed for terms of four years each.
(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
(c)
(i) Notwithstanding Subsection (4)(a), the term of a board member who is appointed before March 1, 2013, shall expire on February 28, 2013.
(ii) On March 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.
(5) Each member is eligible for reappointment.
(6) Board members shall continue in office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor, after considering recommendations of the board and with the consent of the Senate.
(8) The board shall elect a chair and vice chair on or before April 1 of each year from its membership.
(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  (a) Section 63A-3-106;
  (b) Section 63A-3-107; and
  (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(10)
  (a) The board shall hold a meeting at least once every three months including one meeting during each annual general session of the Legislature.
  (b) Meetings shall be held on the call of the chair, the director, or any three of the members.
(11) Six members constitute a quorum at any meeting, and the action of the majority of members present is the action of the board.

Amended by Chapter 451, 2015 General Session

19-6-104 Powers of board -- Creation of statewide solid waste management plan.
(1) The board may:
  (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement the provisions of the Radiation Control Act;
  (b) recommend that the director:
    (i) issue orders necessary to enforce the provisions of the Radiation Control Act;
    (ii) enforce the orders by appropriate administrative and judicial proceedings; or
    (iii) institute judicial proceedings to secure compliance with this part;
  (c)
    (i) hold a hearing that is not an adjudicative proceeding; or
    (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding;
  (d) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of the Radiation Control Act; or
  (e) order the director to impound radioactive material in accordance with Section 19-3-111.
(2)
  (a) The board shall promote the planning and application of pollution prevention and radioactive waste minimization measures to prevent the unnecessary waste and depletion of natural resources; and
  (b) review the qualifications of, and issue certificates of approval to, individuals who:
    (i) survey mammography equipment; or
    (ii) oversee quality assurance practices at mammography facilities.
(3) The board shall:
  (a) survey solid and hazardous waste generation and management practices within this state and, after public hearing and after providing opportunities for comment by local governmental entities, industry, and other interested persons, prepare and revise, as necessary, a waste management plan for the state;
  (b) order the director to:

(i) issue orders necessary to effectuate the provisions of this part and rules made under this part;
(ii) enforce the orders by administrative and judicial proceedings; or
(iii) initiate judicial proceedings to secure compliance with this part;
(c) promote the planning and application of resource recovery systems to prevent the unnecessary waste and depletion of natural resources;
(d) meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste;
(e)
(i) require any facility, including those listed in Subsection (3)(e)(ii), that is intended for disposing of nonhazardous solid waste or wastes listed in Subsection (3)(e)(ii)(B) to submit plans, specifications, and other information required by the board to the board prior to construction, modification, installation, or establishment of a facility to allow the board to determine whether the proposed construction, modification, installation, or establishment of the facility will be in accordance with rules made under this part;
(ii) facilities referred to in Subsection (3)(e)(i) include:
(A) any incinerator that is intended for disposing of nonhazardous solid waste; and
(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; and
(f) to ensure compliance with applicable statutes and regulations:
(i) review a settlement negotiated by the director in accordance with Subsection 19-6-107(3)(a) that requires a civil penalty of $25,000 or more; and
(ii) approve or disapprove the settlement.
(4) The board may:
(a)
(i) hold a hearing that is not an adjudicative proceeding; or
(ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding; or
(b) advise, consult, cooperate with, or provide technical assistance to other agencies of the state or federal government, other states, interstate agencies, or affected groups, political subdivisions, industries, or other persons in carrying out the purposes of this part.
(5)
(a) The board shall establish a comprehensive statewide waste management plan by January 1, 1994.
(b) The plan shall:
(i) incorporate the solid waste management plans submitted by the counties;
(ii) provide an estimate of solid waste capacity needed in the state for the next 20 years;
(iii) assess the state's ability to minimize waste and recycle;
(iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste needs and existing capacity;
(v) evaluate facility siting, design, and operation;
(vi) review funding alternatives for solid waste management; and
(vii) address other solid waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

(c) The board shall consider the economic viability of solid waste management strategies prior to incorporating them into the plan and shall consider the needs of population centers.
(d) The board shall review and modify the comprehensive statewide solid waste management plan no less frequently than every five years.
(6)
(a) The board shall determine the type of solid waste generated in the state and tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid waste management plan.
(b) The board shall review and modify the inventory no less frequently than once every five years.
(7) Subject to the limitations contained in Subsection 19-6-102(19)(b), the board shall establish siting criteria for nonhazardous solid waste disposal facilities, including incinerators.
(8) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-6-107:
(a) a permit;
(b) a license;
(c) a registration;
(d) a certification; or
(e) another administrative authorization made by the director.
(9) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Amended by Chapter 451, 2015 General Session

19-6-105 Rules of board.
(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(a) establishing minimum standards for protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of solid waste, including requirements for the approval by the director of plans for the construction, extension, operation, and closure of solid waste disposal sites;
(b) identifying wastes which are determined to be hazardous, including wastes designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., Sec. 6921, et seq.;
(c) governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage, and disposal facilities, including requirements for keeping records, monitoring, submitting reports, and using a manifest, without treating high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling muds, and oil production brines in a manner more stringent than they are treated under federal standards;
(d) requiring an owner or operator of a treatment, storage, or disposal facility that is subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982, to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility;
(e) specifying the terms and conditions under which the director shall approve, disapprove, revoke, or review hazardous wastes operation plans;
(f) governing public hearings and participation under this part;

(g) establishing standards governing underground storage tanks, in accordance with Title 19, Chapter 6, Part 4, Underground Storage Tank Act;
(h) relating to the collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities in accordance with the requirements of Section 19-6-106;
(i) defining closure plans as major or minor;
(j) defining modification plans as major or minor; and
(k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch, canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or well.
(2) If any of the following are determined to be hazardous waste and are therefore subjected to the provisions of this part, the board shall, in the case of landfills or surface impoundments that receive the solid wastes, take into account the special characteristics of the wastes, the practical difficulties associated with applying requirements for other wastes to the wastes, and site specific characteristics, including the climate, geology, hydrology, and soil chemistry at the site, if the modified requirements assure protection of human health and the environment and are no more stringent than federal standards applicable to wastes:
(a) solid waste from the extraction, beneficiation, or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium;
(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; and
(c) cement kiln dust waste.
(3) The board shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. Those criteria shall apply to any facility or incinerator for which plan approval is required under Section 19-6-108.

Amended by Chapter 360, 2012 General Session

19-6-106 Rulemaking authority and procedure.
(1) Except as provided in Subsection (2), no rule which the board makes for the purpose of the state administering a program under the federal Resource Conservation and Recovery Act and, to the extent the board may have jurisdiction, under the federal Comprehensive Environmental Response, Compensation and Liability Act, or the federal Emergency Planning and Community Right to Know Act of 1986, may be more stringent than the corresponding federal regulations which address the same circumstances. In making the rules, the board may incorporate by reference corresponding federal regulations.
(2) The board may make rules more stringent than corresponding federal regulations for the purposes described in Subsection (1), only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the conclusion.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-107 Director -- Appointment -- Powers.
(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.
(2) The director shall:

(a) develop programs to promote and protect the public from radiation sources in the state;
(b) advise, consult, cooperate with, and provide technical assistance to other agencies, states, the federal government, political subdivisions, industries, and other persons in carrying out the provisions of the Radiation Control Act;
(c) receive specifications or other information relating to licensing applications for radioactive materials or registration of radiation sources for review, approval, disapproval, or termination;
(d) issue permits, licenses, registrations, certifications, and other administrative authorizations;
(e) review and approve plans;
(f) assess penalties in accordance with Section 19-3-109;
(g) impound radioactive material under Section 19-3-111;
(h) issue orders necessary to enforce the provisions of this part, to enforce the orders by appropriate administrative and judicial proceedings, or to institute judicial proceedings to secure compliance with this part;
(i) carry out inspections pursuant to Section 19-6-109;
(j) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review the plans;
(k) develop programs for solid waste and hazardous waste management and control within the state;
(l) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this part;
(m) subject to the provisions of this part, enforce rules made or revised by the board through the issuance of orders;
(n) review plans, specifications or other data relative to solid waste and hazardous waste control systems or any part of the systems as provided in this part;
(o) under the direction of the executive director, represent the state in all matters pertaining to interstate solid waste and hazardous waste management and control including, under the direction of the board, entering into interstate compacts and other similar agreements; and
(p) as authorized by the board and subject to the provisions of this part, act as executive secretary of the board under the direction of the chairman of the board.

(3) The director may:
(a) subject to Subsection 19-6-104(3)(f), settle or compromise any administrative or civil action initiated to compel compliance with this part and any rules adopted under this part;
(b) employ full-time employees necessary to carry out this part;
(c) as authorized by the board pursuant to the provisions of this part, authorize any employee or representative of the department to conduct inspections as permitted in this part;
(d) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to solid waste and hazardous waste management and control necessary for the discharge of duties assigned under this part;
(e) collect and disseminate information relating to solid waste and hazardous waste management control;
(f) cooperate with any person in studies and research regarding solid waste and hazardous waste management and control;
(g) cooperate with any person in studies, research, or demonstration projects regarding radioactive waste management or control of radiation sources;
(h) settle or compromise any civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter; and

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

Amended by Chapter 451, 2015 General Session

19-6-108 New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Revocation of approval -- Periodic review.

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990;

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or

(e) a submission of an operation plan to construct a facility, if previous approvals of the operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3)

(a)

(i) No person may own, construct, modify, or operate any facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste without first submitting and receiving the approval of the director for an operation plan for that facility or site.

(ii)

(A) A permittee who is the current owner of a facility or site that is subject to an operation plan may submit to the director information, a report, a plan, or other request for approval for a proposed activity under an operation plan:

(I) after obtaining the consent of any other permittee who is a current owner of the facility or site; and

(II) without obtaining the consent of any other permittee who is not a current owner of the facility or site.

(B) The director may not:

(I) withhold an approval of an operation plan requested by a permittee who is a current owner of the facility or site on the grounds that another permittee who is not a current owner of the facility or site has not consented to the request; or

(II) give an approval of an operation plan requested by a permittee who is not a current owner before receiving consent of the current owner of the facility or site.

(b)

(i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the director for an operation plan for that facility site.

(ii) Wastes referred to in Subsection (3)(b)(i) are:

(A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

(C) cement kiln dust wastes.

(c)

(i) No person may construct a facility listed under Subsection (3)(c)(ii) until the person receives:

(A) local government approval and the approval described in Subsection (3)(a);

(B) approval from the Legislature; and

(C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B), approval from the governor.

(ii) A facility referred to in Subsection (3)(c)(i) is:

(A) a commercial nonhazardous solid waste disposal facility;

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; or

(C) a commercial hazardous waste treatment, storage, or disposal facility.

(iii) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

(A) the governor's approval is received on or after May 10, 2011, and the facility is not operational within five years after the day on which the governor's approval is received; or

(B) the governor's approval is received before May 10, 2011, and the facility is not operational on or before May 10, 2016.

(iv) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to another person for five years after the day on which the governor's approval is received.

(d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary of the board under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary of the board to be complete, in accordance with state and federal requirements for operating

plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary of the board under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary of the board determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g)

(i) The director shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that the director cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The director shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The director shall review each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5)

(a) If the facility is a class I or class II facility, the director shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the director shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c)

(i) If the plan for a class I or II facility is determined to be complete, the director shall issue a notice of completeness.

(ii) If the plan is determined by the director to be incomplete, the director shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The director shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6)

(a) If the facility is a class III or class IV facility, the director shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the director;
(ii) time required for public participation and hearings for issuance of plan approvals; and
(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any facility, the director determines that the proposed plan, or any part of it, will not comply with applicable rules, the director shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the director determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) The director may not approve a proposed nonhazardous solid or hazardous waste operation plan unless the plan contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the director determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the director considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board;

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit;

(g) for a proposed operation plan submitted on or after July 1, 2013, for a new solid or hazardous waste facility other than a water treatment facility that treats, stores, or disposes site-generated solid or hazardous waste onsite, a traffic impact study that:

(i) takes into consideration the safety, operation, and condition of roadways serving the proposed facility; and

(ii) is reviewed and approved by the Department of Transportation or a local highway authority, whichever has jurisdiction over each road serving the proposed facility, with the cost of the review paid by the person who submits the proposed operation plan; and

(h) for a proposed operation plan submitted on or after July 1, 2013, for a new nonhazardous solid waste facility owned or operated by a local government, financial information that discloses all costs of establishing and operating the facility, including:
(i) land acquisition and leasing;
(ii) construction;
(iii) estimated annual operation;
(iv) equipment;
(v) ancillary structures;
(vi) roads;
(vii) transfer stations; and
(viii) using other operations that are not contiguous to the proposed facility but are necessary to support the facility's construction and operation.

(10) The director may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:
(a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:
(i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;
(ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and
(iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;
(b) a description of the public benefits of the proposed facility, including:
(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;
(ii) the energy and resources recoverable by the proposed facility;
(iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility; and
(iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and
(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the director in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The director may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the director determines that:
(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and
(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The director shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary of the board on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.
(15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the director, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.
(16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in the state where it is generated and which is received for disposal in this state may not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the director.
(17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

Amended by Chapter 378, 2013 General Session

19-6-108.3 Director to issue written assurances, make determinations, and partition operation plans -- Board to make rules.
(1) Based upon risk to human health or the environment from potential exposure to hazardous waste, the director may:
  (a) even if corrective action is incomplete, issue an enforceable written assurance to a person acquiring an interest in real property covered by an operation plan that the person to whom the assurance is issued:
    (i) is not a permittee under the operation plan; and
    (ii) will not be subject to an enforcement action under this part for contamination that exists or for violations under this part that occurred before the person acquired the interest in the real property covered by the operation plan;
  (b) determine that corrective action to the real property covered by the operation plan is:
    (i) complete;
    (ii) incomplete;
    (iii) unnecessary with an environmental covenant; or
    (iv) unnecessary without an environmental covenant; and
  (c) partition from an operation plan a portion of real property subject to the operation plan after determining that corrective action for that portion of real property is:
    (i) complete;
    (ii) unnecessary with an environmental covenant; or
    (iii) unnecessary without an environmental covenant.
(2) If the director determines that an environmental covenant is necessary under Subsection (1)(b) or (c), the director shall require that the real property be subject to an environmental covenant according to Title 57, Chapter 25, Uniform Environmental Covenants Act.
(3) An assurance issued under Subsection (1) protects the person to whom the assurance is issued from any cost recovery and contribution action under state law.

(4) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may adopt rules to administer this section.

Amended by Chapter 360, 2012 General Session

19-6-108.5 Management of hazardous waste generated outside Utah.

(1) On and after July 1, 1992, any waste entering Utah for disposal or treatment, excluding incineration, that is classified by Utah as nonhazardous solid waste and by the state of origin as hazardous waste, and that exceeds the base volume provided in Subsection (2) for each receiving facility or site, shall be treated according to the same treatment standards to which it would have been subject had it remained in the state where it originated. However, if those standards are less protective of human health or the environment than the treatment standards applicable under Utah law, the waste shall be treated in compliance with the Utah standards.

(2) The base volume provided in Subsection (1) for each receiving facility or site is the average of the annual quantities of nonhazardous solid waste that originated outside Utah and were received by the facility or site in calendar years 1990 and 1991.

(3)

(a) The base volume for each receiving facility or site that has an operating plan approved prior to July 1, 1992, but did not receive nonhazardous solid waste originating outside Utah during calendar years 1990 and 1991, shall be the average of annual quantities of out-of-state nonhazardous waste the facility or site received during the 24 months following the date of initial receipt of nonhazardous waste originating outside Utah.

(b) The base determined under Subsection (3)(a) applies to the facility or site on and after July 1, 1995, regardless of the amount of nonhazardous waste originating outside Utah received by the facility or site prior to this date.

Amended by Chapter 324, 2010 General Session

19-6-109 Inspections authorized.

Any duly authorized officer, employee, or representative of the director may, at any reasonable time and upon presentation of appropriate credentials, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated, or disposed of, and have access to and the right to copy any records relating to the wastes, for the purpose of ascertaining compliance with this part and the rules of the board. Those persons referred to in this section may also inspect any waste and obtain waste samples, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator, or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

Amended by Chapter 360, 2012 General Session

19-6-111 Variances -- Requirements for application -- Procedure.

(1)

(a) If the board determines that the application of, or compliance with, any requirements of this part would cause undue or unreasonable hardship to any person, it may issue a variance from any of those requirements.

(b) No variance may be granted except upon application for it.
(c) Immediately upon receipt of an application for a variance, the board shall give public notice of the application and provide an opportunity for a public hearing.
(d) A variance granted for more than one year shall contain a timetable for coming into compliance with this part and shall be conditioned on adherence to that timetable.
(2)
(a) Any variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate for the initial granting of a variance.
(b) No renewal may be granted except on application for it.
(c) Immediately upon receipt of an application for renewal, the board shall give public notice of the application and provide an opportunity for a public hearing.
(3)
(a) The board may review any variance during the term for which it was granted.
(b) The procedure for review is the same as that for an original application and the variance previously granted may be revoked upon a finding that the conditions and the terms upon which the variance was granted are not being met.
(4)
(a) Any variance or renewal exists at the discretion of the board and is not a right of the applicant or holder.
(b) However, any person adversely affected by the granting, denying, or revoking of any variance or renewal by the board may obtain judicial review of the board's decision by filing a petition in district court within 30 days from the date of notification of the decision.
(c) The decision of the board may not be overturned upon review unless the court finds that the actions of the board were arbitrary or capricious.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-112 Notice of violations -- Order for correction -- Civil action to enforce.
(1) Whenever the director determines that any person is in violation of any applicable approved hazardous wastes operation plan or solid waste plan, the requirements of this part, or any of the board's rules, the director may cause written notice of that violation to be served upon the alleged violator. The notice shall specify the provisions of the plan, this part or rule alleged to have been violated, and the facts alleged to constitute the violation.
(2) The director may:
(a) issue an order requiring that necessary corrective action be taken within a reasonable time; or
(b) request the attorney general or the county attorney in the county in which the violation is taking place to bring a civil action for injunctive relief and enforcement of this part.
(3) Pending promulgation of rules for corrective action under Section 19-6-105, the director may issue corrective action orders on a case-by-case basis, as necessary to carry out the purposes of this part.

Amended by Chapter 360, 2012 General Session

19-6-113 Violations -- Penalties -- Reimbursement for expenses.
(1) As used in this section, "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.

(2) Any person who violates any order, plan, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than $13,000 per day for each day of violation.

(3) On or after July 1, 1990, no person shall knowingly:

(a) transport or cause to be transported any hazardous waste identified or listed under this part to a facility that does not have a hazardous waste operation plan or permit under this part or RCRA;

(b) treat, store, or dispose of any hazardous waste identified or listed under this part:

(i) without having obtained a hazardous waste operation plan or permit as required by this part or RCRA;

(ii) in knowing violation of any material condition or requirement of a hazardous waste operation plan or permit; or

(iii) in knowing violation of any material condition or requirement of any rules or regulations under this part or RCRA;

(c) omit material information or make any false material statement or representation in any application, label, manifest, record, report, permit, operation plan, or other document filed, maintained, or used for purposes of compliance with this part or RCRA or any rules or regulations made under this part or RCRA; and

(d) transport or cause to be transported without a manifest any hazardous waste identified or listed under this part and required by rules or regulations made under this part or RCRA to be accompanied by a manifest.

(4)

(a)

(i) Any person who knowingly violates any provision of Subsection (3)(a) or (b) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony under Subsection (3)(a) or (b) is subject to a fine of not more than $50,000 for each day of violation, or imprisonment for a term not to exceed five years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(a) or (b), the maximum punishment is double both the fine and the term of imprisonment authorized in Subsection (4)(a)(ii).

(b)

(i) Any person who knowingly violates any of the provisions of Subsection (3)(c) or (d) is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony for a violation of Subsection (3)(c) or (d) is subject to a fine of not more than $50,000 for each day of violation, or imprisonment for a term not to exceed two years, or both.

(iii) If a person is convicted of a second or subsequent violation under Subsection (3)(c) or (d), the maximum punishment is double both the fine and the imprisonment authorized in Subsection (4)(b)(ii).

(c)

(i) Any person who knowingly transports, treats, stores, or disposes of any hazardous waste identified or listed under this part in violation of Subsection (3)(a), (b), (c), or (d), who knows at that time that the person thereby places another person in imminent danger of death or serious bodily injury, is guilty of a felony.

(ii) Notwithstanding Sections 76-3-203, 76-3-301, and 76-3-302, a person convicted of a felony described in Subsection (4)(c)(i) is subject to a fine of not more than $250,000, or imprisonment for a term not to exceed 15 years, or both.

(iii) A corporation, association, partnership, or governmental instrumentality, upon conviction of violating Subsection (4)(c)(i), is subject to a fine of not more than $1,000,000.

(5)

(a) Except as provided in Subsections (5)(b) and (c) and Section 19-6-722, all penalties assessed and collected under authority of this section shall be deposited in the General Fund.

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

(c) Notwithstanding the provisions of Section 78A-5-110, the department may reimburse itself and local governments from money collected from criminal fines for qualifying extraordinary expenses incurred in prosecutions for violations of this part.

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

(i) qualifying environmental enforcement activities; and

(ii) qualifying extraordinary expenses.

(6) Prosecution for criminal violations of this part may be commenced by the attorney general, the county attorney, or the district attorney as appropriate under Section 17-18a-202 or 17-18a-203 in any county where venue is proper.

Amended by Chapter 237, 2013 General Session

19-6-114 Proof of service of notice, order, or other document.

Proof of service of any notice, order, or other document issued by, or under the authority of, the board may be made in the same manner as in the service of a summons in a civil action. Proof of service shall be filed with the board or may be made by forwarding a copy of that notice, order, or other document by registered mail, directed to the person at his last known address, with an affidavit to that effect being filed with the board.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-115 Imminent danger to health or environment -- Authority of executive director to initiate action to restrain.

Notwithstanding any other provision of this part, upon receipt of evidence that the handling, transportation, treatment, storage, or disposal of any solid or hazardous waste, or a release from an underground storage tank, is presenting an imminent and substantial danger to health or the environment, the executive director may bring suit on behalf of this state in the district court to immediately restrain any person contributing, or who has contributed, to that action to stop the handling, storage, treatment, transportation, or disposal or to take other action as appropriate.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-116 Application of part subject to state assumption of primary responsibility from federal government -- Authority of political subdivisions.

(1) The requirements of this part applicable to the generation, treatment, storage, or disposal of hazardous waste, and the rules adopted under this part, do not take effect until this state is qualified to assume, and does assume, primacy from the federal government for the control of hazardous wastes.

(2) This part does not alter the authority of political subdivisions of the state to control solid and hazardous wastes within their local jurisdictions so long as any local laws, ordinances, or rules are not inconsistent with this part or the rules of the board.

Amended by Chapter 297, 2011 General Session

19-6-117 Action against insurer or guarantor.

(1) The state may assert a cause of action directly against an insurer or guarantor of an owner or operator if:
  (a) a cause of action exists against an owner or operator of a treatment, storage, or disposal facility, based upon conduct for which the director requires evidence of financial responsibility under Section 19-6-108, and that owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code; or
  (b) jurisdiction over an owner or operator, who is likely to be solvent at the time of judgment, cannot be obtained in state or federal court.
(2) In that action, the insurer or guarantor may assert all rights and defenses available to the owner or operator, in addition to rights and defenses that would be available to the insurer or guarantor in an action brought against him by the owner or operator.

Amended by Chapter 360, 2012 General Session

19-6-117.5 Applicability of fees for treatment or disposal of waste.

Waste that is subject to more than one fee under Section 19-6-118, 19-6-118.5, or 19-6-119 is subject only to the highest applicable fee.

Enacted by Chapter 10, 2005 General Session

19-6-118 Hazardous waste and treated hazardous waste disposal fees.

(1) As used in this section:
  (a) "Demilitarization waste" means:
    (i) a nerve, military, or chemical agent, including:
      (A) CX;
      (B) GA;
      (C) GB;
      (D) GD;
      (E) H;
      (F) HD;
      (G) HL;
      (H) HN-1;
      (I) HN-2;
      (J) HN-3;
      (K) HT;
      (L) L; or
      (M) VX; or
    (ii) waste or residue from demilitarization, treatment, testing, or disposal of an agent described in Subsection (1)(a)(i).
  (b) "Remediation project" means:
    (i) a superfund cleanup project;

(ii) a Resource Conservation and Recovery Act closure or corrective action site; or
(iii) a voluntary cleanup of:
(A) hazardous debris; or
(B) hazardous waste subject to regulation solely because of removal or remedial action taken in response to environmental contamination.
(c) "Remediation waste" means waste from a remediation project.
(2)
(a) An owner or operator of any commercial hazardous waste or mixed waste disposal or treatment facility that primarily receives hazardous or mixed wastes generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator, and that is subject to the requirements of Section 19-6-108, shall pay the fee under Subsection (3).
(b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or industrial furnace that receives for burning hazardous waste generated by off-site sources not owned, controlled, or operated by the owner or operator shall pay the fee under Subsection (3).
(3)
(a)
(i) Through June 30, 2014, the owner or operator of each facility under Subsection (2) shall pay a fee of $28 per ton on all hazardous waste and mixed waste received at the facility for disposal, treatment, or both.
(ii) The fee required under Subsection (3)(a)(i) shall be calculated by multiplying the total tonnage of waste, computed to the first decimal place, received during the calendar month by $28.
(b)
(i) Through June 30, 2014, hazardous waste received at a land disposal facility is subject to a fee of $14 per ton instead of the fee described in Subsection (3)(a) if the waste is treated so that it:
(A) meets the state treatment standards required for land disposal at the facility; or
(B) is no longer a hazardous waste at the time of disposal at that facility.
(ii) Through June 30, 2014, demilitarization waste received at a land disposal facility is subject to the fee described in Subsection (3)(b)(i), if:
(A) the demilitarization waste contains an additional constituent that is not demilitarization waste and is required by rule to be treated before land disposal; and
(B) the additional constituent meets every applicable state treatment standard required for land disposal of that constituent at the facility.
(iii) A fee required under Subsection (3)(b)(i) shall be calculated by multiplying the tonnage of waste, computed to the first decimal place, received during the calendar month by $14.
(c) Through June 30, 2014, when hazardous waste or mixed waste is received at a facility for treatment or disposal and the fee required under Subsection (3) is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under Subsection (3).
(d)
(i) In accordance with Section 63J-1-504, on or before July 1, 2014, the department shall establish a fee schedule for the treatment and land disposal of hazardous waste and mixed waste.
(ii) To create the fee schedule described in Subsection (3)(d)(i), the department shall, before establishing the fee schedule, complete a review of program costs and indirect costs of regulating hazardous waste and mixed waste in the state.
(iii) The fee schedule described in Subsection (3)(d)(i) shall:

(A) implement a flat fee not calculated according to the amount of waste treated or disposed;
(B) provide for reasonable and timely oversight by the department; and
(C) adequately meet the needs of industry and the department, including enabling the department to employ qualified personnel to appropriately oversee industry regulation.

(iv) A facility that treats or disposes of hazardous waste or mixed waste is authorized to collect the fee established under Subsection (3)(d)(i) from the generator of the waste.

(4)

(a) Through June 30, 2014, remediation waste received at a hazardous waste land disposal or treatment facility from a remediation project is subject to a fee in the following amounts:

Amount of Remediation Waste Received from a Remediation Project	Fee Amount
More than 0, but less than 1,000 tons	$28 per ton
Equal to or greater than 1,000 tons, but less than 12,500 tons	$10 per ton for all waste
Equal to or greater than 12,500 tons, but less than 25,000 tons	$5 per ton for all waste
Equal to or greater than 25,000 tons	$2.50 per ton for all waste

(b) Through June 30, 2014, emission control dust/sludge from the primary production of steel in electric furnaces (K061, as defined in 40 C.F.R. Sec. 261.32) received at a hazardous waste land disposal or treatment facility is subject to a fee of $5 per ton in lieu of the fee established in Subsection (3).

(c) Through June 30, 2014, demilitarization waste received at a hazardous waste treatment, storage, or disposal facility is subject to a fee of $5 per ton in addition to the fee established in Subsection (3).

(d)

(i) Through June 30, 2014, the department may in accordance with this Subsection (4)(d) assess a person required to pay a fee under this section a special assessment if the department determines that the aggregate of the following fees is insufficient to cover the department's costs of administering its hazardous waste program:
(A) a fee imposed under this section; and
(B) a fee imposed under Section 19-6-118.5.

(ii) In determining the amount of a special assessment under this Subsection (4)(d), the department shall calculate the amount of the insufficiency and assess each person subject to the special assessment a proportion of the insufficiency equal to the proportion of fees paid by that person.

(iii) The department shall deposit a special assessment collected under this Subsection (4)(d) into the Environmental Quality Restricted Account created in Section 19-1-108.

(e) Through June 30, 2014, the department shall annually review the fee established in Subsection (4)(a) and make recommendations to the Legislature's Natural Resources, Agriculture, and Environment Interim Committee concerning the amount of the fee.

(5)

(a) Through June 30, 2014, the department shall allocate at least 10% of the fees received from a facility under this section to the county where the facility is located, not including a special assessment.

(b) Beginning on July 1, 2014, the department shall allocate and pay to a county at least 10% of the fee established under Subsection (3)(d)(i) that the department receives from a facility in that county.
(c) The county may use fees allocated under Subsection (5) to carry out its hazardous waste monitoring and response programs.
(6) The department shall deposit the state portion of a fee received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.
(7)
(a)
(i) Except as provided in Subsection (7)(a)(ii), the owner or operator shall pay a fee, accrued under this section before June 30, 2014, to the department on or before the 15th day of the month following the month in which the fee accrued.
(ii) If a fee accrues on remediation waste under this section before June 30, 2014, the fee shall be paid in accordance with a schedule determined by the department:
(A) made in consultation with the person paying the fee; and
(B) considering any contractual schedule for payment between the person paying the fee and another person with whom the person paying the fee has contracted.
(b) With the monthly fee described in Subsection (7)(a)(i), the owner or operator shall submit a completed form, as prescribed by the department, specifying information required by the department to verify the amount of waste received and the fee amount for which the owner or operator is liable.
(c) Beginning on July 1, 2014, an owner or operator shall submit payment of the fee established in Subsection (3)(d)(i) to the department:
(i) in accordance with a schedule provided by the department; and
(ii) using forms provided by the department.
(8)
(a) The department shall oversee and monitor hazardous waste treatment, disposal, and incineration facilities, including federal government facilities located within the state.
(b) The department may determine facility oversight priorities.
(9)
(a) The department, in preparing its budget for the governor and the Legislature, shall separately indicate the amount necessary to administer the hazardous waste program established by this part.
(b) The Legislature shall appropriate the costs of administering this program.
(10) The Office of Legislative Fiscal Analyst shall monitor a fee collected under this part.
(11) Mixed waste subject to a fee under this section is not subject to a fee under Section 19-3-106.

Amended by Chapter 201, 2013 General Session

19-6-118.5 PCB disposal fee.
(1)
(a) On or after July 1, 2010, but on or before June 30, 2011, the owner or operator of a waste facility shall pay a fee of $4.75 per ton on all wastes containing polychlorinated biphenyls (PCBs) that are:
(i) regulated under 15 U.S.C. Sec. 2605; and
(ii) received at a facility for disposal or treatment.
(b) On and after July 1, 2011, the department shall establish a fee for disposal or treatment of wastes containing polychlorinated biphenyls in accordance with Section 63J-1-504.

(2) The owner or operator of a facility receiving PCBs for disposal or treatment shall:
(a) calculate the fees imposed under Subsection (1)(a) by multiplying the total tonnage of waste received during the calendar month, computed to the first decimal place, by the required fee rate of $4.75 per ton;
(b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and
(c) with the fees required under this section, submit to the department, on a form prescribed by the department, information that verifies the amount of waste received and the fees that the owner or operator is required to pay.
(3) The department shall deposit the fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.
(4) The owner or operator of a waste facility that is subject to a fee under this section is not subject to a fee for the same waste under Section 19-3-106, even if the waste contains radioactive materials.

Amended by Chapter 17, 2010 General Session

19-6-119 Nonhazardous solid waste disposal fees.
(1)
(a) Except as provided in Subsection (5), the owner or operator of a commercial nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste received for treatment or disposal at the facility if the facility or incinerator is required to have operation plan approval under Section 19-6-108 and primarily receives waste generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator:
(i) 13 cents per ton on all municipal waste and municipal incinerator ash;
(ii) 50 cents per ton on the following wastes if the facility disposes of one or more of the following wastes in a cell exclusively designated for the waste being disposed:
(A) construction waste or demolition waste;
(B) yard waste, including vegetative matter resulting from landscaping, land maintenance, and land clearing operations;
(C) dead animals;
(D) waste tires and materials derived from waste tires disposed of in accordance with Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and
(E) petroleum contaminated soils that are approved by the director; and
(iii) $2.50 per ton on:
(A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and
(B)
(I) fly ash waste;
(II) bottom ash waste;
(III) slag waste;
(IV) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;
(V) waste from the extraction, beneficiation, and processing of ores and minerals; and
(VI) cement kiln dust wastes.
(b) A commercial nonhazardous solid waste disposal facility or incinerator subject to the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii) for those wastes described in Subsections (1)(a)(i) and (ii).

(c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.

(2)

(a) Except as provided in Subsections (2)(b) and (5), a waste facility that is owned by a political subdivision shall pay the following annual facility fee to the department by January 15 of each year:

(i) $800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal waste each year;

(ii) $1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of municipal waste each year;

(iii) $3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of municipal waste each year;

(iv) $12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of municipal waste each year;

(v) $14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of municipal waste each year;

(vi) $33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of municipal waste each year; and

(vii) $66,000 if the facility receives 500,000 or more tons of municipal waste each year.

(b) Except as provided in Subsection (5), a waste facility that is owned by a political subdivision shall pay $2.50 per ton for:

(i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii) received for disposal if the waste is:

(A) generated outside the boundaries of the political subdivision; and

(B) received from a single generator and exceeds 500 tons in a calendar year; and

(ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:

(A) generated outside the boundaries of the political subdivision; and

(B) received from a single generator and exceeds 500 tons in a calendar year.

(c) Waste received at a facility owned by a political subdivision under Subsection (2)(b) may not be counted as part of the total tonnage received by the facility under Subsection (2)(a).

(3)

(a) As used in this Subsection (3):

(i) "Recycling center" means a facility that extracts valuable materials from a waste stream or transforms or remanufactures the material into a usable form that has demonstrated or potential market value.

(ii) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is used to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(b) Except as provided in Subsection (5), the owner or operator of a transfer station or recycling center shall pay to the department the following fees on waste sent for disposal to a nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this section:

(i) $1.25 per ton on:

(A) all nonhazardous solid waste; and

(B) waste described in Subsection (1)(a)(iii)(B);

(ii) 10 cents per ton on all construction and demolition waste; and

(iii) 5 cents per ton on all municipal waste or municipal incinerator ash.

(c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee required under Subsection (3)(b)(i).
(4) If a facility required to pay fees under this section receives nonhazardous solid waste for treatment or disposal, and the fee required under this section is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this section.
(5) The owner or operator of a waste disposal facility that receives waste described in Subsection (1)(a)(iii)(B) is not required to pay any fee on those wastes if received solely for the purpose of recycling, reuse, or reprocessing.
(6) Except as provided in Subsection (2)(a), a facility required to pay fees under this section shall:
(a) calculate the fees by multiplying the total tonnage of waste received during the calendar month, computed to the first decimal place, by the required fee rate;
(b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and
(c) with the fees required under Subsection (6)(b), submit to the department, on a form prescribed by the department, information that verifies the amount of waste received and the fees that the owner or operator is required to pay.
(7) The department shall:
(a) deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108; and
(b) in preparing its budget for the governor and the Legislature, separately indicate the amount of the department's budget necessary to administer the solid and hazardous waste program established by this part.
(8) The department may contract or agree with a county to assist in performing nonhazardous solid waste management activities, including agreements for:
(a) the development of a solid waste management plan required under Section 17-15-23; and
(b) pass-through of available funding.
(9) This section does not exempt any facility from applicable regulation under the Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

Amended by Chapter 360, 2012 General Session

19-6-120 New hazardous waste operation plans -- Designation of hazardous waste facilities -- Fees for filing and plan review.
(1) For purposes of this section, the following items shall be treated as submission of a new hazardous waste operation plan:
(a) the submission of a revised hazardous waste operation plan specifying a different geographic site than a previously submitted plan;
(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the commercial hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990; or
(c) an application for modification of a commercial hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if initial approval is subsequent to January 1, 1990.

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3)

(a) Hazardous waste facilities that are subject to payment of fees under this section or Section 19-1-201 for plan reviews under Section 19-6-108 shall be designated by the department as either class I, class II, class III, or class IV facilities.

(b) The department shall designate commercial hazardous waste facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, incinerators, or underground injection wells, which primarily receive wastes generated by off-site sources not owned, controlled, or operated by the facility owner or operator, as class I facilities.

(4) The maximum fee for filing and review of each class I facility operation plan is $200,000, and is due and payable as follows:

(a) The owner or operator of a class I facility shall, at the time of filing for plan review, pay to the department the nonrefundable sum of $50,000.

(b) Upon issuance by the director of a notice of completeness under Section 19-6-108, the owner or operator of the facility shall pay to the department an additional nonrefundable sum of $50,000.

(c) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional $100,000.

(5)

(a) The department shall designate hazardous waste incinerators that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator as class II facilities.

(b) The maximum fee for filing and review of each class II facility operation plan is $150,000, and shall be due and payable as follows:

(i) The owner or operator of a class II facility shall, at the time of filing for plan review under Section 19-6-108, pay to the department the nonrefundable sum of $50,000.

(ii) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional $100,000.

(6)

(a) The department shall designate hazardous waste facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, or underground injection wells, that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator, as class III facilities.

(b) The maximum fee for filing and review of each class III facility operation plan is $100,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of $1,000.

(ii) The department shall bill the owner or operator of each class III facility for actual costs of operation plan review, up to an additional $99,000.

(7)

(a) All other hazardous waste facilities are designated as class IV facilities.

(b) The maximum fee for filing and review of each class IV facility operation plan is $50,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of $1,000.

(ii) The department shall bill the owner or operator of each class IV facility for actual costs of operation plan review, up to an additional $49,000.

(8)

(a) The maximum fee for filing and review of each major modification plan and major closure plan for a class I, class II, or class III facility is $50,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of $1,000.

(ii) The department shall bill the owner or operator of the hazardous waste facility for actual costs of the review, up to an additional $49,000.

(b) The maximum fee for filing and review of each minor modification and minor closure plan for a class I, class II, or class III facility, and of any modification or closure plan for a class IV facility, is $20,000, and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of $1,000.

(ii) The department shall bill the owner or operator of the hazardous waste facility for actual costs of review up to an additional $19,000.

(c) The owner or operator of a thermal treatment unit shall submit a trial or test burn schedule 90 days prior to any planned trial or test burn. At the time the schedule is submitted, the owner or operator shall pay to the department the nonrefundable fee of $25,000. The department shall apply the fee to the costs of the review and processing of each trial or test burn plan, trial or test burn, and trial or test burn data report. The department shall bill the owner or operator of the facility for any additional actual costs of review and preparation.

(9)

(a) The owner or operator of a class III facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(b) The owner or operator of a class IV facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(c) An owner or operator of a class I, class II, or class III facility who submits a major modification plan or a major closure plan may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(d) An owner or operator of a class I, class II, or class III facility who submits a minor modification plan or a minor closure plan, and an owner or operator of a class IV facility who submits a modification plan or a closure plan, may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(10) All fees received by the department under this section shall be deposited in the General Fund as dedicated credits for hazardous waste plan reviews in accordance with Subsection (12) and Section 19-6-108.

(11)

(a)

(i) The director shall establish an accounting procedure that separately accounts for fees paid by each owner or operator who submits a hazardous waste operation plan for approval under Section 19-6-108 and pays fees for hazardous waste plan reviews under this section or Section 19-1-201.

(ii) The director shall credit all fees paid by the owner or operator to that owner or operator.

(iii) The director shall account for costs actually incurred in reviewing each operation plan and may only use the fees of each owner or operator for review of that owner or operator's plan.

(b) If the costs actually incurred by the department in reviewing a hazardous waste operation plan of any facility are less than the nonrefundable fee paid by the owner or operator under this section, the department may, upon approval or disapproval of the plan by the board or upon withdrawal of the plan by the owner or operator, use any remaining funds that have been credited to that owner or operator for the purposes of administering provisions of the hazardous waste programs and activities authorized by this part.

(12)

(a) With regard to any review of a hazardous waste operation plan, modification plan, or closure plan that is pending on April 25, 1988, the director may assess fees for that plan review.

(b) The total amount of fees paid by an owner or operator of a hazardous waste facility whose plan review is affected by this subsection may not exceed the maximum fees allowable under this section for the appropriate class of facility.

(13)

(a) The department shall maintain accurate records of its actual costs for each plan review under this section.

(b) Those records shall be available for public inspection.

Amended by Chapter 360, 2012 General Session

19-6-121 Local zoning authority powers.

Nothing in this part prohibits any local zoning authority from adopting zoning criteria for commercial hazardous waste disposal facilities or sites that are more stringent than any requirements adopted by the department.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-122 Facilities to meet local zoning requirements.

Notwithstanding any provisions of this part, persons seeking to operate a commercial hazardous waste disposal facility or site shall meet all local zoning requirements before beginning operations.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-123 Kilns -- Siting.

A cement kiln or lightweight aggregate kiln may not accept hazardous waste for recycling or for use as fuel without meeting the siting criteria for commercial hazardous waste treatment, storage, and disposal facilities established under Section 19-6-105.

Enacted by Chapter 219, 1991 General Session

19-6-124 Burial of nonhazardous solid waste by an individual.

(1) Notwithstanding any other provision of this chapter, an individual may bury nonhazardous solid waste on the individual's own property if:

(a) the individual lives in an area where no public or duly licensed waste disposal service is available;

(b) the individual owns the nonhazardous solid waste; and

(c) the nonhazardous solid waste is generated on the individual's private property.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules necessary for the administration of this section.

Enacted by Chapter 287, 2014 General Session

19-6-125 Incineration of medical waste.

(1) Except as provided in Subsection (2), the division may not approve an operation plan or issue a permit for construction of a new facility that:
  (a) incinerates infectious waste or chemotherapeutic agents; and
  (b) is located within a two-mile radius of an area zoned residential on January 1, 2014.
(2) The division may approve renewal or modification of an operation plan or a permit for a facility that is in operation as of May 13, 2014.

Enacted by Chapter 198, 2014 General Session

Part 2
Hazardous Waste Facility Siting Act

19-6-201 Short title.

This part is known as the "Hazardous Waste Facility Siting Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-202 Definitions.

As used in this part:

(1) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.
(2) "Disposal" means the final disposition of hazardous wastes into or onto the lands, waters, and air of this state.
(3) "Hazardous wastes" means wastes as defined in Section 19-6-102.
(4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site used or intended to be used for the treatment, storage, or disposal of hazardous waste materials, including physical, chemical, or thermal processing systems, incinerators, and secure landfills.
(5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.
(6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the board pursuant to Sections 19-6-204 and 19-6-205.
(7) "Storage" means the containment of hazardous wastes for a period of more than 90 days.
(8) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to another usable material, or reduced in volume and suitable for ultimate disposal.

Amended by Chapter 451, 2015 General Session

19-6-203 Other provisions relating to hazardous waste.

This part may not be construed to supersede any other state or local law relating to hazardous waste, except as otherwise provided in Section 19-6-207.

Amended by Chapter 297, 2011 General Session

19-6-204 Guidelines for facility siting -- Considerations in adopting.

(1) The board shall adopt and publish guidelines for the location of hazardous waste treatment, storage, and disposal facilities. The guidelines shall ensure that facilities are sited so that the wastes located there will not constitute an unacceptable health hazard or impact the environment in an unacceptable manner.

(2) Proposed guidelines for siting shall take into account the following considerations:

(a) the zoning classification of the site proposed and its proximity to present or projected land use dedicated to industrial development;

(b) the existing land uses and the density of population in areas neighboring the proposed site;

(c) the density of population in areas adjacent to probable hazardous waste delivery routes;

(d) the risk and impact of accidents which might occur during the transportation of hazardous wastes to the site;

(e) the determination of areas that are dedicated to an incompatible public use or are unsuitable for other reasons for the location of hazardous wastes;

(f) the geology of the proposed site with special attention to the presence of fault zones and the risk of contamination to ground and surface waters through leaching and runoff;

(g) the risk to life and property from fires or explosions that might occur if improper storage and disposal methods are used;

(h) the economic and environmental impact of the proposed facility site location upon local governmental units adjacent to, or within which, the facility is proposed for location;

(i) closure and postclosure monitoring and maintenance requirements; and

(j) other criteria required for the siting of hazardous wastes under state or federal law.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-205 Siting plan -- Procedure for adoption -- Review -- Effect.

(1) After completion of the guidelines, the board shall prepare and publish a preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the board in accordance with Subsection (2) and shall be based upon the guidelines adopted under Section 19-6-204 and be published within one year after adoption of the guidelines.

(2)

(a) After completion of its guidelines, the board shall publish notice of intent to prepare a siting plan. The notice shall invite all interested persons to nominate sites for inclusion in the siting plan. It shall be published at least twice in not less than two newspapers with statewide circulation and shall also be sent to any person, business, or other organization that has notified the board of an interest or involvement in hazardous waste management activities.

(b) Nominations for the location of hazardous waste sites shall be accepted by the board for a period of 120 days after the date of first publication of notice. Nominations may include a description of the site or sites suggested or may simply suggest a general area. In addition, any nomination may provide data and reasons in support of inclusion of the site nominated.

(c) The board, in cooperation with other state agencies and private sources, shall then prepare an inventory of:

(i) the hazardous wastes generated in the state;

(ii) those likely to be generated in the future;
(iii) those being generated in other states that are likely to be treated, disposed of, or stored in the state;
(iv) the sites within the state currently being used for hazardous waste and those suggested through the nomination process;
(v) the treatment, storage, and disposal processes and management practices that are required to comply with Section 19-6-108; and
(vi) an estimate of the public and private costs for meeting the long-term demand for hazardous waste treatment, disposal, and storage facilities.

(d)
(i) After the hazardous waste inventory and cost estimate are complete, the board, with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment, and storage for the next 25 years.
(ii) The board may not exclude any area of the state from consideration in the selection of potential sites but, to the maximum extent possible, shall give preference to sites located in areas already dedicated through zoning or other land use regulations to industrial use or to areas located near industrial uses. However, the board shall give consideration to excluding an area designated for disposal of uranium mill tailings or for disposal of nuclear wastes unless the proposed disposal site is approved by the affected county through its county executive and county legislative body.

(e) The board shall also analyze and identify areas of the state where, due to the concentration of industrial waste generation processes or to favorable geology or hydrology, the construction and operation of hazardous waste treatment, disposal, and storage facilities appears to be technically, environmentally, and economically feasible.

(3)
(a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before adoption, be distributed to all units of local government located near existing or proposed sites.
(b) Notice of the availability of the preliminary siting plan for examination shall be published at least twice in two newspapers, if available, with general circulation in the areas of the state that potentially will be affected by the plan.
(c) The board shall also issue a statewide news release that informs persons where copies of the preliminary siting plan may be inspected or purchased at cost.
(d) After release of the preliminary siting plan, the board shall hold not less than two public hearings in different areas of the state affected by the proposed siting plan to allow local officials and other interested persons to express their views and submit information relevant to the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release of the plan. Within 30 days after completion of the hearings, the board shall prepare and make available for public inspection a summary of public comments.

(4)
(a) The board, between 30 and 60 days after publication of the public comments, shall prepare a final siting plan.
(b) The final siting plan shall be widely distributed to members of the public.
(c) The board, at any time between 30 and 60 days after release of the final plan, on its own initiative or that of interested parties, shall hold not less than two public hearings in each area of the state affected by the final plan to allow local officials and other interested persons to express their views.

(d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with modification, or reject the final siting plan.

(5)

(a) Any person adversely affected by the board's decision may seek judicial review of the decision by filing a petition for review with the district court for Salt Lake County within 90 days after the board's decision.

(b) Judicial review may be had, however, only on the grounds that the board violated the procedures set forth in this section, that it acted without or in excess of its powers, or that its actions were arbitrary or capricious and not based on substantial evidence.

(6) If the final siting plan is adopted, the board shall cause it to be published.

(7) After publication of the final siting plan, the board shall engage in a continuous monitoring and review process to ensure that the long-range needs of hazardous waste producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An annual review of the adequacy of the plan shall be conducted and published by the board.

(8)

(a) If necessary, the board may amend the siting plan to provide additional sites or delete sites which are no longer suitable.

(b) Before any plan amendment adding or deleting a site is adopted, the board, upon not less than 20 days' public notice, shall hold at least one public hearing in the area where the affected site is located.

(9) After adoption of the final plan, an applicant for approval of a plan to construct and operate a hazardous waste treatment, storage, and disposal facility who seeks protection under this part shall select a site contained on the final site plan.

(10) Nothing in this part, however, shall be construed to prohibit the construction and operation of an approved hazardous waste treatment, storage, and disposal facility at a site which is not included within the final site plan, but such a facility is not entitled to the protections afforded under this part.

Amended by Chapter 297, 2011 General Session

19-6-206 Exclusive remedy for devaluation of property caused by approved facility.

(1) Before construction of a hazardous waste management facility, but in no case later than nine months after approval of a plan for a hazardous waste treatment, storage, or disposal facility, any owner or user of property adversely affected by approval may bring an action in a district court of competent jurisdiction against the owner of the proposed facility. If the court determines that the planned construction and operation of the hazardous waste management facility will result in the devaluation of the plaintiff's property or will otherwise interfere with the plaintiff's rights in the property, it shall order the owner to compensate the plaintiff in an amount equal to the value of the plaintiff's loss.

(2) The remedy provided in Subsection (1) is the exclusive remedy for owners or users aggrieved by the proposed construction and operation of a hazardous waste treatment, disposal, or storage facility, and no court has jurisdiction to enjoin the construction or operation of any facility located at a site included in the siting plan adopted by the board.

(3) Nothing in this part prevents an owner or user of property aggrieved by the construction and operation of a facility from seeking damages that result from a subsequent modification of the design or operation of a facility but damages are limited to the incremental damage that results from the modification. Any action for damages from a modification shall be brought within nine months after the plans for modification of the design or operation of the facility are approved.

(4) For the purpose of assessing damages, the value of the rights affected is fixed at the date the facility plan is approved and the actual value of the right at that date is the basis for the determination of the amount of damage suffered, and no improvements to the property subsequent to the date of approval of the plans shall be included in the assessment of damages. Similarly, for any subsequent modification of a facility, value is fixed at the date of approval of the amended facility plan.
(5) The owner or operator of a proposed facility may, at any time before an award of damages, abandon the construction or operation of the facility or any modification and cause the action to be dismissed. As a condition of dismissal, however, the owner or operator shall compensate the plaintiff for any actual damage sustained as a result of construction or operation of the facility before abandonment together with court costs and a reasonable attorney's fee.
(6) Nothing in this part prevents a court from enjoining any activity at a hazardous waste facility that is outside of, or not in compliance with, the terms and conditions of an approved hazardous waste operations plan.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-207 Facility at site approved in siting plan -- Exemption from zoning and local approval requirements -- Transportation restrictions limited.
(1) The construction or operation of a hazardous waste treatment, storage, or disposal facility at a site included within the siting plan is not required to conform to any local zoning or other land use regulation, law, or ordinance.
(2) The owner of any hazardous waste treatment, storage, or disposal facility proposed to be located at a site included in the siting plan is not required to obtain approval of the site from any county or municipal planning commission or similar authority and no local unit of government may prohibit or unduly restrict the transportation of hazardous waste through the governmental unit to an approved hazardous waste treatment, storage, or disposal facility.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-208 Facilities subject to Industrial Facilities and Development Act.
The financing, acquiring, constructing, reconstructing, improving, maintaining, equipping, or finishing of a hazardous waste treatment, disposal, or storage facility is deemed, where applicable, to be a "project," subject to the Utah Industrial Facilities and Development Act.

Renumbered and Amended by Chapter 112, 1991 General Session

Part 3
Hazardous Substances Mitigation Act

19-6-301 Short title.
This part is known as the "Hazardous Substances Mitigation Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-302 Definitions.

As used in this part:

(1)

(a) "Abatement action" means to take steps or contract with someone to take steps to eliminate or mitigate the direct or immediate threat to the public health or the environment caused by a hazardous materials release.

(b) "Abatement action" includes control of the source of the contamination.

(2) "Bona fide prospective purchaser" has the meaning given in 42 U.S.C. Sec. 9601(40) of CERCLA, but with the substitution of "executive director" for "President" and "part" for "chapter," and including "hazardous materials" where the term "hazardous substances" appears.

(3) "CERCLA" means 42 U.S.C. 9601 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act.

(4) "Cleanup action" means action taken according to the procedures established in this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous material from a facility.

(5) "Contiguous property owner" means a person who qualifies for the exemption from liability in 42 U.S.C. Sec. 9607(q)(1) of CERCLA, but with the substitution of "executive director" for "President" and "part" for "chapter."

(6) "Enforcement action" means the procedures contained in Section 19-6-306 to enforce orders, rules, and agreements authorized by this part.

(7)

(a) "Facility" means:

(i) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous material or substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(b) "Facility" does not mean any consumer product in consumer use or any vessel.

(8) "Fund" means the Hazardous Substances Mitigation Fund created by Section 19-6-307.

(9) "Hazardous materials" means hazardous waste as defined in the Utah Hazardous Waste Management Regulations, PCBs, dioxin, asbestos, or a substance regulated under 42 U.S.C. Section 6991(7).

(10) "Hazardous substances" means the definition of hazardous substances contained in CERCLA.

(11) "Hazardous substances priority list" means a list of facilities meeting the criteria established by Section 19-6-311 that may be addressed under the authority of this part.

(12) "Innocent landowner" means a person who qualifies for the exemption from liability in 42 U.S.C. Sec. 9607(b)(3) of CERCLA.

(13) "National Contingency Plan" means the National Oil and Hazardous Substance Contingency plan established by CERCLA.

(14) "National Priority List" means the list established by CERCLA.

(15) "National priority list site" means a site in Utah that is listed on the National Priority List.

(16) "Proposed national priority list site" means a site in Utah that has been proposed by the Environmental Protection Agency for listing on the National Priority List.

(17)

(a) "Release" means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of substances into the environment that is not authorized under state or federal law, rule, or regulation.

(b) "Release" includes abandoning or discarding barrels, containers, and other closed receptacles containing any hazardous material or substance, unless the discard or abandonment is authorized under state or federal law, rule, or regulation.

(18) "Remedial action" means action taken consistent with the substantive requirements of CERCLA according to the procedures established by this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous substance from a facility on the hazardous substances priority list.

(19) "Remedial action plan" means a plan for remedial action consistent with the substantive requirements of CERCLA and approved by the executive director.

(20) "Remedial investigation" means a remedial investigation and feasibility study as defined in the National Contingency Plan established by CERCLA.

(21)

(a) "Responsible party" means:

(i) the owner or operator of a facility;

(ii) any person who, at the time any hazardous substance or material was disposed of at the facility, owned or operated the facility;

(iii) any person who arranged for disposal or treatment, or arranged with a transporter for transport, for disposal, or treatment of hazardous materials or substances owned or possessed by the person, at any facility owned or operated by another person and containing the hazardous materials or substances; or

(iv) any person who accepts or accepted any hazardous materials or substances for transport to a facility selected by that person from which there is a release that causes the incurrence of response costs.

(b) For hazardous materials or substances that were delivered by a motor carrier to any facility, "responsible party" does not include the motor carrier, and the motor carrier may not be considered to have caused or contributed to any release at the facility that results from circumstances or conditions beyond its control.

(c) "Responsible party" under Subsections (21)(a)(i) and (ii) does not include:

(i) any person who does not participate in the management of a facility and who holds indicia of ownership:

(A) primarily to protect a security interest in a facility; or

(B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan;

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D) and 40 CFR 300.1105, National Contingency Plan; or

(iii) any person, including a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan who holds indicia of ownership and did not participate in the management of a facility prior to foreclosure in accordance with 42 U.S.C. Sec. 9601(20)(E)(ii) of CERCLA.

(d) The exemption created by Subsection (21)(c)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(e) The terms "security interest," "participate in management," "foreclose," and "foreclosure" under this part are defined in accordance with 42 U.S.C. Sec. 9601(20)(E), (F), and (G) of CERCLA.

(22) "Scored site" means a facility in Utah that meets the requirements of scoring established by the National Contingency Plan for placement on the National Priority List.

Amended by Chapter 356, 2009 General Session

19-6-302.5 Retroactive effect.

(1) The Legislature finds the language in this part, prior to the passage of this act, did not clearly set forth procedures for identifying responsible parties and allocating among those parties response costs at sites where hazardous substances or materials have been released. This lack of clarity has interfered with effective allocation of costs of cleanup as required by this part.

(2) It is the intent of the Legislature that this act provides clarification of the Legislature's original intent to facilitate cleanups of hazardous substances or materials by providing clarification of procedures for allocating liability and response costs.

(3)

(a) It is the intent of the Legislature that liability as determined under this act applies retroactively to any release of a hazardous substance or material subject to or currently in the process of investigation, abatement, or corrective action under this part as of the effective date of this act.

(b) Any responsible party whose liability for cleanup costs is absolved or altered by the provisions of this act is subject only to further costs or action as required by this part.

Enacted by Chapter 324, 1995 General Session

19-6-303 Rulemaking provisions.

The executive director may regulate hazardous substances releases by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the substantive requirements of CERCLA, to establish the requirements for remedial investigation studies and remedial action plans.

Amended by Chapter 382, 2008 General Session

19-6-304 Inspections.

(1) Upon presentation of appropriate credentials and at any reasonable time, any authorized officer, employee, or representative of the department may:

(a) enter and inspect any property, premises, or place where he has reason to believe there is a hazardous materials or substances release;

(b) copy any records relating to those hazardous materials or substances to determine compliance with this part and the rules made under authority of this part; and

(c) inspect and take samples of any suspected hazardous material or substance.

(2) If the department's representative takes samples of any suspected hazardous material or substance under authority of this section, he shall:

(a) give a receipt describing the sample taken to the owner, operator, or agent who has control of the suspected hazardous material or substance;

(b) if requested and if possible, give the owner, operator, or agent a split sample of the suspected hazardous material or substance equal in volume or weight to the portion he retains; and

(c) if an analysis of any sample is made, upon request, promptly furnish a copy of the results of the analysis to the owner, operator, or agent.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-306 Penalties -- Lawsuits.

(1) Any person who violates any final order or rule issued or made under this part is subject in a civil proceeding to a penalty of not more than $10,000 per day for each day of violation.
(2) Any person who violates the terms of any agreement made under authority of this part is subject in a civil proceeding to pay:
  (a) any penalties stipulated in the agreement; or
  (b) if no penalties are stipulated in the agreement, a penalty of not more than $10,000 per day for each day of violation.
(3) The executive director shall deposit all civil penalties collected under the authority of this section into the General Fund.
(4)
  (a) The executive director may enforce any orders issued under authority of this part by bringing a suit to enforce the order in the district court in Salt Lake County or in the district court in the county where the hazardous substances release occurred.
  (b) After a remedial investigation has been completed, the executive director may bring a suit in district court against all responsible parties, asking the court for injunctive relief and to apportion liability among the responsible parties for performance of remedial action.

Amended by Chapter 324, 1995 General Session

19-6-307 Hazardous Substances Mitigation Fund -- Uses.
(1) There is created an expendable special revenue fund entitled the "Hazardous Substances Mitigation Fund."
(2) The fund consists of money generated from the following revenue sources:
  (a) any voluntary contributions received for the cleanup of hazardous substances facilities;
  (b) appropriations made to the fund by the Legislature; and
  (c) money received by the state under Section 19-6-310 and Section 19-6-316.
(3)
  (a) The fund shall earn interest.
  (b) All interest earned on fund money shall be deposited into the fund.
(4) The executive director may use fund money to:
  (a) take emergency action as provided in Sections 19-6-309 and 19-6-310;
  (b) conduct remedial investigations as provided in Sections 19-6-314 through 19-6-316;
  (c) pay the amount required by the federal government as the state's portion of the cost of cleanups under authority of CERCLA, as appropriated by the Legislature for that purpose; and
  (d) pay the amount required by the federal government as the state's portion of the cost of cleanups under 42 U.S.C. 6991 et seq., the Leaking Underground Storage Tank Trust Fund, as appropriated by the Legislature for that purpose.

Amended by Chapter 400, 2013 General Session

19-6-308 Hazardous Substances Mitigation Fund -- Prohibited uses.
The executive director may not use fund money to pay for:
(1) property damage or bodily injury resulting from a hazardous material or substance release; or
(2) property damage or bodily injury resulting from remedial studies or abatement action taken to address a hazardous material or substance release.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-309 Emergency provisions.

(1)

(a) If the executive director has reason to believe any hazardous materials release that occurred after March 18, 1985, is presenting a direct and immediate threat to public health or the environment, the executive director may:

(i) issue an order requiring the owner or operator of the facility to take abatement action within the time specified in the order; or

(ii) bring suit on behalf of the state in the district court to require the owner or operator to take immediate abatement action.

(b) If the executive director determines the owner or operator cannot be located or is unwilling or unable to take abatement action, the executive director may:

(i) reach an agreement with one or more potentially responsible parties to take abatement action; or

(ii) use fund money to investigate the release and take abatement action.

(2) The executive director may use money from the fund created in Section 19-6-307:

(a) for abatement action even if an adjudicative proceeding or judicial review challenging an order or a decision to take abatement action is pending; and

(b) to investigate a suspected hazardous materials release if he has reason to believe the release may present a direct and immediate threat to public health.

(3) This section takes precedence over any conflicting provision in this part.

Amended by Chapter 30, 1992 General Session

19-6-310 Apportionment of liability -- Liability agreements -- Legal remedies.

(1) The executive director may recover only the proportionate share of costs of any investigation and abatement performed under Section 19-6-309 and this section from each responsible party, as provided in this section.

(2)

(a) In apportioning responsibility for the investigation and abatement, or liability for the costs of the investigation and abatement, in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release; and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous materials contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous

material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f)

(i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the executive director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of investigation and abatement costs.

(3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(4)

(a) Any party who incurs costs under Section 19-6-309 and this section in excess of his liability may seek contribution from any other party who is or may be liable under Section 19-6-309 and this section for the excess costs in the district court.

(b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).

(5)

(a) A party who has resolved his liability in an agreement under Section 19-6-309 and this section is not liable for claims for contribution regarding matters addressed in the settlement.

(b)

(i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement.

(6)

(a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Section 19-6-309 and this section, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Section 19-6-309 and this section may seek contribution from any person who is not party to an agreement under Section 19-6-309 and this section.

(7)

(a) An agreement made under Section 19-6-309 and this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.
(b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Section 19-6-309 and this section or any other applicable authority.
(8)
(a) The executive director may not recover costs of any investigation performed under the authority of Subsection 19-6-309(2)(b) if the investigation does not confirm that a release presenting a direct and immediate threat to public health has occurred.
(b) This subsection takes precedence over any conflicting provision of this section regarding cost recovery.

Amended by Chapter 356, 2009 General Session

19-6-311 Hazardous substances priority list.
(1) The executive director shall develop and, as frequently as is necessary, revise a hazardous substances priority list by making a rule that:
(a) identifies separately national priority list sites, proposed national priority list sites, and scored sites that pose a significant threat to the public health or the environment; and
(b) declares those sites to be eligible to be addressed under the authority granted by this part.
(2) The executive director may not spend fund money or use the authority granted by this part to address any facilities containing hazardous substances that are not on the hazardous substances priority list.
(3) The executive director shall remove facilities from the hazardous substances priority list when appropriate.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-312 Preinvestigation requirements.
Before undertaking any remedial investigations on a facility on the hazardous substances priority list, the executive director shall make reasonable attempts to:
(1) identify potentially responsible parties for each facility; and
(2) send written notice to each potentially responsible party informing him of his potential responsibility.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-313 Priority of other statutes.
The executive director may not spend fund money or take action under authority of Sections 19-6-314 through 19-6-320 to address hazardous substances on any facility listed on the hazardous substances priority list if the facility can be cleaned up under any other state statute.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-314 Remedial investigations of priority list sites -- Parties involved -- Powers of the executive director.
(1) All remedial investigations conducted under the authority of this section shall:
(a) meet the substantive requirements of CERCLA;

(b) follow procedures established by the National Contingency Plan to avoid inconsistent state and federal action; and
(c) include recommendations for remedial action.
(2)
(a) After determining that a hazardous substance release is occurring from a national priority list site or proposed national priority list site, and identifying responsible parties under Section 19-6-312, the executive director shall make reasonable efforts to reach an agreement with the identified responsible parties to conduct a remedial investigation.
(b) The executive director may define in the agreement the scope of the remedial investigation, the form of the report, and the time limits for completion of the investigation.
(c) If any responsible party fails to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.
(3)
(a) If the executive director is unable to reach an agreement with one or more responsible parties to perform a remedial investigation, the executive director may issue an order directing one or more responsible parties to perform the remedial investigation.
(b) The executive director may define in the order the scope of the remedial investigation, the form of the report, and the time limits for completion of the remedial investigation.
(4)
(a) If the executive director is unable to obtain an agreement with one or more responsible parties to perform a remedial investigation, chooses not to order any responsible party to perform the remedial investigation, or determines that the remedial investigation performed by a responsible party does not meet the substantive requirements of CERCLA, he may direct the department to conduct or correct the remedial investigation.
(b) The executive director may recover the costs incurred in conducting a remedial investigation from responsible parties according to the standards contained in Section 19-6-316.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-315 Remedial investigations of scored sites -- Parties involved -- Powers of the executive director.
(1) All remedial investigations conducted under the authority of this section shall:
(a) meet the substantive requirements of CERCLA; and
(b) include recommendations for remedial action.
(2)
(a) After determining that a hazardous substance release is occurring from a scored site and identifying responsible parties under Section 19-6-312, the executive director shall make reasonable efforts to reach an agreement with the identified responsible parties to perform a remedial investigation.
(b) The executive director may define in the agreement the scope of the investigation, the form of the report, and the time limits for completion of the investigation.
(c) If the potentially responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.
(3)
(a) If the executive director is unable to reach an agreement with one or more responsible parties to perform a remedial investigation, or determines that the remedial investigation performed

by responsible parties does not meet the substantive requirements of CERCLA, he may direct the department to conduct or correct the remedial investigation.

(b) The executive director may recover the costs incurred in conducting a remedial investigation from responsible parties according to the standards contained in Section 19-6-316.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-316 Liability for costs of remedial investigations -- Liability agreements.

(1) The executive director may recover only a proportionate share of costs of any remedial investigation performed under Sections 19-6-314 and 19-6-315 from each responsible party, as provided in this section.

(2)

(a) In apportioning responsibility for the remedial investigation, or liability for the costs of the remedial investigation, in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f)

(i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the executive director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).
(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.
(g) The court may not impose joint and several liability.
(h) Each responsible party is strictly liable solely for his proportionate share of investigation costs.
(3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.
(4)
(a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in district court.
(b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).
(5)
(a) A party who has resolved his liability in an agreement under Sections 19-6-314 through this section is not liable for claims for contribution regarding matters addressed in the settlement.
(b)
(i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.
(ii) An agreement made under this Subsection (5)(b) reduces the potential liability of other responsible parties by the amount of the agreement.
(6)
(a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-314 through this section, the executive director may bring an action against any party who has not resolved his liability in an agreement.
(b) In apportioning liability, the standards of Subsection (2) apply.
(c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-314 through this section may seek contribution from any person who is not party to an agreement under Sections 19-6-314 through this section.
(7)
(a) An agreement made under Sections 19-6-314 through this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.
(b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Sections 19-6-314 through this section or any other applicable authority.

Amended by Chapter 324, 2010 General Session

19-6-317 Remedial investigation report -- Remedial action plan implementation -- Legal remedies.

(1) Upon receipt of a remedial investigation report for a national priority list site, the executive director shall:
(a) review the report;
(b) provide a period for public comment;
(c) issue an order defining a remedial action plan consistent with CERCLA for the facility; and
(d) follow the procedures established by the National Contingency Plan to avoid inconsistent state and federal action.
(2)

(a) To implement the remedial action plan, the executive director shall seek to reach an agreement with all responsible parties to perform the remedial action.
(b) The executive director may define in the agreement the remedial action required and the time limits for completion of the remedial action.
(c) If the responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.
(3)
(a) If the executive director is unable to reach an agreement with one or more responsible parties to perform remedial action, he may order all responsible parties to perform the remedial action.
(b) The executive director may define in the order the remedial action required and the time limits for completion of the remedial action.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-318 Remedial action liability -- Liability agreements.
(1)
(a) In apportioning responsibility for the remedial action in any administrative proceeding or judicial action under Sections 19-6-317 and 19-6-319, the following standards apply:
(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;
(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.
(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.
(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.
(d) A responsible party who is not exempt under Subsection (1)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.
(e) A responsible party who meets the criteria in Subsection (1)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (1)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f)
(i) The burden of proving proportionate contribution shall be borne by each responsible party.
(ii) If a responsible party does not prove his proportionate contribution, the court or the director shall apportion liability to the party solely based on available evidence and the standards of Subsection (1)(a).
(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.
(g) The court may not impose joint and several liability.
(h) Each responsible party is strictly liable solely for his proportionate share of remedial action costs.
(2) The failure of the executive director to name all responsible parties is not a defense to an action under this section.
(3)
(a) Any party who incurs costs under Sections 19-6-317 through 19-6-320 in excess of his liability may seek contribution from any other party who is or may be liable under Sections 19-6-317 through 19-6-320 for the excess costs in district court.
(b) In resolving claims made under Subsection (3)(a), the court shall allocate costs using the standards set forth in Subsection (1).
(4)
(a) A party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320 is not liable for claims for contribution regarding matters addressed in the settlement.
(b)
(i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.
(ii) An agreement made under this Subsection (4)(b) reduces the potential liability of other responsible parties by the amount of the agreement.
(5)
(a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320, the executive director may bring an action against any party who has not resolved his liability in an agreement.
(b) In apportioning liability, the standards of Subsection (1) apply.
(c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-317 through 19-6-320 may seek contribution from any person who is not party to an agreement under Sections 19-6-317 through 19-6-320.
(6)
(a) An agreement made under Sections 19-6-317 through 19-6-320 may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.
(b) If the executive director makes payments, he may recover the amount using the authority of Sections 19-6-317 through 19-6-320 or any other applicable authority.

Amended by Chapter 324, 2010 General Session

19-6-319 Remedial action investigation report -- Remedial action plan implementation -- Enforcement provisions.

(1) Upon receipt of a remedial action investigation report for a proposed national priority list site or a scored site, the executive director shall:
(a) review the report;

(b) provide a period for public comment; and
(c) issue an order defining the remedial action plan for the facility.
(2)
(a) To implement the remedial action plan, the executive director shall seek to reach an agreement with all responsible parties to perform the remedial action.
(b) In reaching an agreement for a proposed national priority list site, the executive director shall follow procedures established by the National Contingency Plan to avoid inconsistent state and federal action.
(c) The executive director may define in the agreement the remedial action required and the time limits for completion of the remedial action.
(d) If the responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-320 Remedial action completion procedures -- Legal remedies.
(1) A party who has entered an agreement or who has been issued a final order under the authority of Sections 19-6-317 through this section shall send notice to the executive director when the remedial action for the facility is completed.
(2) Upon notice that remedial action at a facility is complete, the executive director shall inspect the facility to determine if the remedial action plan as implemented meets the substantive requirements of CERCLA.
(3) If the executive director determines that the remedial action plan as implemented meets the substantive requirements of CERCLA, except for any ongoing activities at the facility, including operation, maintenance, or monitoring, he shall issue a notice of agency action declaring that remedial action at the facility is complete and removing the facility from the hazardous substances priority list.
(4)
(a) If the executive director determines that the remedial action plan for a national priority list site, as implemented, does not meet the substantive requirements of CERCLA, he may issue an order directing the responsible parties to take additional actions to implement the remedial action plan.
(b) If the responsible parties refuse to comply with the order the executive director may take enforcement action.
(5)
(a) If the executive director determines that the remedial action plan for a proposed national priority list site or a scored site has not been properly and completely implemented according to the agreement between the executive director and the responsible parties, or is not consistent with the substantive requirements of CERCLA, he shall request that the responsible parties take additional actions to fulfill the agreement to implement the remedial action plan.
(b) If the responsible parties refuse to comply with the request, the executive director may take action to enforce the agreement.

Amended by Chapter 275, 2001 General Session

19-6-321 Construction with other state and federal laws -- Governmental immunity.

(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way the obligations or liability of any person under a contract or any other provision of this part or state or federal law, including common law, for damages, indemnification, injury, or loss associated with a hazardous material or substance release or a substantial threat of a hazardous material or substance release.
(2) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.
(3) Nothing in this part affects, limits, or modifies in any way the authority granted to the state, any state agency, or any political subdivision under other state or federal law.

Amended by Chapter 382, 2008 General Session

19-6-322 Cooperative agreements with federal government -- Legislative findings.

Due to the enactment of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, PL 96-510, and recognizing the applicability of that act to the unauthorized or accidental discharge of hazardous substances or to inactive hazardous waste sites in the state of Utah, the Legislature finds and declares it to be in the public interest to enter into agreements with the federal Environmental Protection Agency to undertake activities and perform remedial and removal actions as provided by PL 96-510, to protect the public health, safety, and welfare.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-323 Department authority to enter cooperative agreements.

The department, on behalf of the state, is authorized to undertake activities and enter into contracts and cooperative agreements with the federal Environmental Protection Agency as provided by the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, PL 96-510.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-325 Voluntary agreements -- Parties -- Funds -- Enforcement.

(1)
(a) Under this part, and subject to Subsection (1)(b), the executive director may enter into a voluntary agreement with a responsible party providing for the responsible party to conduct an investigation or a cleanup action on sites that contain hazardous materials.
(b) The executive director and a responsible party may not enter into a voluntary agreement under this part unless all known potentially responsible parties:
(i) have been notified by either the executive director or the responsible party of the proposed agreement; and
(ii) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.
(2)
(a) The executive director may receive funds from any responsible party that signs a voluntary agreement allowing the executive director to:

(i) review any proposals outlining how the investigation or cleanup action is to be performed; and
(ii) oversee the investigation or cleanup action.
(b) Funds received by the executive director under this section shall be deposited in the fund and used by the executive director as provided in the voluntary agreement.
(3) If a responsible party fails to perform as required under a voluntary agreement entered into under this part, the executive director may take action and seek penalties to enforce the agreement as provided in the agreement.
(4) The executive director may not use the provisions of Section 19-6-310, 19-6-316, or 19-6-318 to recover costs received or expended pursuant to a voluntary agreement from any person not a party to that agreement.
(5)
(a) Any party who incurs costs under a voluntary agreement in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in district court.
(b) In resolving claims made under Subsection (5)(a), the court shall allocate costs using the standards in Subsection 19-6-310(2).
(6) This section takes precedence over conflicting provisions in this chapter regarding agreements with responsible parties to conduct an investigation or cleanup action.

Amended by Chapter 324, 2010 General Session

19-6-326 Written assurances.
(1) Based upon risk to human health or the environment from potential exposure to hazardous substances or materials, the executive director may issue enforceable written assurances to a bona fide prospective purchaser, contiguous property owner, or innocent landowner of real property that no enforcement action under this part may be initiated regarding that real property against the person to whom the assurances are issued.
(2) An assurance granted under Subsection (1) grants the person to whom the assurance is issued protection from imposition of any state law cost recovery and contribution actions under this part.
(3) The executive director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the administration of this section.

Amended by Chapter 382, 2008 General Session

Part 4
Underground Storage Tank Act

19-6-401 Short title.
This part is known as the "Underground Storage Tank Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-402 Definitions.
As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:
(a) a release from an underground storage tank or petroleum storage tank; or
(b) the damage caused by that release.
(2) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.
(3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a person.
(4) "Certificate of compliance" means a certificate issued to a facility by the director:
(a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and
(b) listing all tanks at the facility, specifying:
(i) which tanks may receive petroleum; and
(ii) which tanks have not met the requirements for compliance.
(5) "Certificate of registration" means a certificate issued to a facility by the director demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:
(a) registered the tanks; and
(b) paid the annual underground storage tank fee.
(6)
(a) "Certified underground storage tank consultant" means a person who:
(i) for a fee, or in connection with services for which a fee is charged, provides or contracts to provide information, opinions, or advice relating to underground storage tank release:
(A) management;
(B) abatement;
(C) investigation;
(D) corrective action; or
(E) evaluation;
(ii) has submitted an application to the director;
(iii) received a written statement of certification from the director; and
(iv) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vii).
(b) "Certified underground storage tank consultant" does not include:
(i)
(A) an employee of the owner or operator of the underground storage tank; or
(B) an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and markets petroleum products or manages underground storage tanks; or
(ii) a person licensed to practice law in this state who offers only legal advice on underground storage tank release:
(A) management;
(B) abatement;
(C) investigation;
(D) corrective action; or
(E) evaluation.
(7) "Closed" means an underground storage tank no longer in use that has been:
(a) emptied and cleaned to remove all liquids and accumulated sludges; and
(b)
(i) removed from the ground; or
(ii) filled with an inert solid material.

(8) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for any of the following:
(a) cleanup or removal of the release;
(b) containment or isolation of the release;
(c) treatment of the release;
(d) correction of the cause of the release;
(e) monitoring and maintenance of the site of the release;
(f) provision of alternative water supplies to a person whose drinking water has become contaminated by the release; or
(g) temporary or permanent relocation, whichever is determined by the director to be more cost-effective, of a person whose dwelling has been determined by the director to be no longer habitable due to the release.
(9) "Costs" means money expended for:
(a) investigation;
(b) abatement action;
(c) corrective action;
(d) judgments, awards, and settlements for bodily injury or property damage to third parties;
(e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or
(f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.
(10) "Covered by the fund" means the requirements of Section 19-6-424 have been met.
(11) "Director" means the director of the Division of Environmental Response and Remediation.
(12) "Division" means the Division of Environmental Response and Remediation, created in Subsection 19-1-105(1)(c).
(13) "Dwelling" means a building that is usually occupied by a person lodging there at night.
(14) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.
(15) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.
(16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.
(17) "Operator" means a person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or dispensing of a regulated substance.
(18) "Owner" means:
(a) in the case of an underground storage tank in use on or after November 8, 1984, a person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and
(b) in the case of an underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, a person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.
(19) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:
(a) 60 degrees Fahrenheit; and
(b) a pressure of 14.7 pounds per square inch absolute.
(20) "Petroleum storage tank" means a tank that:
(a)
(i) is underground;
(ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq.; and

(iii) contains petroleum; or
(b) the owner or operator voluntarily submits for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.
(21) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.
(22) "Program" means the Environmental Assurance Program under Section 19-6-410.5.
(23) "Property damage" means physical injury to, destruction of, or loss of use of tangible property.
(24)
(a) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing.
(b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
(25)
(a) "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing a regulated substance from an underground storage tank or petroleum storage tank.
(b) A release of a regulated substance from an underground storage tank or petroleum storage tank is considered a single release from that tank system.
(26)
(a) "Responsible party" means a person who:
(i) is the owner or operator of a facility;
(ii) owns or has legal or equitable title in a facility or an underground storage tank;
(iii) owned or had legal or equitable title in a facility at the time petroleum was received or contained at the facility;
(iv) operated or otherwise controlled activities at a facility at the time petroleum was received or contained at the facility; or
(v) is an underground storage tank installation company.
(b) "Responsible party" is as defined in Subsections (26)(a)(i), (ii), and (iii) does not include:
(i) a person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:
(A) primarily to protect the person's security interest in the facility; or
(B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan; or
(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).
(c) The exemption created by Subsection (26)(b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.
(d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "security interest" under this part are in accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).
(e) The terms "participate in management" and "indicia of ownership" as defined in 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the fiduciaries listed in Subsection (26)(b)(i)(B).
(27) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

(28) "State cleanup appropriation" means money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.
(29) "Underground storage tank" means a tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:
(a) a petroleum storage tank;
(b) underground pipes and lines connected to a storage tank;
(c) underground ancillary equipment;
(d) a containment system; and
(e) each compartment of a multi-compartment storage tank.
(30) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization who installs underground storage tanks.
(31) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the director.
(32) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

Amended by Chapter 451, 2015 General Session

19-6-402.5 Retroactive effect.
(1) The Legislature finds the definitions in this part prior to the passage of this act did not clearly set forth procedures for identifying responsible parties and interfered with effective allocation of costs of cleanup as required by this part.
(2) It is the intent of the Legislature that this act provides clarification regarding procedures for allocating responsibility for the costs of investigation, abatement, and corrective action as required under this part.
(3) It is the intent of the Legislature that this part imposes liability as determined under this part retroactively to any release of petroleum or any other regulated substance subject to investigation, abatement, or corrective action under this part.

Enacted by Chapter 214, 1992 General Session

19-6-403 Powers and duties of board.
The board shall regulate an underground storage tank or petroleum storage tank by:
(1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that:
(a) provide for the:
(i) certification of an underground storage tank installer, inspector, tester, or remover;
(ii) registration of an underground storage tank operator;
(iii) registration of an underground storage tank;
(iv) administration of the petroleum storage tank program;
(v) format of, and required information in, a record kept by an underground storage or petroleum storage tank owner or operator who is participating in the fund;
(vi) voluntary participation in the fund for:
(A) an above ground petroleum storage tank; and
(B) a tank:

(I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and
(II) specified in Section 19-6-415; and
(vii) certification of an underground storage tank consultant including:
(A) a minimum education or experience requirement; and
(B) a recognition of the educational requirement of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, as meeting the education requirement for certification;
(b) adopt the requirements for an underground storage tank contained in:
(i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may be amended in the future; and
(ii) an applicable federal requirement authorized by the federal law referenced in Subsection (1)(b)(i); and
(c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of primacy in the regulation of an underground storage tank; and
(2) applying the provisions of this part.

Amended by Chapter 310, 2012 General Session
Amended by Chapter 360, 2012 General Session

19-6-404 Powers and duties of director.
(1) The director shall:
(a) administer the petroleum storage tank program established in this part; and
(b) as authorized by the board and subject to the provisions of this part, act as executive secretary of the board under the direction of the chairman of the board.
(2) As necessary to meet the requirements or carry out the purposes of this part, the director may:
(a) advise, consult, and cooperate with other persons;
(b) employ persons;
(c) authorize a certified employee or a certified representative of the department to conduct facility inspections and reviews of records required to be kept by this part and by rules made under this part;
(d) encourage, participate in, or conduct studies, investigation, research, and demonstrations;
(e) collect and disseminate information;
(f) enforce rules made by the board and any requirement in this part by issuing notices and orders;
(g) review plans, specifications, or other data;
(h) under the direction of the executive director, represent the state in all matters pertaining to interstate underground storage tank management and control, including entering into interstate compacts and other similar agreements;
(i) enter into contracts or agreements with political subdivisions for the performance of any of the department's responsibilities under this part if:
(i) the contract or agreement is not prohibited by state or federal law and will not result in a loss of federal funding; and
(ii) the director determines that:
(A) the political subdivision is willing and able to satisfactorily discharge its responsibilities under the contract or agreement; and
(B) the contract or agreement will be practical and effective;

(j) take any necessary enforcement action authorized under this part, including filing a lien against the real property, which is subject to cleanup and is owned by a responsible party, for the costs of abatement, investigative and corrective actions taken by the agency, if necessary, and depositing any funds received into the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7;
(k) require an owner or operator of an underground storage tank to:
(i) furnish information or records relating to the tank, its equipment, and contents;
(ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils, air, or water; or
(iii) provide access to the tank at reasonable times;
(l) take any abatement, investigative, or corrective action as authorized in this part; or
(m) enter into agreements or issue orders to apportion percentages of liability of responsible parties under Section 19-6-424.5.

Amended by Chapter 227, 2014 General Session

19-6-405.5 Creation of restricted account.
(1) There is created in the General Fund a restricted account known as the Petroleum Storage Tank Restricted Account.
(2) All penalties and interest imposed under this part shall be deposited in this account, except as provided in Section 19-6-410.5. Specified program funds under this part that are unexpended at the end of the fiscal year lapse into this account.
(3) The Legislature shall appropriate the money in the account to the department for the costs of administering the petroleum storage tank program under this part.

Amended by Chapter 95, 1998 General Session

19-6-405.7 Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.
(1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Cleanup Fund," which is referred to in this section as the cleanup fund.
(2) The cleanup fund sources of revenue are:
(a) any voluntary contributions received by the department for the cleanup of facilities;
(b) legislative appropriations made to the cleanup fund; and
(c) costs recovered under this part.
(3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.
(4) The director may use the cleanup fund money for administration, investigation, abatement action, and preparing and implementing a corrective action plan regarding releases and suspected releases not covered by the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

Amended by Chapter 227, 2014 General Session

19-6-407 Underground storage tank registration -- Change of ownership or operation -- Civil penalty.
(1)
(a) Each owner or operator of an underground storage tank shall register the tank with the director if the tank:
(i) is in use; or

(ii) was closed after January 1, 1974.
(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the executive secretary of the change within 30 days after the change occurs.
(c) Each installer of an underground storage tank shall notify the director of the completed installation within 60 days following the installation of an underground storage tank.
(2) The director may issue a notice of agency action assessing a civil penalty in the amount of $1,000 if an owner, operator, or installer, of a petroleum or underground storage tank fails to register the tank or provide notice as required in Subsection (1).
(3) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

Amended by Chapter 360, 2012 General Session

19-6-408 Underground storage tank registration fee -- Processing fee for tanks not in the program.

(1) The department may assess an annual underground storage tank registration fee against an owner or operator of an underground storage tank that has not been closed. These fees shall be:
(a) billed per facility;
(b) due on July 1 annually;
(c) deposited with the department as dedicated credits;
(d) used by the department for the administration of the underground storage tank program outlined in this part; and
(e) established under Section 63J-1-504.
(2)
(a) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.
(b) In addition to the fee under Subsection (1), an owner or operator who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee established under Section 63J-1-504.
(c) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee under Subsection (2)(b) shall be paid for each document submitted.
(3) Any funds provided for administration of the underground storage tank program under this section that are not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.
(4) The director shall provide all owners or operators who pay the annual underground storage tank registration fee a certificate of registration.
(5)
(a) The director may issue a notice of agency action assessing a civil penalty of $1,000 per facility if an owner or operator of an underground storage tank facility fails to pay the required fee within 60 days after the July 1 due date.
(b) The registration fee and late payment penalty accrue interest at 12% per annum.
(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The director may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.

(d) The director may waive any penalty assessed under this Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

Amended by Chapter 227, 2014 General Session

19-6-409 Petroleum Storage Tank Trust Fund created -- Source of revenues.

(1)
(a) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Trust Fund."
(b) The sole sources of revenues for the fund are:
(i) petroleum storage tank fees paid under Section 19-6-411;
(ii) underground storage tank installation company permit fees paid under Section 19-6-411;
(iii) the environmental assurance fee and penalties paid under Section 19-6-410.5;
(iv) appropriations to the fund;
(v) principal and interest received from the repayment of loans made by the director under Subsection (5); and
(vi) interest accrued on revenues listed in this Subsection (1)(b).
(c) Interest earned on fund money is deposited into the fund.
(2) The director may expend money from the fund to pay costs:
(a) covered by the fund under Section 19-6-419;
(b) of administering the:
(i) fund; and
(ii) environmental assurance program and fee under Section 19-6-410.5;
(c) incurred by the state for a legal service or claim adjusting service provided in connection with a claim, judgment, award, or settlement for bodily injury or property damage to a third party;
(d) incurred by the executive director in determining the actuarial soundness of the fund;
(e) incurred by a third party claiming injury or damages from a release reported on or after May 11, 2010, for hiring a certified underground storage tank consultant:
(i) to review an investigation or corrective action by a responsible party; and
(ii) in accordance with Subsection (4);
(f) incurred by the department to implement the study described in Subsection 19-6-410.5(8), including a one-time cost of up to $200,000 for the actuarial study described in Subsection 19-6-410.5(8)(a)(ii); and
(g) allowed under this part that are not listed under this Subsection (2).
(3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.
(4) The director shall:
(a) in paying costs under Subsection (2)(e):
(i) determine a reasonable limit on costs paid based on the:
(A) extent of the release;
(B) impact of the release; and
(C) services provided by the certified underground storage tank consultant;
(ii) pay, per release, costs for one certified underground storage tank consultant agreed to by all third parties claiming damages or injury;
(iii) include costs paid in the coverage limits allowed under Section 19-6-419; and
(iv) not pay legal costs of third parties;
(b) review and give careful consideration to reports and recommendations provided by a certified underground storage tank consultant hired by a third party; and

(c) make reports and recommendations provided under Subsection (4)(b) available on the Division of Environmental Response and Remediation's website.

(5) The director may loan, in accordance with this section, money available in the fund to a person to be used for:
(a) upgrading an underground storage tank;
(b) replacing an underground storage tank; or
(c) permanently closing an underground storage tank.

(6) A person may apply to the director for a loan under Subsection (5) if all tanks owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the fund.

(7) The director shall consider loan applications under Subsection (6) to meet the following objectives:
(a) support availability of gasoline in rural parts of the state;
(b) support small businesses; and
(c) reduce the threat of a petroleum release endangering the environment.

(8)
(a) A loan made under this section may not be for more than:
(i) $150,000 for all tanks at any one facility;
(ii) $50,000 per tank; and
(iii) 80% of the total cost of:
(A) upgrading an underground storage tank;
(B) replacing an underground storage tank; or
(C) permanently closing an underground storage tank.
(b) A loan made under this section shall:
(i) have a fixed annual interest rate of 0%;
(ii) have a term no longer than 10 years;
(iii) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (9); and
(iv) comply with rules made by the board under Subsection (9).

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:
(a) form, content, and procedure for a loan application;
(b) criteria and procedures for prioritizing a loan application;
(c) requirements and procedures for securing a loan;
(d) procedures for making a loan;
(e) procedures for administering and ensuring repayment of a loan, including late payment penalties;
(f) procedures for recovering on a defaulted loan; and
(g) the maximum amount of the fund that may be used for loans.

(10) A decision by the director to loan money from the fund and otherwise administer the fund is not subject to Title 63G, Chapter 4, Administrative Procedures Act.

(11) The Legislature shall appropriate money from the fund to the department for the administration costs associated with making loans under this section.

(12) The director may enter into an agreement with a public entity or private organization to perform a task associated with administration of loans made under this section.

Amended by Chapter 227, 2014 General Session

19-6-410.5 Environmental Assurance Program -- Participant fee -- State Tax Commission administration, collection, and enforcement of tax.

(1) As used in this section:
(a) "Cash balance" means cash plus investments and current accounts receivable minus current accounts payable, excluding the liabilities estimated by the executive director.
(b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.
(2)
(a) There is created an Environmental Assurance Program.
(b) The program shall provide to a participating owner or operator, upon payment of the fee imposed under Subsection (4), assistance with satisfying the financial responsibility requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.
(3)
(a) Subject to Subsection (3)(b), participation in the program is voluntary.
(b) An owner or operator seeking to satisfy financial responsibility requirements through the program shall use the program for all petroleum underground storage tanks that the owner or operator owns or operates.
(4)
(a) There is assessed an environmental assurance fee of 13/20 cent per gallon on the first sale or use of petroleum products in the state.
(b) The environmental assurance fee and any other revenue collected under this section shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and used solely for the purposes listed in Section 19-6-409.
(5)
(a) The commission shall administer, collect, and enforce the fee imposed under this section according to the same procedures used in the administration, collection, and enforcement of the state sales and use tax under:
(i)Title 59, Chapter 1, General Taxation Policies; and
(ii)Title 59, Chapter 12, Part 1, Tax Collection.
(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to establish:
(i) the method of payment of the environmental assurance fee;
(ii) the procedure for reimbursement or exemption of an owner or operator that does not participate in the program, including an owner or operator of an above ground storage tank; and
(iii) the procedure for confirming with the department that an owner or operator qualifies for reimbursement or exemption under Subsection (5)(b)(ii).
(c) The commission may retain an amount not to exceed 2.5% of fees collected under this section for the cost to the commission of rendering its services.
(d) By January 1, 2015, the division shall, by rule, create:
(i) a model for assessing the risk profile of each facility participating in the program, for purposes of qualifying for a rebate of a portion of the environmental assurance fee described in Subsection (4) collected from an owner or operator that participates in the program; and
(ii) a rebate schedule listing the amount of the environmental assurance fee that an owner or operator participating in the program may qualify for based on risk profiles determined by the model developed under Subsection (5)(d)(i).

(e) The rebate described in Subsection (5)(d):
(i) may not exceed 40% of the actual fee collected from an owner or operator of a low-risk underground storage tank as defined in the risk-based model developed under Subsection (5)(d);
(ii) is administered on a per facility basis;
(iii) is based on the facility's risk profile at the end of the prior calendar year;
(iv) is only applicable to an environmental assurance fee collected after December 30, 2014; and
(v) shall be claimed in the form of a refund from the commission.
(f) The refund described in Subsection (5)(e)(v) may be claimed on a monthly basis.
(6)
(a) The person responsible for payment of the fee under this section shall, by the last day of the month following the month in which the sale occurs:
(i) complete and submit the form prescribed by the commission; and
(ii) pay the fee to the commission.
(b)
(i) The penalties and interest for failure to file the form or to pay the environmental assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.
(ii) The commission shall deposit penalties and interest collected under this section in the Petroleum Storage Tank Trust Fund.
(c) The commission shall report to the department a person who is delinquent in payment of the fee under this section.
(7)
(a)
(i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of any year exceeds $30,000,000, the assessment of the environmental assurance fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.
(ii) The reduction under this Subsection (7)(a) remains in effect until modified by the Legislature in a general or special session.
(b) The commission shall determine the cash balance of the fund each year as of June 30.
(c) Before September 1 of each year, the department shall provide the commission with the accounts payable of the fund as of June 30.
(8) The department shall:
(a)
(i) study the adverse selection of participants in the program and the actuarial deficit of the fund;
(ii) obtain an actuarial study and related consultation that provides the necessary calculations to minimize adverse selection in the program and the actuarial deficit of the fund;
(iii) develop a risk characterization profile for participants in the program and recommend a fee schedule based on fair market rates;
(iv) develop a strategy to reduce the negative equity balance of the fund and, based on the fee schedule described in Subsection (8)(a)(iii), a corresponding time schedule showing an actuarial reduction in the negative equity balance of the fund; and
(v) identify and study other adverse impacts to the program and the fund; and
(b) based on the information obtained and developed under Subsection (8)(a), prepare a recommendation to implement a strategy to minimize adverse selection of participants in the program and eliminate or reduce the actuarial deficit of the fund.

(9) The department shall report to the Natural Resources, Agriculture, and Environment Interim Committee before December 31, 2013, regarding:
(a) the information obtained and developed under Subsection (8)(a); and
(b) the recommendation prepared under Subsection (8)(b).

Amended by Chapter 227, 2014 General Session

19-6-411 Petroleum storage tank fee for program participants.

(1) In addition to the underground storage tank registration fee paid in Section 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum storage tank fee to the department for each facility as follows:
(a) an annual fee of:
(i) $450 for each tank in a facility with an annual facility throughput rate of 70,000 gallons or less;
(ii) $150 for each tank in a facility with an annual facility throughput rate of greater than 70,000 gallons; and
(iii) $450 for each tank in a facility regarding which:
(A) the facility's throughput rate is not reported to the department within 30 days after the date this throughput information is requested by the department; or
(B) the owner or operator elects to pay the fee under this Subsection (1)(a)(iii), rather than report under Subsection (1)(a)(i) or (ii); and
(b) for any new tank:
(i) that is installed to replace an existing tank at an existing facility, any annual petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to the new tank; and
(ii) installed at a new facility or at an existing facility, which is not a replacement for another existing tank, the fees are as provided in Subsection (1)(a)(ii).

(2)
(a) As a condition of receiving a permit and being eligible for benefits under Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank installation company shall pay to the department the following fees to be deposited in the fund:
(i) an annual fee of:
(A) $2,000 per underground storage tank installation company if the installation company has installed 15 or fewer underground storage tanks within the 12 months preceding the fee due date; or
(B) $4,000 per underground storage tank installation company if the installation company has installed 16 or more underground storage tanks within the 12 months preceding the fee due date; and
(ii) $200 for each underground storage tank installed in the state, to be paid prior to completion of installation.
(b) The board shall make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full underground storage tank system is installed.

(3)
(a) Fees under Subsection (1) are due on or before July 1 annually.
(b) If the department does not receive the fee on or before July 1, the department shall impose a late penalty of $60 per facility.

(c)
(i) The fee and the late penalty accrue interest at 12% per annum.
(ii) If the fee, the late penalty, and all accrued interest are not received by the department within 60 days after July 1, the eligibility of the owner or operator to receive payments for claims against the fund lapses on the 61st day after July 1.
(iii) In order for the owner or operator to reinstate eligibility to receive payments for claims against the fund, the owner or operator shall meet the requirements of Subsection 19-6-428(3).

(4)
(a)
(i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the department does not receive the fees on or before July 1, the department shall impose a late penalty of $60 per installation company. The fee and the late penalty accrue interest at 12% per annum.
(ii) If the fee, late penalty, and all accrued interest due are not received by the department within 60 days after July 1, the underground storage tank installation company's permit and eligibility to receive payments for claims against the fund lapse on the 61st day after July 1.
(b)
(i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If the department does not receive the fees prior to completion of installation, the department shall impose a late penalty of $60 per facility. The fee and the late penalty accrue interest at 12% per annum.
(ii) If the fee, late penalty, and all accrued interest are not received by the department within 60 days after the underground storage tank installation is completed, eligibility to receive payments for claims against the fund for that tank lapse on the 61st day after the tank installation is completed.
(c) The director may not reissue the underground storage tank installation company permit until the fee, late penalty, and all accrued interest are received by the department.

(5) If the executive director determines that the fees established in Subsections (1) and (2) and the environmental assurance fee established in Section 19-6-410.5 are insufficient to maintain the fund on an actuarially sound basis, the executive director may petition the Legislature to increase the petroleum storage tank and underground storage tank installation company permit fees, and the environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

(6) The director may waive all or part of the fees required to be paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has been dispensed from the tank on or after July 1, 1991.

(7)
(a) The director shall issue a certificate of compliance to the owner or operator of a petroleum storage tank or underground storage tank, for which payment of fees has been made and other requirements have been met to qualify for a certificate of compliance under this part.
(b) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of a petroleum storage tank or underground storage tank under Subsection (7)(a) that does not qualify for a certificate of compliance under this part.

Amended by Chapter 227, 2014 General Session

19-6-412 Petroleum storage tank -- Certificate of compliance.

(1)

(a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may obtain a certificate of compliance for the facility.
(b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall have a certificate of compliance for the facility.
(2) The director shall issue a certificate of compliance if:
(a) the owner or operator has a certificate of registration;
(b) the owner or operator demonstrates it is participating in the Environmental Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with financial assurance requirements as defined by rule;
(c) all state and federal statutes, rules, and regulations have been substantially complied with; and
(d) all tank test requirements of Section 19-6-413 have been met.
(3) If the ownership of or responsibility for the petroleum storage tank changes, the certificate of compliance is still valid unless it has been revoked or has lapsed.
(4) The director may issue a certificate of compliance for a period of less than one year to maintain an administrative schedule of certification.
(5) The director shall reissue a certificate of compliance if the owner or operator of an underground storage tank has complied with the requirements of Subsection (2).
(6) If the owner or operator electing to participate in the program has a number of tanks in an area where the director finds it would be difficult to accurately determine which of the tanks may be the source of a release, the owner may only elect to place all of the tanks in the area in the program, but not just some of the tanks in the area.

Amended by Chapter 360, 2012 General Session

19-6-413 Tank tightness test -- Actions required after testing.
(1) The owner or operator of any petroleum storage tank registered before July 1, 1991, shall submit to the director the results of a tank tightness test conducted:
(a) on or after September 1, 1989, and before January 1, 1990, if the test meets requirements set by rule regarding tank tightness tests that were applicable during that period; or
(b) on or after January 1, 1990, and before July 1, 1991.
(2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, shall submit to the director the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.
(3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the director at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.
(4)
(a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:
(i) correct the problem; and
(ii) submit evidence of the correction to the director.
(b) When the director receives evidence from an owner or operator of a petroleum storage tank that the problem with the tank has been corrected, the director shall:
(i) approve or disapprove the correction; and
(ii) notify the owner or operator that the correction has been approved or disapproved.

(5) The director shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.
(6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D, to perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

Amended by Chapter 360, 2012 General Session

19-6-414 Grounds for revocation of certificate of compliance and ineligibility for payment of costs from fund.

(1) If the director determines that any of the requirements of Subsection 19-6-412(2), Section 19-6-413, or Subsection 19-6-420(2) have not been met, the director shall notify the owner or operator by certified mail that:
  (a) the owner or operator's certificate of compliance may be revoked;
  (b) if the owner or operator is participating in the program, the owner or operator is violating the eligibility requirements for the fund; and
  (c) the owner or operator shall demonstrate the owner or operator's compliance with this part within 60 days after receipt of the notification or the certificate of compliance will be revoked and if participating in the program the owner or operator will be ineligible to receive payment for claims against the fund.
(2) If the director determines the owner's or operator's compliance problems have not been resolved within 60 days after receipt of the notification in Subsection (1), the director shall send written notice to the owner or operator that the owner's or operator's certificate of compliance is revoked and he is no longer eligible for payment of costs from the fund.
(3) Revocation of certificates of compliance may be appealed to the executive director.

Amended by Chapter 227, 2014 General Session

19-6-415 Participation of exempt and above ground tanks.

(1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280, Subpart A, may become eligible for payments from the Petroleum Storage Tank Trust Fund if it:
  (a)
    (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;
    (ii) is used for storing heating oil for consumptive use on the premises where stored; or
    (iii) is used for any oxygenate blending component for motor fuels;
  (b) complies with the requirements of Section 19-6-412;
  (c) meets other requirements established by rules made under Section 19-6-403; and
  (d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.
(2) An above ground petroleum storage tank may become eligible for payments from the Petroleum Storage Tank Trust Fund if the owner or operator:
  (a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;
  (b) complies with the requirements of Section 19-6-412; and
  (c) meets other requirements established by rules made under Section 19-6-403.

Amended by Chapter 172, 1997 General Session

19-6-415.5 State-owned underground tanks to participate in program.

Any underground storage tank owned or leased by the state of Utah and subject to the financial assurance requirements established by division rule shall participate in the program.

Enacted by Chapter 172, 1997 General Session

19-6-416 Restrictions on delivery of petroleum -- Civil penalty.

(1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(7).
(2) Any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank in violation of Subsection (1) is subject to a civil penalty of not more than $500 for each occurrence.
(3) The director shall issue a notice of agency action assessing a civil penalty of not more than $500 against any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank or underground storage tank.
(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank or underground storage tank that is identified in compliance with Subsection 19-6-411(7) and rules made under that subsection, whether or not the tank is in actual compliance with the other requirements of Section 19-6-411.

Amended by Chapter 360, 2012 General Session

19-6-416.5 Restrictions on underground storage tank installation companies -- Civil penalty.

(1) After July 1, 1994, no individual or underground installation company may install an underground storage tank without having a valid underground storage tank installation company permit.
(2) Any individual or underground storage tank installation company who installs an underground storage tank in violation of Subsection (1) is subject to a civil penalty of $500 per underground storage tank.
(3) The director shall issue a notice of agency action assessing a civil penalty of $500 against any underground storage tank installation company or person who installs an underground storage tank in violation of Subsection (1).

Amended by Chapter 360, 2012 General Session

19-6-417 Use of fund revenues to investigate certain releases from petroleum storage tank.

If the director is notified of or otherwise becomes aware of a release or suspected release of petroleum, he may expend revenues from the fund to investigate the release or suspected release if he has reasonable cause to believe the release is from a tank that is covered by the fund.

Amended by Chapter 360, 2012 General Session

19-6-418 Recovery of costs by director.

(1) The director may recover:

(a) from a responsible party the proportionate share of costs the party is responsible for as determined under Section 19-6-424.5;
(b) any amount required to be paid by the owner under this part which the owner has not paid; and
(c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).
(2) The director may pursue an action or recover costs from any other person if that person caused or substantially contributed to the release.
(3) All costs recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7.

Amended by Chapter 360, 2012 General Session

19-6-419 Costs covered by the fund -- Costs paid by owner or operator -- Payments to third parties -- Apportionment of costs.
(1) If all requirements of this part have been met and a release occurs from a tank that is covered by the fund, the costs per release are covered as provided under this section.
(2) For releases reported before May 11, 2010, the responsible party shall pay:
(a) the first $10,000 of costs; and
(b)
(i) all costs over $1,000,000, if the release was from a tank:
(A) located at a facility engaged in petroleum production, refining, or marketing; or
(B) with an average monthly facility throughput of more than 10,000 gallons; and
(ii) all costs over $500,000, if the release was from a tank:
(A) not located at a facility engaged in petroleum production, refining, or marketing; and
(B) with an average monthly facility throughput of 10,000 gallons or less.
(3) For releases reported before May 11, 2010, if money is available in the fund and the responsible party has paid costs of $10,000, the director shall pay costs from the fund in an amount not to exceed:
(a) $990,000 if the release was from a tank:
(i) located at a facility engaged in petroleum production, refining, or marketing; or
(ii) with an average monthly facility throughput of more than 10,000 gallons; and
(b) $490,000 if the release was from a tank:
(i) not located at a facility engaged in petroleum production, refining, or marketing; and
(ii) with an average monthly facility throughput of 10,000 gallons or less.
(4) For a release reported on or after May 11, 2010, the responsible party shall pay:
(a) the first $10,000 of costs; and
(b)
(i) all costs over $2,000,000, if the release was from a tank:
(A) located at a facility engaged in petroleum production, refining, or marketing; or
(B) with an average monthly facility throughput of more than 10,000 gallons; and
(ii) all costs over $1,000,000, if the release was from a tank:
(A) not located at a facility engaged in petroleum production, refining, or marketing; and
(B) with an average monthly facility throughput of 10,000 gallons or less.
(5) For a release reported on or after May 11, 2010, if money is available in the fund and the responsible party has paid costs of $10,000, the director shall pay costs from the fund in an amount not to exceed:
(a) $1,990,000 if the release was from a tank:
(i) located at a facility engaged in petroleum production, refining, or marketing; or

(ii) with an average monthly facility throughput of more than 10,000 gallons; and
(b) $990,000 if the release was from a tank:
(i) not located at a facility engaged in petroleum production, refining, or marketing; and
(ii) with an average monthly facility throughput of 10,000 gallons or less.
(6) The director may pay fund money to a responsible party up to the following amounts in a fiscal year:
(a) $1,990,000 to a responsible party owning or operating less than 100 petroleum storage tanks; or
(b) $3,990,000 to a responsible party owning or operating 100 or more petroleum storage tanks.
(7)
(a) In authorizing payments for costs from the fund, the director shall apportion money:
(i) first, to the following type of expenses incurred by the state:
(A) legal;
(B) adjusting; and
(C) actuarial;
(ii) second, to costs incurred for:
(A) investigation;
(B) abatement action; and
(C) corrective action; and
(iii) third, to payment of:
(A) judgments;
(B) awards; and
(C) settlements to third parties for bodily injury or property damage.
(b) The board shall make rules governing the apportionment of costs among third party claimants.

Amended by Chapter 360, 2012 General Session

19-6-420 Releases -- Abatement actions -- Corrective actions.
(1) If the director determines that a release from a petroleum storage tank has occurred, the director shall:
(a) identify and name as many of the responsible parties as reasonably possible; and
(b) determine which responsible parties, if any, are covered by the fund regarding the release in question.
(2) Regardless of whether the tank generating the release is covered by the fund:
(a) the director may order the owner or operator to take abatement, or investigative or corrective action, including the submission of a corrective action plan; and
(b) if the owner or operator fails to comply with the action ordered by the director under Subsection (2)(a), the director may take one or more of the following actions:
(i) subject to the conditions in this part, use money from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;
(ii) commence an enforcement proceeding;
(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5;
(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5; or
(v) where the owner or operator is the responsible party, revoke the responsible party's certificate of compliance, as described in Section 19-6-414.

(3)
(a) Subject to the limitations established in Section 19-6-419, the director shall provide money from the fund for abatement action for a release generated by a tank covered by the fund if:
(i) the owner or operator takes the abatement action ordered by the director; and
(ii) the director approves the abatement action.
(b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the director for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the director that the abatement action was reasonable and timely in light of circumstances, the director shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.
(c) The owner or operator shall notify the director within 24 hours of the abatement action taken.
(4)
(a) If the director determines corrective action is necessary, the director shall order the owner or operator to submit a corrective action plan to address the release.
(b) If the owner or operator submits a corrective action plan, the director shall review the corrective action plan and approve or disapprove the plan.
(c) In reviewing the corrective action plan, the director shall consider the following:
(i) the threat to public health;
(ii) the threat to the environment; and
(iii) the cost-effectiveness of alternative corrective actions.
(5) If the director approves the corrective action plan or develops the director's own corrective action plan, the director shall:
(a) approve the estimated cost of implementing the corrective action plan;
(b) order the owner or operator to implement the corrective action plan;
(c)
(i) if the release is covered by the fund, determine the amount of fund money to be allocated to an owner or operator to implement a corrective action plan; and
(ii) subject to the limitations established in Section 19-6-419, provide money from the fund to the owner or operator to implement the corrective action plan.
(6)
(a) The director may not distribute any money from the fund for corrective action until the owner or operator obtains the director's approval of the corrective action plan.
(b) An owner or operator who begins corrective action without first obtaining approval from the director and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:
(i) the owner or operator submits the corrective action plan to the director within seven days after beginning corrective action; and
(ii) the director approves the corrective action plan.
(7) If the director disapproves the plan, the director shall solicit a new corrective action plan from the owner or operator.
(8) If the director disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the director may:
(a) develop an alternative corrective action plan; and
(b) act as authorized under Subsections (2) and (5).
(9)

(a) When notified that the corrective action plan has been implemented, the director shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.
(b) If the director determines the corrective action has not been properly performed or completed, the director may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.
(10)
(a) For releases not covered by the fund, the director may recover from the responsible party expenses incurred by the division for managing and overseeing the abatement, and investigation or corrective action of the release. These expenses shall be:
(i) billed quarterly per release;
(ii) due within 30 days of billing;
(iii) deposited with the division as dedicated credits;
(iv) used by the division for the administration of the underground storage tank program outlined in this part; and
(v) billed per hourly rates as established under Section 63J-1-504.
(b) If the responsible party fails to pay expenses under Subsection 10(a), the director may:
(i) revoke the responsible party's certificate of compliance, as described in Section 19-6-414, if the responsible party is also the owner or operator; and
(ii) pursue an action to collect expenses in Subsection 10(a), including the costs of collection.

Amended by Chapter 227, 2014 General Session

19-6-421 Third party payment restrictions and requirements.
(1) If there are sufficient revenues in the fund, and subject to the provisions of Sections 19-6-419, 19-6-422, and 19-6-423, the director shall authorize payment from the fund to third parties regarding a release covered by the fund as provided in Subsection (2) if:
(a)
(i) he is notified that a final judgment or award has been entered against the responsible party covered by the fund that determines liability for bodily injury or property damage to third parties caused by a release from the tank; or
(ii) approved by the state risk manager, the responsible party has agreed to pay an amount in settlement of a claim arising from the release; and
(b) the responsible party has failed to satisfy the judgment or award, or pay the amount agreed to.
(2) The director shall authorize payment to the third parties of the amount of the judgment, award, or amount agreed to subject to the limitations established in Section 19-6-419.

Amended by Chapter 360, 2012 General Session

19-6-422 Participation by state risk manager in suit, claim, or settlement.
(1) If a suit is filed or a claim is made against a responsible party who is eligible for payments from the fund for bodily injury or property damage connected with a release of petroleum from a petroleum storage tank, the state risk manager and his legal counsel may participate with the responsible party and his legal counsel in:
(a) the defense of any suit;
(b) determination of legal strategy and any other decisions affecting the defense of any suit; and
(c) any settlement negotiations.

(2) The state risk manager shall approve any settlement between the responsible party and a third party before payment of fund money is made.

Amended by Chapter 214, 1992 General Session

19-6-423 Claim or suit against responsible parties -- Prerequisites for payment from fund to responsible parties or third parties -- Limitations of liability for third party claims.

(1)
- (a) The director may authorize payments from the fund to a responsible party if the responsible party receives actual or constructive notice:
  - (i) of a release likely to give rise to a claim; or
  - (ii) that in connection with a release a:
    - (A) suit has been filed; or
    - (B) claim has been made against the responsible party for:
      - (I) bodily injury; or
      - (II) property damage.
- (b) A responsible party described in Subsection (1)(a) shall:
  - (i) inform the state risk manager immediately of a release, suit, or claim described in Subsection (1)(a);
  - (ii) allow the state risk manager and the state risk manager's legal counsel to participate with the responsible party and the responsible party's legal counsel in:
    - (A) the defense of a suit;
    - (B) determination of legal strategy;
    - (C) other decisions affecting the defense of a suit; and
    - (D) settlement negotiations; and
  - (iii) conduct the defense of a suit or claim in good faith.

(2) The director may authorize payment of fund money for a judgment or award to third parties if the state risk manager:
- (a) is allowed to participate in the defense of the suit as required under Subsection (1)(b); and
- (b) approves the settlement.

(3) The director may make a payment from the fund to a third party pursuant to Section 19-6-421 or fund a corrective action plan pursuant to Section 19-6-420 if the payment or funding does not impose a liability or make a payment for:
- (a) an obligation of a responsible party for:
  - (i) workers' compensation benefits;
  - (ii) disability benefits;
  - (iii) unemployment compensation; or
  - (iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);
- (b) a bodily injury award to:
  - (i) a responsible party's employee arising from and in the course of the employee's employment; or
  - (ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of the employee described in Subsection (3)(b)(i);
- (c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of an aircraft, motor vehicle, or watercraft;
- (d) property damage to a property owned by, occupied by, rented to, loaned to, bailed to, or otherwise in the care, custody, or control of a responsible party except to the extent necessary to complete a corrective action plan;

(e) bodily injury or property damage for which a responsible party is obligated to pay damages by reason of the assumption of liability in a contract or agreement unless the responsible party entered into the contract or agreement to meet the financial responsibility requirements of:
(i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c et seq., or regulations issued under this act; or
(ii) this part, or rules made under this part;
(f) bodily injury or property damage for which a responsible party is liable to a third party solely on account of personal injury to the third party's spouse;
(g) bodily injury, property damage, or the cost of corrective action caused by releases reported before May 11, 2010 that are covered by the fund if the total amount previously paid by the director to compensate third parties and fund corrective action plans for the releases equals:
(i) $990,000 for a single release; and
(ii) for all releases by a responsible party in a fiscal year:
(A) $1,990,000 for a responsible party owning less than 100 petroleum storage tanks; and
(B) $3,990,000 for a responsible party owning 100 or more petroleum storage tanks; and
(h) bodily injury, property damage, or the cost of corrective action caused by releases reported on or after May 11, 2010, covered by the fund if the total amount previously paid by the director to compensate third parties and fund corrective action plans for the releases equals:
(i) $1,990,000 for a single release; and
(ii) for all releases by a responsible party in a fiscal year:
(A) $1,990,000 for a responsible party owning less than 100 petroleum storage tanks; and
(B) $3,990,000 for a responsible party owning 100 or more petroleum storage tanks.

Amended by Chapter 360, 2012 General Session

19-6-424 Claims not covered by fund.
(1) The director may not authorize payments from the fund unless:
(a) the claim was based on a release occurring during a period for which that tank was covered by the fund;
(b) the claim was made:
(i) during a period for which that tank was covered by the fund; or
(ii)
(A) within one year after that fund-covered tank is closed; or
(B) within six months after the end of the period during which the tank was covered by the fund; and
(c) there are sufficient revenues in the fund.
(2) The director may not authorize payments from the fund for an underground storage tank installation company unless:
(a) the claim was based on a release occurring during the period prior to the issuance of a certificate of compliance;
(b) the claim was made within 12 months after the date the tank is issued a certificate of compliance for that tank; and
(c) there are sufficient revenues in the fund.
(3) The director may require the claimant to provide additional information as necessary to demonstrate coverage by the fund at the time of submittal of the claim.
(4) If the Legislature repeals or refuses to reauthorize the program for petroleum storage tanks established in this part, the director may authorize payments from the fund as provided in

this part for claims made until the end of the time period established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

Amended by Chapter 360, 2012 General Session

19-6-424.5 Apportionment of liability -- Liability agreements -- Legal remedies -- Amounts recovered.

(1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the director may:
  (a) issue written orders determining responsible parties;
  (b) issue written orders apportioning liability among responsible parties; and
  (c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.
(2)
  (a) In any apportionment of liability, whether made by the director or made in any administrative proceeding or judicial action, the following standards apply:
    (i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and
    (ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.
  (b)
    (i) The burden of proving proportionate contribution shall be borne by each responsible party.
    (ii) If a responsible party does not prove the responsible party's proportionate contribution, the court or the director shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).
  (c) The court, the board, or the director may not impose joint and several liability.
  (d) Each responsible party is strictly liable for his share of costs.
(3) The failure of the director to name all responsible parties is not a defense to an action under this section.
(4) The director may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party.
(5) The director and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):
  (a) have been notified in writing by either the director or the responsible party of the proposed agreement; and
  (b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.
(6)
  (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court.
  (b) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).
(7)

(a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.
(b)
(i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.
(ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.
(8)
(a) If the director obtains less than complete relief from a party who has resolved his liability under this section, the director may bring an action against any party who has not resolved his liability as determined in an order.
(b) In apportioning liability, the standards of Subsection (2) apply.
(c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order.
(9)
(a) An agreement or order determining liability under this part may provide that the director will pay for costs of actions that the parties have agreed to perform, but which the director has agreed to finance, under the terms of the agreement or order.
(b) If the director makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.
(c) Any amounts recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.

Amended by Chapter 360, 2012 General Session

19-6-425 Violation of part -- Civil penalty -- Suit in district court.
(1) Except as provided in Section 19-6-407, any person who violates any requirement of this part or any order issued or rule made under the authority of this part is subject to a civil penalty of not more than $10,000 per day for each day of violation.
(2) The director may enforce any requirement, rule, agreement, or order issued under this part by bringing a suit in the district court in the county where the underground storage tank or petroleum storage tank is located.
(3) The department shall deposit the penalties collected under this part in the Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

Amended by Chapter 360, 2012 General Session

19-6-426 Limitation of liability of state -- Liability of responsible parties -- Indemnification agreement involving responsible parties.
(1) This part is not intended to create an insurance program.
(2) The fund established in this part shall only provide funds to finance costs for responsible parties who meet the requirements of this part when releases from petroleum storage tanks occur.
(3) The assets of the fund, if any, are the sole source of money to pay claims against the fund.
(4) The state is not liable for:
(a) any amounts payable from the fund for which the fund does not have sufficient assets;
(b) any expenses or debts of the fund; or

(c) any claim arising from the creation, management, rate-setting, or any other activity pertaining to the fund.
(5) The responsible parties are liable for any costs associated with any release from the underground storage tank system.
(6) This part does not preclude a responsible party from enforcing or recovering under any agreement or contract for indemnification associated with a release from the tank or from pursuing any other legal remedies that may be available against any party.
(7) If any payment is made under this part, the fund shall be subrogated to all the responsible parties' rights of recovery against any person or organization and the responsible parties shall execute and deliver instruments and papers and do whatever else is necessary to secure the rights. The responsible parties shall do nothing after a release is discovered to prejudice the rights. In the event of recovery by the fund, any amount recovered shall first be used to reimburse the responsible parties for costs they are required to pay pursuant to Section 19-6-419.
(8) Parties who elect to participate in the fund do so subject to the conditions and limitations in this section and in this part.

Amended by Chapter 172, 1997 General Session

19-6-427 Liability of any person under other laws -- Additional state and governmental immunity -- Exceptions.
(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way:
(a) the obligations or liability of any person under any other provision of this part or state or federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of petroleum from an underground storage tank or a petroleum storage tank; or
(b) the liability of any person for costs incurred except as provided in this part.
(2) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

Amended by Chapter 382, 2008 General Session

19-6-428 Eligibility for participation in the fund.
(1) Subject to the requirements of Section 19-6-410.5, all owners and operators of existing petroleum storage tanks that were covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and 19-6-411.
(2) Any new petroleum storage tanks that were installed after May 5, 1997, or tanks eligible under Section 19-6-415, may elect to participate in the program by complying with the requirements of this part.
(3)
(a) All owners and operators of petroleum storage tanks who elect to not participate in the program, including by the use of an alternative financial assurance mechanism, shall, in order to subsequently participate in the program:
(i) perform a tank tightness test;

(ii) except as provided in Subsection (3)(b), perform a site check, including soil and, when applicable, groundwater samples, to demonstrate that no release of petroleum exists or that there has been adequate remediation of releases as required by board rules;
(iii) provide the required tests and samples to the director; and
(iv) comply with the requirements of this part.
(b) A site check under Subsection (3)(a)(ii) is not required if the director determines, with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released.
(4) The director shall review the tests and samples provided under Subsection (3)(a)(iii) to determine:
(a) whether or not any release of the petroleum has occurred; or
(b) if the remediation is adequate.

Amended by Chapter 360, 2012 General Session

19-6-429 False information and claims.
(1) Any person who presents or causes to be presented any oral or written statement, knowing the statement contains false information, in order to obtain a certificate of compliance is guilty of a class B misdemeanor.
(2)
(a) Any person who presents or causes to be presented any claim for payment from the fund, knowing the claim contains materially false information or knowing the claim is not eligible for payment from the fund, is subject to the criminal penalties under Section 76-10-1801 regarding fraud.
(b) The level of criminal penalty shall be determined by the value involved, in the same manner as in Section 76-10-1801.

Enacted by Chapter 172, 1997 General Session

Part 5
Solid Waste Management Act

19-6-501 Short title.
This part is known as the "Solid Waste Management Act."

Renumbered and Amended by Chapter 112, 1991 General Session

Superseded 1/16/2017
19-6-502 Definitions.
As used in this part:
(1) "Governing body" means the governing board, commission, or council of a public entity.
(2) "Jurisdiction" means the area within the incorporated limits of:
(a) a municipality;
(b) a special service district;
(c) a municipal-type service district;
(d) a service area; or

(e) the territorial area of a county not lying within a municipality.
(3) "Long-term agreement" means an agreement or contract having a term of more than five years but less than 50 years.
(4) "Municipal residential waste" means solid waste that is:
(a) discarded or rejected at a residence within the public entity's jurisdiction; and
(b) collected at or near the residence by:
(i) a public entity; or
(ii) a person with whom the public entity has as an agreement to provide solid waste management.
(5) "Public entity" means:
(a) a county;
(b) a municipality;
(c) a special service district under Title 17D, Chapter 1, Special Service District Act;
(d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act; or
(e) a municipal-type service district created under Title 17, Chapter 34, Municipal-Type Services to Unincorporated Areas.
(6) "Requirement" means an ordinance, policy, rule, mandate, or other directive that imposes a legal duty on a person.
(7) "Residence" means an improvement to real property used or occupied as a primary or secondary detached single-family dwelling.
(8) "Resource recovery" means the separation, extraction, recycling, or recovery of usable material, energy, fuel, or heat from solid waste and the disposition of it.
(9) "Short-term agreement" means a contract or agreement having a term of five years or less.
(10)
(a) "Solid waste" means a putrescible or nonputrescible material or substance discarded or rejected as being spent, useless, worthless, or in excess of the owner's needs at the time of discard or rejection, including:
(i) garbage;
(ii) refuse;
(iii) industrial and commercial waste;
(iv) sludge from an air or water control facility;
(v) rubbish;
(vi) ash;
(vii) contained gaseous material;
(viii) incinerator residue;
(ix) demolition and construction debris;
(x) a discarded automobile; and
(xi) offal.
(b) "Solid waste" does not include sewage or another highly diluted water carried material or substance and those in gaseous form.
(11) "Solid waste management" means the purposeful and systematic collection, transportation, storage, processing, recovery, or disposal of solid waste.
(12) "Solid waste management facility" means a facility employed for solid waste management, including:
(a) a transfer station;
(b) a transport system;
(c) a baling facility;
(d) a landfill; and

(e) a processing system, including:
(i) a resource recovery facility;
(ii) a facility for reducing solid waste volume;
(iii) a plant or facility for compacting, composting, or pyrolization of solid waste;
(iv) an incinerator;
(v) a solid waste disposal, reduction, or conversion facility;
(vi) a facility for resource recovery of energy consisting of:
(A) a facility for the production, transmission, distribution, and sale of heat and steam;
(B) a facility for the generation and sale of electric energy to a public utility, municipality, or other public entity that owns and operates an electric power system on March 15, 1982; and
(C) a facility for the generation, sale, and transmission of electric energy on an emergency basis only to a military installation of the United States; and
(vii) an auxiliary energy facility that is connected to a facility for resource recovery of energy as described in Subsection (12)(e)(vi), that:
(A) is fueled by natural gas, landfill gas, or both;
(B) consists of a facility for the production, transmission, distribution, and sale of supplemental heat and steam to meet all or a portion of the heat and steam requirements of a military installation of the United States; and
(C) consists of a facility for the generation, transmission, distribution, and sale of electric energy to a public utility, a municipality described in Subsection (12)(e)(vi)(B), or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

Amended by Chapter 183, 2014 General Session

Effective 1/16/2017
19-6-502 Definitions.
As used in this part:
(1) "Governing body" means the governing board, commission, or council of a public entity.
(2) "Jurisdiction" means the area within the incorporated limits of:
(a) a municipality;
(b) a special service district;
(c) a municipal-type service district;
(d) a service area; or
(e) the territorial area of a county not lying within a municipality.
(3) "Long-term agreement" means an agreement or contract having a term of more than five years but less than 50 years.
(4) "Municipal residential waste" means solid waste that is:
(a) discarded or rejected at a residence within the public entity's jurisdiction; and
(b) collected at or near the residence by:
(i) a public entity; or
(ii) a person with whom the public entity has as an agreement to provide solid waste management.
(5) "Public entity" means:
(a) a county;
(b) a municipality;
(c) a special service district under Title 17D, Chapter 1, Special Service District Act;
(d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act; or

(e) a municipal-type service district created under Title 17, Chapter 34, Municipal-Type Services to Unincorporated Areas.

(6) "Requirement" means an ordinance, policy, rule, mandate, or other directive that imposes a legal duty on a person.

(7) "Residence" means an improvement to real property used or occupied as a primary or secondary detached single-family dwelling.

(8) "Resource recovery" means the separation, extraction, recycling, or recovery of usable material, energy, fuel, or heat from solid waste and the disposition of it.

(9) "Short-term agreement" means a contract or agreement having a term of five years or less.

(10)

(a) "Solid waste" means a putrescible or nonputrescible material or substance discarded or rejected as being spent, useless, worthless, or in excess of the owner's needs at the time of discard or rejection, including:

(i) garbage;

(ii) refuse;

(iii) industrial and commercial waste;

(iv) sludge from an air or water control facility;

(v) rubbish;

(vi) ash;

(vii) contained gaseous material;

(viii) incinerator residue;

(ix) demolition and construction debris;

(x) a discarded automobile; and

(xi) offal.

(b) "Solid waste" does not include sewage or another highly diluted water carried material or substance and those in gaseous form.

(11) "Solid waste management" means the purposeful and systematic collection, transportation, storage, processing, recovery, or disposal of solid waste.

(12)

(a) "Solid waste management facility" means a facility employed for solid waste management, including:

(i) a transfer station;

(ii) a transport system;

(iii) a baling facility;

(iv) a landfill; and

(v) a processing system, including:

(A) a resource recovery facility;

(B) a facility for reducing solid waste volume;

(C) a plant or facility for compacting, composting, or pyrolization of solid waste;

(D) an incinerator;

(E) a solid waste disposal, reduction, or conversion facility;

(F) a facility for resource recovery of energy consisting of:

(I) a facility for the production, transmission, distribution, and sale of heat and steam;

(II) a facility for the generation and sale of electric energy to a public utility, municipality, or other public entity that owns and operates an electric power system on March 15, 1982; and

(III) a facility for the generation, sale, and transmission of electric energy on an emergency basis only to a military installation of the United States; and

(G) an auxiliary energy facility that is connected to a facility for resource recovery of energy as described in Subsection (12)(a)(v)(F), that:
(I) is fueled by natural gas, landfill gas, or both;
(II) consists of a facility for the production, transmission, distribution, and sale of supplemental heat and steam to meet all or a portion of the heat and steam requirements of a military installation of the United States; and
(III) consists of a facility for the generation, transmission, distribution, and sale of electric energy to a public utility, a municipality described in Subsection (12)(a)(v)(F)(II), or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.
(b) "Solid waste management facility" does not mean a facility that:
(i) accepts and processes metal, as defined in Subsection 19-6-102(19)(b), by separating, shearing, sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product of prepared scrap metal for sale or use for remelting purposes provided that any byproduct or residual that would qualify as solid waste is managed at a solid waste management facility; or
(ii) accepts and processes paper, plastic, rubber, glass, or textiles that:
(A) have been source-separated or otherwise diverted from the solid waste stream before acceptance at the facility and that are not otherwise hazardous waste or subject to conditions of federal hazardous waste regulations; and
(B) are reused or recycled as a valuable commercial commodity by separating, shearing, sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product, provided that any byproduct or residual that would qualify as solid waste is managed at a solid waste management facility.

Amended by Chapter 1, 2016 Special Session 4

19-6-502.5 Solid waste management facility not a public utility.
A solid waste management facility is not a public utility as defined in Section 54-2-1.

Enacted by Chapter 89, 2008 General Session

19-6-503 Powers and duties of public entities.
(1) Subject to the powers and rules of the department and except as provided by Section 19-6-507, a governing body of a public entity may:
(a) supervise and regulate the collection, transportation, and disposition of solid waste generated within its jurisdiction;
(b) provide a solid waste management facility to adequately handle solid waste generated or existing within or without its jurisdiction;
(c) assume, by agreement, responsibility for the collection and disposition of solid waste whether generated within or without its jurisdiction;
(d) enter into a short or long-term interlocal agreement to provide for or operate a solid waste management facility with:
(i) another public entity;
(ii) a public agency, as defined in Section 11-13-103;
(iii) a private person; or
(iv) a combination of persons listed in Subsections (1)(d)(i) through (iii);
(e) levy and collect a tax, fee, or charge or require a license as may be appropriate to discharge its responsibility for the acquisition, construction, operation, maintenance, and improvement

of a solid waste management facility, including licensing a private collector operating within its jurisdiction;
(f) require that solid waste generated within its jurisdiction be delivered to a solid waste management facility;
(g) control the right to collect, transport, and dispose of solid waste generated within its jurisdiction;
(h) agree that, according to Section 19-6-505, the exclusive right to collect, transport, and dispose of solid waste within its jurisdiction may be assumed by:
(i) another public entity;
(ii) a private person; or
(iii) a combination of persons listed in Subsections (1)(h)(i) through (ii);
(i) accept and disburse funds derived from a federal or state grant, a private source, or money that may be appropriated by the Legislature for the acquisition, construction, ownership, operation, maintenance, and improvement of a solid waste management facility;
(j) contract for the lease or purchase of land, a facility, or a vehicle for the operation of a solid waste management facility;
(k) establish one or more policies for the operation of a solid waste management facility, including:
(i) hours of operation;
(ii) character and kind of wastes accepted at a disposal site; and
(iii) another policy necessary for the safety of the operating personnel;
(l) sell or contract for the sale, according to a short or long-term agreement, of usable material, energy, fuel, or heat separated, extracted, recycled, or recovered from solid waste in a solid waste management facility, on terms in its best interest;
(m) pledge, assign, or otherwise convey as security for the payment of bonds, revenues and receipts derived from the sale or contract or from the operation and ownership of a solid waste management facility or an interest in it;
(n) issue a bond according to Title 11, Chapter 14, Local Government Bonding Act;
(o) issue industrial development revenue bonds according to Title 11, Chapter 17, Utah Industrial Facilities and Development Act, to pay the costs of financing a project consisting of a solid waste management facility on behalf of an entity that constitutes the users of a solid waste management facility project within the meaning of Section 11-17-2;
(p) agree to construct and operate or to provide for the construction and operation of a solid waste management facility project, which project manages the solid waste of a public entity or private person, according to one or more contracts and other arrangements provided for in a proceeding according to which a bond is issued; and
(q) issue a bond to pay the cost of establishing reserves to pay principal and interest on the bonds as provided for in the proceedings according to which the bonds are issued.
(2) The power to issue a bond under this section is in addition to the power to issue a bond under Title 11, Chapter 17, Utah Industrial Facilities and Development Act.

Amended by Chapter 89, 2008 General Session

19-6-505 Long-term agreements for joint action -- Construction, acquisition, or sale of interest in management facilities -- Issuance of bonds.
(1)
(a) Two or more public entities, which for the purposes of this section shall only include any political subdivision of the state, the state and its agencies, and the United States and

its agencies, may enter into long-term agreements with one another pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and any one or more public entities may enter into long-term agreements with any private entity or entities for joint or cooperative action related to the acquisition, construction, ownership, operation, maintenance, and improvement of solid waste management facilities, regardless of whether the facilities are owned or leased by a public entity or entities, private entity or entities, or combination of them and pursuant to which solid waste of one or more public entities, any private entity or entities, or combination of them, are made available for solid waste management pursuant to the terms, conditions, and consideration provided in the agreement.

(b) Any payments made by a public entity for services received under the agreement are not an indebtedness of the public entity within the meaning of any constitutional or statutory restriction, and no election is necessary for the authorization of the agreement.

(c) Any public entity or any public entity in combination with a private entity agreeing to make solid waste management facilities available may, in the agreement, agree to make available to other public entities a specified portion of the capacity of the solid waste management facilities, without regard to its future need of the specified capacity for its own use and may in the agreement agree to increase the capacity of its solid waste management facilities from time to time, as necessary, in order to take care of its own needs and to perform its obligations to the other parties to the agreement.

(2)

(a) Two or more public entities or any one or more public entities together with any private entity or entities may construct or otherwise acquire joint interests in solid waste management facilities, or any part of them, for their common use, or may sell to any other public or private entity or entities a partial interest or interests in its solid waste management facility.

(b) Any public entity otherwise qualifying under Title 11, Chapter 14, Local Government Bonding Act or Title 11, Chapter 17, Utah Industrial Facilities and Development Act may issue its bonds pursuant to these acts for the purpose of acquiring a joint interest in solid waste management facilities, or any part thereof, whether the joint interest is to be acquired through construction of new facilities or the purchase of an interest in existing facilities.

Amended by Chapter 105, 2005 General Session

19-6-506 Schedule of fees -- Classification of property -- Collection of delinquent fees.

(1)

(a) The governing body of any public entity may by ordinance or resolution establish a schedule of fees to be imposed and assessed on property within its jurisdiction the revenue from which shall be used for solid waste purposes.

(b) In establishing a schedule of fees, the governing body shall classify the property within its jurisdiction based upon the character and volume of waste occurring from the various property uses subject to this part.

(c) If the governing body makes solid waste facilities available to a public entity as provided in Section 19-6-505, it shall charge a fee to that public entity, calculated in the same way as fees assessed on property within the jurisdiction of the governing body.

(2)

(a) The governing body may impose, assess, and collect a reasonable fee for each classification of property established and divide the property within its jurisdiction according to the classifications.

(b) It may also establish classifications of property for which services may be provided for no fee or a reduced fee and determine the eligibility requirements for inclusion in the classifications upon application by property owners on a case-by-case basis.
(c) The governing body shall impose and assess the appropriate fee established for each classification and division of property by ordinance or resolution, and provide therein for the billing and collection of the fees on an annual or more frequent basis as it shall determine to be necessary or appropriate.
(d) The ordinance or resolution may provide that the fees imposed and assessed may be billed and collected by the county treasurer as a part of the regular, ad valorem property tax notice, billing, and collection system of the county, if it is feasible to do so, unless the public entity imposing and assessing the fees has an existing service or utility billing and collection system which can be used for this purpose.
(3) County treasurers may include the fees certified to them pursuant to this part on the general, ad valorem tax notice and collect and remit the fees in the manner and as a part of the tax collection system including the collection of delinquent fees in the manner provided by law for tax delinquencies.
(4) Any governing body which uses the general property tax billing and collection system of a county to bill and collect the fees imposed and assessed under this part shall reimburse the county for the actual costs thereof annually, which costs include the materials, equipment, and supplies used and the labor involved plus a factor added for overhead and general and administrative expenses.

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-507 Flow control for solid waste prohibited -- Exceptions.
(1) Except as provided in Subsection (2), a public entity may not require solid waste discarded or rejected within the public entity's jurisdiction to be stored, recovered, or disposed of at a solid waste management facility owned or operated by a public entity.
(2) A public entity may require solid waste discarded or rejected within the public entity's jurisdiction to be stored, recovered, or disposed of at a solid waste management facility owned or operated by a public entity if:
(a) the solid waste is municipal residential waste;
(b) no more than one landfill that may take the solid waste exists within:
(i) the public entity's jurisdiction; and
(ii) 125 miles outside the public entity's jurisdiction, as measured from the landfill's primary entrance by following the shortest route of ordinary travel by motor vehicle; or
(c) the solid waste management facility owned or operated by the public entity receives less than 75 tons of solid waste per day.
(3) A requirement described in Subsection (1) that is:
(a) in effect on January 1, 2008 is void as of January 1, 2013; and
(b) adopted on or after January 2, 2008 and in effect on May 4, 2008 is void as of May 5, 2008.
(4) A person engaged in solid waste management that is aggrieved by a violation of this section may seek judicial review of the violation in a court of competent jurisdiction.

Enacted by Chapter 89, 2008 General Session

19-6-508 Resource recovery project operated by an improvement district.

(1) As used in this section, "resource recovery project" means a project that consists of facilities for the handling, treatment and processing through anaerobic digestion, and resource recovery, of solid waste consisting primarily of organic matter.
(2) An improvement district authorized to operate all or any part of a system for the collection, treatment, or disposition of sewage under Section 17B-2a-403 may own, acquire, construct, or operate a resource recovery project in accordance with this section.
(3) An improvement district described in Subsection (2) may:
(a)
(i) own, acquire, construct, or operate a resource recovery project independently; or
(ii) subject to Subsection (4), enter into a short- or long-term agreement for the ownership, acquisition, construction, management, or operation of a resource recovery project with:
(A) a public agency, as defined in Section 11-13-103;
(B) a private person; or
(C) a combination of persons listed in Subsections (3)(a)(ii)(A) and (B);
(b) accept and disburse money from a federal or state grant or any other source for the acquisition, construction, operation, maintenance, or improvement of a resource recovery project;
(c) contract for the lease or purchase of land, a facility, or a vehicle for the operation of a resource recovery project;
(d) establish one or more policies for the operation of a resource recovery project, including:
(i) the hours of operation;
(ii) the character and kind of waste accepted by the resource recovery project; and
(iii) any policy necessary to ensure the safety of the resource recovery project personnel;
(e) sell or contract for the sale of usable material, energy, fuel, or heat separated, extracted, recycled, or recovered from solid waste that consists primarily of organic matter in a resource recovery project;
(f) issue a bond in accordance with Title 17B, Chapter 1, Part 11, Local District Bonds;
(g) issue an industrial development revenue bond in accordance with Title 11, Chapter 17, Utah Industrial Facilities and Development Act, to pay the costs of financing a project, as defined in Section 11-17-2, that consists of a resource recovery project;
(h) agree to construct and operate a resource recovery project that manages the solid waste of a public entity or a private person, in accordance with one or more contracts and other arrangements described in a proceeding according to which a bond is issued; and
(i) contract for and accept solid waste that consists primarily of organic matter at a resource recovery project regardless of whether the solid waste is generated inside or outside the boundaries of the improvement district.
(4)
(a) An agreement described in Subsection (3)(a)(ii) shall:
(i) contain provisions that the improvement district's board determines are in the best interests of the improvement district, including provisions that address:
(A) the purposes of the agreement;
(B) the duration of the agreement;
(C) the method of appointing or employing necessary personnel;
(D) the method of financing the resource recovery project, including the apportionment of costs of construction and operation;
(E) the ownership interest of each owner in the resource recovery project and other property used in connection with the resource recovery project;

(F) the procedures for the disposition of property when the agreement expires or is terminated, or when the resource recovery project ceases operation for any reason;
(G) any agreement of the parties prohibiting or restricting the alienation or partition of the undivided interests of an owner in the resource recovery project;
(H) the construction and repair of the resource recovery project, including, if the parties agree, a determination that one of the parties may construct or repair the resource recovery project as agent for all parties to the agreement;
(I) the administration, operation, and maintenance of the resource recovery project, including, if the parties agree, a determination that one of the parties may administer, operate, and maintain the resource recovery project as agent for all parties to the agreement;
(J) the creation of a committee of representatives of the parties to the agreement, including the committee's powers;
(K) if the parties agree, a provision that if any party defaults in the performance or discharge of the party's obligations under the agreement, the other parties may perform or assume, pro rata or otherwise, the obligations of the defaulting party and may, if the defaulting party fails to remedy the default, succeed to or require the disposition of the rights and interests of the defaulting party in the resource recovery project;
(L) provisions for indemnification of construction, operation, and administration agents for completing construction, handling emergencies, and allocating output of the resource recovery project among the parties to the agreement according to the ownership interests of the parties;
(M) methods for amending and terminating the agreement; and
(N) any other matter determined by the parties to the agreement to be necessary; and
(ii) provide for an equitable method of allocating operation, repair, and maintenance costs of the resource recovery project.
(b) A provision under Subsection (4)(a)(i)(G) is not subject to any law restricting covenants against alienation or partition.
(c) An improvement district's ownership interest in a resource recovery project may not be less than the proportion of money or the value of property supplied by the improvement district for the acquisition and construction of the resource recovery project.

Enacted by Chapter 273, 2016 General Session
Enacted by Chapter 346, 2016 General Session

Part 6
Lead Acid Battery Disposal

19-6-601 Definitions.

As used in this part:
(1) "Board" means the Waste Management and Radiation Control Board appointed under Title 19, Chapter 6, Hazardous Substances.
(2) "Director" means the director of the Division of Waste Management and Radiation Control.

Amended by Chapter 451, 2015 General Session

19-6-602 Lead acid batteries -- Disposal limitations.

(1) A person may not place, discard, or otherwise dispose of a lead acid battery in any solid waste treatment, storage, or disposal facility operated by a municipality, county, other political subdivision, or other entity. All lead acid batteries shall be disposed of by delivery to:
  (a) a lead acid battery retailer as provided in Section 19-6-603;
  (b) a lead acid battery wholesaler;
  (c) a collection or recycling facility; or
  (d) a secondary lead smelter that meets state and federal permit requirements.
(2)
  (a) Lead acid batteries shall be removed from vehicles prior to crushing or shredding.
  (b) The removed lead acid batteries shall be disposed of in accordance with this part.

Renumbered and Amended by Chapter 112, 1991 General Session
Enacted by Chapter 122, 1991 General Session

19-6-603 Collection for recycling.
(1) A person selling lead acid batteries at retail shall at the point of sale accept a customer's used lead acid battery and a maximum of one additional used lead acid battery when the customer purchases a new lead acid battery.
(2) A person selling lead acid batteries at wholesale shall at the point of sale accept a customer's used lead acid batteries.
(3)
  (a) A person selling lead acid batteries at retail shall post on the premises a clearly legible notice that is at least 8 1/2 inches by 11 inches in size and visible to customers that states: "It is illegal under state law to discard a motor vehicle battery or other lead acid battery. You must recycle your used battery. State law requires us to accept up to two of your used lead acid batteries for recycling when you purchase a new lead acid battery.
  "You may take lead acid batteries for recycling to (the retailer shall insert the name and address of at least one facility under Subsection 19-6-602(1)(b), (c), or (d) that is near the retailer)."
  (b) A person selling lead acid batteries wholesale shall post on the premises a clearly legible notice that is at least 8 1/2 inches by 11 inches in size and visible to customers that states: "It is illegal under state law to discard a motor vehicle battery or other lead acid battery. You must recycle your used battery. State law requires us to accept your used lead acid battery for recycling, including when you purchase a new lead acid battery."
(4) Lead acid batteries that a lead acid battery retailer is not required to accept under this section shall be disposed of only at facilities listed under Subsections 19-6-602(1)(b), (c), or (d).

Renumbered and Amended by Chapter 112, 1991 General Session
Enacted by Chapter 122, 1991 General Session

19-6-604 Disposal by battery retailer.
(1) A lead acid battery retailer may not dispose of a used lead acid battery except by delivery to:
  (a) a lead acid battery wholesaler;
  (b) a lead acid battery manufacturer for delivery to a secondary lead smelter that meets state and federal permit requirements;
  (c) a collection or recycling facility; or
  (d) a secondary lead smelter that meets state and federal permit requirements.

(2) Removal or disposal of acid or other contents from lead acid batteries shall be done only in accordance with board rules.
(3) A lead acid battery retailer shall ensure removal of lead acid batteries received under Section 19-6-602 or 19-6-603 from the retail collection point.

Renumbered and Amended by Chapter 112, 1991 General Session
Enacted by Chapter 122, 1991 General Session

19-6-605 Disposal by battery wholesaler.
(1) A person selling lead acid batteries at wholesale may not dispose of a used lead acid battery except by delivery to:
  (a) a battery manufacturer for delivery to a secondary lead smelter that meets the state and federal permit requirements;
  (b) a collection or recycling facility; or
  (c) a secondary lead smelter that meets the state and federal permit requirements.
(2) The wholesale lead acid battery distributor shall ensure removal of batteries received under Section 19-6-602 or 19-6-604 from the wholesale collection point.

Renumbered and Amended by Chapter 112, 1991 General Session
Enacted by Chapter 122, 1991 General Session

19-6-606 Enforcement.
(1) The director may authorize inspections under Section 19-6-107 of any place, building, or premise where lead acid batteries are sold to determine compliance with this part. The director may authorize inspections under this subsection only as funding is available within the department's current budget.
(2) Local health departments established under Title 26A, Local Health Authorities, may enforce the provisions of this part.

Amended by Chapter 360, 2012 General Session

19-6-607 Penalty.
(1) A violation of this part is a class B misdemeanor.
(2) Each lead acid battery improperly disposed of or rejected by a lead acid battery wholesaler or retailer in violation of Section 19-6-603, 19-6-604, or 19-6-605 is a separate violation.

Amended by Chapter 79, 1996 General Session

Part 7
Used Oil Management Act

19-6-701 Short title.
This act is known as the "Used Oil Management Act."

Enacted by Chapter 283, 1993 General Session

19-6-702 Legislative findings.

(1) The Legislature finds millions of gallons of used oil are generated each year in Utah, and this oil is:
  (a) a valuable petroleum resource that can be recycled; and
  (b) in spite of the potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means that pollute the water, land, and air, and endanger the public health, safety, and welfare.
(2) The Legislature finds used oil should be collected, treated, and reused in a manner that conserves energy and does not present a hazard to public health or the environment.
(3) The Legislature finds in light of the harmful consequences that can result from the improper disposal and use of used oil, and its value as a resource, the collection, recycling, and reuse of used oil is in the public interest.

Enacted by Chapter 283, 1993 General Session

19-6-703 Definitions.

(1) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.
(2) "Commission" means the State Tax Commission.
(3) "Department" means the Department of Environmental Quality created in Title 19, Chapter 1, General Provisions.
(4) "Director" means the director of the Division of Waste Management and Radiation Control.
(5) "Division" means the Division of Waste Management and Radiation Control, created in Section 19-1-105.
(6) "DIY" means do it yourself.
(7) "DIYer" means a person who generates used oil through household activities, including maintenance of personal vehicles.
(8) "DIYer used oil" means used oil a person generates through household activities, including maintenance of personal vehicles.
(9) "DIYer used oil collection center" means any site or facility that accepts or aggregates and stores used oil collected only from DIYers.
(10) "Hazardous waste" means any substance defined as hazardous waste under Title 19, Chapter 6, Hazardous Substances.
(11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.
(12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil in Utah.
(13) "Manifest" means the form used for identifying the quantity and composition and the origin, routing, and destination of used oil during its transportation from the point of collection to the point of storage, processing, use, or disposal.
(14) "Off-specification used oil" means used oil that exceeds levels of constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.
(15) "On-specification used oil" means used oil that does not exceed levels of constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.
(16)
  (a) "Processing" means chemical or physical operations under Subsection (16)(b) designed to produce from used oil, or to make used oil more amenable for production of:

(i) gasoline, diesel, and other petroleum derived fuels;
(ii) lubricants; or
(iii) other products derived from used oil.
(b) "Processing" includes:
(i) blending used oil with virgin petroleum products;
(ii) blending used oils to meet fuel specifications;
(iii) filtration;
(iv) simple distillation;
(v) chemical or physical separation; and
(vi) rerefining.
(17) "Recycled oil" means oil reused for any purpose following its original use, including:
(a) the purpose for which the oil was originally used; and
(b) used oil processed or burned for energy recovery.
(18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition varies with column operation and feedstock.
(19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities.
(20)
(a) "Used oil aggregation point" means any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons.
(b) A used oil aggregation point may also accept oil from DIYers.
(21) "Used oil burner" means a person who burns used oil for energy recovery.
(22) "Used oil collection center" means any site or facility registered with the state to manage used oil and that accepts or aggregates and stores used oil collected from used oil generators, other than DIYers, who are regulated under this part and bring used oil to the collection center in shipments of no more than 55 gallons and under the provisions of this part. Used oil collection centers may accept DIYer used oil also.
(23) "Used oil fuel marketer" means any person who:
(a) directs a shipment of off-specification used oil from its facility to a used oil burner; or
(b) first claims the used oil to be burned for energy recovery meets the used oil fuel specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil is to be burned in accordance with rules for on-site burning in space heaters in accordance with 40 CFR 279.
(24) "Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
(25) "Used oil handler" means a person generating used oil, collecting used oil, transporting used oil, operating a transfer facility or aggregation point, processing or rerefining used oil, or marketing used oil.
(26) "Used oil processor or rerefiner" means a facility that processes used oil.
(27) "Used oil transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days.
(28)
(a) "Used oil transporter" means the following persons unless they are exempted under Subsection (28)(b):
(i) any person who transports used oil;

(ii) any person who collects used oil from more than one generator and transports the collected oil;
(iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who transports collected DIYer used oil from used oil generators, collection centers, aggregation points, or other facilities required to be permitted or registered under this part and where household DIYer used oil is collected; and
(iv) owners and operators of used oil transfer facilities.
(b) "Used oil transporter" does not include:
(i) persons who transport oil on site;
(ii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;
(iii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as allowed under 40 CFR 279.24, Off-site Shipments;
(iv) persons who transport used oil generated by DIYers from the initial generator to a used oil generator, used oil collection center, used oil aggregation point, used oil processor or rerefiner, or used oil burner subject to permitting or registration under this part; or
(v) railroads that transport used oil and are regulated under 49 U.S.C. Subtitle V, Rail Programs, and 49 U.S.C. 5101 et seq., federal Hazardous Materials Transportation Uniform Safety Act.

Amended by Chapter 451, 2015 General Session

19-6-704 Powers and duties of the board.
(1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279, Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil under 40 CFR 279. For these purposes the board shall:
(a) establish by rule conditions and procedures for registration and revocation of registration as a used oil collection center, used oil aggregation point, or DIYer used oil collection center;
(b) provide by rule that used oil aggregation points that do not accept DIYer used oil are required to comply with used oil collection standards under this part, but are not required to be permitted or registered;
(c) establish by rule conditions and fees required to obtain permits and operate as used oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil fuel marketers;
(d) establish by rule the amount of liability insurance or other financial responsibility the applicant shall have to qualify for a permit under Subsection (1)(c);
(e) establish by rule the form and amount of reclamation surety required for reclamation of any site or facility required to be permitted under this part;
(f) establish by rule standards for tracking, analysis, and recordkeeping regarding used oil subject to regulation under this part, including:
(i) manifests for handling and transferring used oil;
(ii) analyses necessary to determine if used oil is on-specification or off-specification;
(iii) records documenting date, quantities, and character of used oil transported, processed, transferred, or sold;

(iv) records documenting persons between whom transactions under this subsection occurred; and
(v) exemption of DIYer used oil collection centers from this subsection except as necessary to verify volumes of used oil picked up by a permitted transporter and the transporter's name and federal EPA identification number;
(g) authorize inspections and audits of facilities, centers, and operations subject to regulation under this part;
(h) establish by rule standards for:
(i) used oil generators;
(ii) used oil collection centers;
(iii) DIYer used oil collection centers;
(iv) aggregation points;
(v) curbside used oil collection programs;
(vi) used oil transporters;
(vii) used oil transfer facilities;
(viii) used oil burners;
(ix) used oil processors and rerefiners; and
(x) used oil marketers;
(i) establish by rule standards for determining on-specification and off-specification used oil and specified mixtures of used oil, subject to Section 19-6-707 regarding rebuttable presumptions;
(j) establish by rule standards for closure, remediation, and response to releases involving used oil; and
(k) establish a public education program to promote used oil recycling and use of used oil collection centers.
(2) The board may:
(a) hold a hearing that is not an adjudicative proceeding relating to any aspect of or matter in the administration of this part;
(b) require retention and submission of records required under this part; or
(c) require audits of records and recordkeeping procedures required under this part and rules made under this part, except that audits of records regarding the fee imposed and collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the commission under Section 19-6-716.

Amended by Chapter 360, 2012 General Session

19-6-705 Powers and duties of the director
(1) The director shall:
(a) administer and enforce the rules and orders of the board;
(b) issue and revoke registration numbers for DIYer used oil collection centers and used oil collection centers;
(c) after public notice and opportunity for a public hearing:
(i) issue or modify a permit under this part;
(ii) deny a permit when the director finds the application is not complete; and
(iii) revoke a permit issued under this section upon a finding the permit holder has failed to ensure compliance with this part;
(d)

(i) coordinate with federal, state, and local government, and other agencies, including entering into memoranda of understanding, to ensure effective regulation of used oil under this part, minimize duplication of regulation, and encourage responsible recycling of used oil; and
(ii) as the department finds appropriate to the implementation of this part, enter into contracts with local health departments to carry out specified functions under this part and be reimbursed by the department in accordance with the contract;
(e) require forms, analyses, documents, maps, and other records as the director finds necessary to permit and inspect an operation regulated under this part;
(f) establish a toll-free telephone line to provide information to the public regarding management of used oil and locations of used oil collection centers; and
(g) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this part.
(2) The director may:
(a) authorize any employee of the division to enter any facility regulated under this part at reasonable times and upon presentation of credentials for the purpose of inspection, audit, or sampling of the used oil site or facility, records, operations, or product;
(b) direct a person whose activities are regulated under this part to take samples for a stated purpose and cause them to be analyzed at that person's expense; and
(c) enforce board rules by issuing orders.

Amended by Chapter 360, 2012 General Session

19-6-706 Disposal of used oil -- Prohibitions.
(1)
(a) Except as authorized by the director, or by rule of the board, or as exempted in this section, a person may not place, discard, or otherwise dispose of used oil:
(i) in any solid waste treatment, storage, or disposal facility operated by a political subdivision or a private entity, except as authorized for the disposal of used oil that is hazardous waste under state law;
(ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water; or
(iii) on the ground.
(b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i) is not guilty of a violation of this section.
(2)
(a) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities under Subsection (1)(a)(i) if:
(i) to the extent reasonably possible all oil has been removed from the item or substance; and
(ii) no free flowing oil remains in the item or substance.
(b)
(i) A nonterne plated used oil filter complies with this section if it is not mixed with hazardous waste and the oil filter has been gravity hot-drained by one of the following methods:
(A) puncturing the filter antidrain back valve or the filter dome end and gravity hot-draining;
(B) gravity hot-draining and crushing;
(C) dismantling and gravity hot-draining; or
(D) any other equivalent gravity hot-draining method that will remove used oil from the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

(ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit.
(iii) This Subsection (2) does not require a person who recycles an engine block to drain a used oil filter or remove a used oil filter from that engine block.
(3) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:
(a) solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the director under this chapter; or
(b) any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under this part.
(4)
(a) This section does not apply to releases to land or water of de minimis quantities of used oil, except:
(i) the release of de minimis quantities of used oil is subject to any regulation or prohibition under the authority of the department; and
(ii) the release of de minimis quantities of used oil is subject to any rule made by the board under this part prohibiting the release of de minimis quantities of used oil to the land or water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).
(b) As used in this Subsection (4), "de minimis quantities of used oil:"
(i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations; and
(ii) does not include used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases.
(5) Used oil may not be used for road oiling, dust control, weed abatement, or other similar uses that have the potential to release used oil in the environment, except in compliance with Section 19-6-711 and board rule.
(6)
(a)
(i) Facilities in existence on July 1, 1993, and subject to this section may apply to the director for an extension of time beyond that date to meet the requirements of this section.
(ii) The director may grant an extension of time beyond July 1, 1993, upon a finding of need under Subsection (6)(b) or (c).
(iii) The total of all extensions of time granted to one applicant under this Subsection (6)(a) may not extend beyond January 1, 1995.
(b) The director upon receipt of a request for an extension of time may request from the facility any information the director finds reasonably necessary to evaluate the need for an extension. This information may include:
(i) why the facility is unable to comply with the requirements of this section on or before July 1, 1993;
(ii) the processes or functions which prevent compliance on or before July 1, 1993;
(iii) measures the facility has taken and will take to achieve compliance; and
(iv) a proposed compliance schedule, including a proposed date for being in compliance with this section.
(c) Additional extensions of time may be granted by the director upon application by the facility and a showing by the facility that:
(i) the additional extension is reasonably necessary; and

(ii) the facility has made a diligent and good faith effort to comply with this section within the time frame of the prior extension.

Amended by Chapter 340, 2015 General Session

19-6-707 Rebuttable presumption regarding used oil mixtures.

(1)
(a) Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261, Subpart D.
(b) This presumption may be rebutted by demonstrating the used oil does not contain hazardous waste, such as by using the analytical method from SW-846, Edition III, to show the used oil does not contain significant concentrations of halogenated hazardous constituents as listed by board rule.

(2)
(a) The rebuttable presumption under Subsection (1) does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed through a tolling agreement to reclaim the metalworking oils or fluids.
(b) The rebuttable presumption under Subsection (1) does apply to metalworking oils or fluids if the oils or fluids are recycled in any other manner or are disposed.

(3)
(a) The rebuttable presumption under Subsection (1) does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units when the CFCs are destined for reclamation.
(b) The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

Enacted by Chapter 283, 1993 General Session

19-6-708 Registration and permit exemptions.

(1) The following persons are subject to Section 19-6-706, but are not subject to regulation as a registered or permitted site or facility under this part:
(a) generators of DIYer used oil; and
(b) farmers who generate in a calendar year an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm.

(2) The following are subject to rules made by the board as necessary to obtain and maintain primacy of the state used oil program under 40 C.F.R. 279, Standards for the Management of Used Oil, but are not subject to any other provision of this part:
(a) mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed, but prior to mixing, the used oil is subject to this part;
(b) used oil transporters and used oil burners conducting incidental processing operations that occur during the normal course of used oil management prior to transportation or burning;
(c) on-specification or off-specification used oil, after it is delivered, as documented by manifest, to a burner authorized to operate by the board or this part and rules made under this part;
(d) used oil burners authorized by the board to burn on-specification or off-specification used oil;
(e) used oil placed directly into a crude oil or natural gas pipeline, after the used oil is introduced into the pipeline;

(f) used oil generated on vessels due to normal shipboard operations is not subject to this part until it is transported ashore;
(g) rerefining distillation bottoms used as feedstock to manufacture asphalt products;
(h) materials reclaimed from used oil, used beneficially, and not burned for energy recovery or used in a manner constituting disposal;
(i) materials derived from used oil that are disposed of or used in a manner constituting disposal, but are subject to regulation under this chapter if the materials are identified as hazardous waste;
(j) wastewater containing a de minimis amount of used oil, as defined in Subsection (3);
(k) used oil contaminated with polychlorinated biphenyls (PCBs), if it is subject to regulation under 40 CFR 761, Toxic Substances Control Act;
(l) used oils that are a hazardous waste under this chapter and may not be recycled; and
(m) used oils that are not hazardous waste under this chapter and cannot be recycled under this part.
(3)
(a) As used in Subsection (2)(j), "de minimis quantities of used oil" means:
(i) small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations; or
(ii) small amounts of oil lost to the wastewater treatment system or unit during washing or draining operations.
(b) "De minimis quantities of used oil" does not include used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

Amended by Chapter 40, 1994 General Session

19-6-709 Reclamation of site or facility.
(1) The owner or operator of any of the following operations shall reclaim the site of the operation to a post-operations land use, as approved by the board in coordination with the department, when the operation ceases or the permit is revoked:
(a) DIYer used oil collection center;
(b) used oil collection center;
(c) used oil aggregation point;
(d) used oil transfer facility; or
(e) used oil processing or rerefining facility.
(2) DIYer used oil collection centers, used oil collection centers, and used oil aggregation points are not required to post a reclamation surety under this part, but are subject to the reclamation requirements of this section.
(3) Facilities and sites required to be permitted under this part shall post a reclamation surety in a form and amount required by board rule prior to issuance of a permit.

Enacted by Chapter 283, 1993 General Session

19-6-710 Registration and permitting of used oil handlers.
(1)
(a) A person may not operate a DIYer used oil collection center or used oil collection center without holding a registration number issued by the director.

(b) The application for registration shall include the following information regarding the DIYer used oil collection center or used oil collection center:
(i) the name and address of the operator;
(ii) the location of the center;
(iii) whether the center will accept DIYer used oil;
(iv) the type of containment or storage to be used;
(v) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;
(vi) emergency spill containment plan;
(vii) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in collecting or storing the used oil, unless waived by the board; and
(viii) any other information the director finds necessary to ensure the safe handling of used oil.
(c) The owner or operator of the center shall notify the director in writing of any changes in the information submitted to apply for registration within 20 days of the change.
(d) To be reimbursed under Section 19-6-717 for collected DIYer used oil, the operator of the DIYer used oil collection center shall maintain and submit to the director records of volumes of DIYer used oil picked up by a permitted used oil transporter, the dates of pickup, and the name and federal EPA identification number of the transporter.
(2)
(a) A person may not act as a used oil transporter or operate a transfer facility without holding a permit issued by the director.
(b) The application for a permit shall include the following information regarding acting as a transporter or operating a transfer facility:
(i) the name and address of the operator;
(ii) the location of the transporter's base of operations or the location of the transfer facility;
(iii) maps of all transfer facilities;
(iv) the methods to be used for collecting, storing, and delivering used oil;
(v) the methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;
(vi) the type of containment or storage to be used;
(vii) the methods of disposing of the waste by-products;
(viii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local government entities;
(ix) emergency spill containment plan;
(x) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in collecting, transporting, or storing the used oil;
(xi) proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and
(xii) any other information the director finds necessary to ensure the safe handling of used oil.
(c) The owner or operator of the facility shall notify the director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.
(3)
(a) A person may not operate a used oil processing or rerefining facility without holding a permit issued by the director.
(b) The application for a permit shall include the following information regarding the used oil processing or rerefining facility:

(i) the name and address of the operator;
(ii) the location of the facility;
(iii) a map of the facility;
(iv) methods to be used to determine if used oil is on-specification or off-specification;
(v) the type of containment or storage to be used;
(vi) the grades of oil to be produced;
(vii) the methods of disposing of the waste by-products;
(viii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;
(ix) emergency spill containment plan;
(x) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in processing or rerefining used oil;
(xi) proof of form and amount of reclamation surety; and
(xii) any other information the director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(4)

(a) A person may not act as a used oil fuel marketer without holding a registration number issued by the director.

(b) The application for a registration number shall include the following information regarding acting as a used oil fuel marketer:
(i) the name and address of the marketer;
(ii) the location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits under this part;
(iii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including any registrations or permits required under this part to collect, process, transport, or store used oil; and
(iv) any other information the director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(5)

(a) Unless exempted under Subsection 19-6-708(2), a person may not burn used oil for energy recovery without holding a permit issued by the director or an authorization from the department.

(b) The application for a permit shall include the following information regarding the used oil burning facility:
(i) the name and address of the operator;
(ii) the location of the facility;
(iii) methods to be used to determine if used oil is on-specification or off-specification;
(iv) the type of containment or storage to be used;
(v) the type of burner to be used;
(vi) the methods of disposing of the waste by-products;
(vii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;
(viii) emergency spill containment plan;
(ix) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in processing or rerefining used oil;

(x) proof of form and amount of reclamation surety for any facility receiving and burning used oil; and
(xi) any other information the director finds necessary to ensure the safe handling of used oil.
(c) The owner or operator of the facility shall notify the director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

Amended by Chapter 360, 2012 General Session

19-6-711 Application of used oil to the land -- Limitations.
(1) A person may not apply used oil to the land as a dust or weed suppressant or for other similar applications to the land unless the person has obtained:
(a) written authorization as required under this chapter; and
(b) a permit from the director.
(2) The applicant for a permit under this section shall demonstrate:
(a) the used oil is not mixed with any hazardous waste;
(b) the used oil does not exhibit any hazardous characteristic other than ignitability; and
(c) how the applicant will minimize the impact on the environment of the use of used oil as a dust or weed suppressant or for other similar applications to the land.
(3) Prior to acting on the application, the director shall provide public notice of the application and shall provide opportunity for public comment under Section 19-6-712.

Amended by Chapter 360, 2012 General Session

19-6-712 Issuance of permits -- Public comments and hearing.
(1) In considering permit applications under this part, the director shall:
(a) ensure the application is complete prior to acting on it;
(b)
(i) publish notice of the permit application and the opportunity for public comment in:
(A) a newspaper of general circulation in the state; and
(B) a newspaper of general circulation in the county where the operation for which the application is submitted is located; and
(ii) as required in Section 45-1-101;
(c) allow the public to submit written comments to the director within 15 days after date of publication;
(d) consider timely submitted public comments and the criteria established in this part and by rule in determining whether to grant the permit; and
(e) send a written copy of the decision to the applicant and to persons submitting timely comments under Subsection (1)(c).
(2) The director's decision under this section may be appealed to the executive director as provided by rule.

Amended by Chapter 360, 2012 General Session

19-6-714 Recycling fee on sale of oil.
(1) On and after October 1, 1993, a recycling fee of $.04 per quart or $.16 per gallon is imposed upon the first sale in Utah by a lubricating oil vendor of lubricating oil. The lubricating oil vendor shall collect the fee at the time the lubricating oil is sold.
(2) A fee under this section may not be collected on sales of lubricating oil:

(a) shipped outside the state;
(b) purchased in five-gallon or smaller containers and used solely in underground mining operations; or
(c) in bulk containers of 55 gallons or more.
(3) This fee is in addition to all other state, county, or municipal fees and taxes imposed on the sale of lubricating oil.
(4) The exemptions from sales and use tax provided in Section 59-12-104 do not apply to this part.
(5) The commission may make rules to implement and enforce the provisions of this section.

Amended by Chapter 297, 2011 General Session

19-6-715 Recycling fee collection procedures.
(1) A lubricating oil vendor shall pay the fee collected under Section 19-6-714 to the commission:
(a) monthly on or before the last day of the month immediately following the last day of the previous month if:
(i) the lubricating oil vendor is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or
(ii) the lubricating oil vendor is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or
(b) quarterly on or before the last day of the month immediately following the last day of the previous quarter if the lubricating oil vendor is required to file a sales and use tax return with the commission quarterly under Section 59-12-108.
(2) A lubricating oil vendor may retain a maximum of 2% of the recycling fee it collects under Section 19-6-714 for the costs of collecting the fee.
(3) The payment of the fee to the commission shall be accompanied by a form provided by the commission.

Amended by Chapter 309, 2011 General Session

19-6-716 Fee collection by commission -- Administrative charge.
(1) The commission shall administer, collect, and enforce the fee authorized under Section 19-6-714 pursuant to the same procedures used in the administration, collection, and enforcement of the sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, and Title 59, Chapter 1, General Taxation Policies.
(2) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a fee under Section 19-6-714.

Amended by Chapter 309, 2011 General Session

19-6-717 Used oil collection incentive payment.
(1)
(a) The division shall pay a recycling incentive to registered DIYer used oil collection centers and curbside collection programs approved by the director for each gallon of used oil collected from DIYer used oil generators on and after July 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor, rerefiner, burner, or to another disposal method authorized by board rule.
(b) Payment of the incentive is subject to Section 19-6-720 regarding priorities.

(2) The board shall by rule establish the amount of the payment, which shall be $.16 per gallon unless the board determines the incentive should be:
  (a) reduced to ensure adequate funds to meet priorities set in Section 19-6-720 and to reimburse all qualified operations under this section; or
  (b) increased to promote collection of used oil under this part and the funds are available in the account created under Section 19-6-719 after meeting the priorities set in Section 19-6-720.

Amended by Chapter 360, 2012 General Session

19-6-718 Limitations on liability of operator of collection center.

(1) Subject to Subsection (2), a person may not recover from the owner, operator, or lessor of a DIYer used oil collection center any costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if the owner, operator, or lessor:
  (a) operates the DIYer used oil collection center in compliance with this part and rules made under this part and the director upon inspection finds the center is in compliance with this part and rules made under this part;
  (b) does not mix any used oil collected with any hazardous waste or PCBs or with any material that would render the resulting mixture as a hazardous waste;
  (c) does not knowingly accept any used oil containing hazardous waste or PCBs;
  (d) ensures the used oil is transported from the center by a permitted used oil transporter; and
  (e) complies with Section 114(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(2)
  (a) This section applies only to that portion of a used oil collection center used for the collection of DIYer used oil under this part.
  (b) This section does not apply to willful or grossly negligent activities of the owner, operator, or lessor in operating the DIYer used oil collection center.
  (c) This section does not affect or modify in any way the obligations or liability of any person other than the owner, operator, or lessor under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous waste.
  (d) For the purposes of this section, the owner, operator, or lessor of a DIYer used oil collection center may presume a quantity of not more than five gallons, except under Subsection (2)(e), of used oil accepted from a member of the public is not mixed with a hazardous waste or PCBs if:
    (i) the oil is accepted in accordance with the inspection and identification procedures required by board rule; and
    (ii) the owner, operator, or lessor operates the DIYer used oil collection center in good faith and in compliance with this part and rules made under this part.
  (e) The owner, operator, or lessor of a DIYer used oil collection center may claim the presumption under Subsection (2)(d) for a quantity of more than five gallons but not more than 55 gallons, if the quantity received is:
    (i) from a farmer exempted under Subsection 19-6-708(1)(b);
    (ii) generated by farming equipment; and
    (iii) handled in accordance with all requirements of this section.

(f) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a DIYer used oil collection center regarding that person's services or functions other than accepting DIYer used oil under this part.

Amended by Chapter 360, 2012 General Session

19-6-719 Used oil collection account.

There is created in the General Fund a restricted account known as the Used Oil Collection Administration Account. All money received by the state from the recycling fee placed on lubricating oil under this part, all permit fees, all penalties imposed under this part, and all money received as a grant or donation to be used for the administration of this part shall be placed in this account to be appropriated to the division for the management of DIYer used oil under this part subject to the priorities in Section 19-6-720.

Enacted by Chapter 283, 1993 General Session

19-6-720 Grants and donations -- Support for programs -- Priorities.

(1) The division may solicit or request and receive gifts, grants, donations, and other assistance from any source. Funds or resources received shall be deposited in the account created in Section 19-6-719 and shall be appropriated to the division for the management of DIYer used oil under this part subject to priorities set in Subsection (2).

(2) Appropriations received by the division shall be expended, as available, for the management of DIYer used oil under this part in the following order of priority:

(a) first, division and board costs of implementation;

(b) second, recycling incentive payments under Section 19-6-717;

(c) third, public education programs;

(d) fourth, awarding grants as funds are available for the establishment of the following, with emphasis on providing used oil collection facilities and programs in rural areas:

(i) used oil collection centers; and

(ii) curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of curbside collection programs; and

(e) fifth, provide funding to local health departments for enforcement of the management of DIYer used oil under this part in coordination with the board.

(3) In awarding grants under Subsection (2)(d), the board shall work with governmental entities in areas of the state where used oil collection centers are limited or do not exist, or where public access to the centers is limited, to promote the establishment of DIYer used oil collection centers.

Enacted by Chapter 283, 1993 General Session

19-6-721 Violations -- Proceedings -- Orders.

(1) A person who violates any provision of this part or any order, permit, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than $10,000 per day for each day of violation, in addition to any fine otherwise imposed for violation of this part.

(2)

(a) The director may bring suit in the name of the state to restrain the person from continuing the violation and to require the person to perform necessary remediation.

(b) Suit under Subsection (2)(a) may be brought in any court in the state having jurisdiction in the county of residence of the person charged or in the county where the violation is alleged to have occurred.
(c) The court may grant prohibitory and mandatory injunctions, including temporary restraining orders.
(3) When the director finds a situation exists in violation of this part that presents an immediate threat to the public health or welfare, the director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures Act.
(4) All penalties collected under this section shall be deposited in the account created in Section 19-6-719.

Amended by Chapter 360, 2012 General Session

19-6-722 Criminal penalties.
(1) A violation of any applicable provision of this part is a class A misdemeanor, except:
(a) any violation involving hazardous waste is governed by provisions of this chapter that address hazardous waste;
(b) any violation of Section 19-6-714 or 19-6-715 regarding the recycling fee is subject to penalties authorized under Section 19-6-716.
(2) Any person who knowingly conducts any activities identified in Subsection 19-6-113(3) regarding hazardous waste in conjunction with any operations under this part is subject to the enforcement actions and penalties identified in Subsection 19-6-113(4).
(3) All penalties collected under this section shall be deposited in the account created in Section 19-6-719.

Amended by Chapter 271, 1998 General Session

19-6-723 Local ordinances regarding used oil.
Any political subdivision of the state may enact and enforce ordinances regarding the management of used oil that are consistent with this part.

Enacted by Chapter 283, 1993 General Session

Part 8
Waste Tire Recycling Act

19-6-801 Title.
This part is known as the "Waste Tire Recycling Act."

Renumbered and Amended by Chapter 51, 2000 General Session

19-6-802 Legislative findings.
(1) The Legislature finds that the disposal of waste tires is a matter of statewide concern and that recycling of waste tires should be promoted in light of the health and environmental benefits.

(2) The Legislature further finds that the recycling of waste tires will decrease the number of tires which are disposed of in landfills and will reduce the health and safety hazards posed by existing stockpiles of waste tires.
(3) It is the intent of the Legislature in adopting this part to encourage the development of the recycling industry and the development of markets for recycled products.

Renumbered and Amended by Chapter 51, 2000 General Session

19-6-803 Definitions.

As used in this part:
(1) "Abandoned waste tire pile" means a waste tire pile regarding which the local department of health has not been able to:
(a) locate the persons responsible for the tire pile; or
(b) cause the persons responsible for the tire pile to remove it.
(2)
(a) "Beneficial use" means the use of chipped tires in a manner that is not recycling, storage, or disposal, but that serves as a replacement for another product or material for specific purposes.
(b) "Beneficial use" includes the use of chipped tires:
(i) as daily landfill cover;
(ii) for civil engineering purposes;
(iii) as low-density, light-weight aggregate fill; or
(iv) for septic or drain field construction.
(c) "Beneficial use" does not include the use of waste tires or material derived from waste tires:
(i) in the construction of fences; or
(ii) as fill, other than low-density, light-weight aggregate fill.
(3) "Board" means the Waste Management and Radiation Control Board created under Section 19-1-106.
(4) "Chip" or "chipped tire" means a two inch square or smaller piece of a waste tire.
(5) "Commission" means the Utah State Tax Commission.
(6)
(a) "Consumer" means a person who purchases a new tire to satisfy a direct need, rather than for resale.
(b) "Consumer" includes a person who purchases a new tire for a motor vehicle to be rented or leased.
(7) "Crumb rubber" means waste tires that have been ground, shredded, or otherwise reduced in size such that the particles are less than or equal to 3/8 inch in diameter and are 98% wire free by weight.
(8) "Director" means the director of the Division of Waste Management and Radiation Control.
(9) "Disposal" means the deposit, dumping, or permanent placement of any waste tire in or on any land or in any water in the state.
(10) "Dispose of" means to deposit, dump, or permanently place any waste tire in or on any land or in any water in the state.
(11) "Division" means the Division of Waste Management and Radiation Control created in Section 19-1-105.
(12) "Fund" means the Waste Tire Recycling Fund created in Section 19-6-807.
(13) "Landfill waste tire pile" means a waste tire pile:
(a) located within the permitted boundary of a landfill operated by a governmental entity; and

(b) consisting solely of waste tires brought to a landfill for disposal and diverted from the landfill waste stream to the waste tire pile.

(14) "Local health department" means the local health department, as defined in Section 26A-1-102, with jurisdiction over the recycler.

(15) "Materials derived from waste tires" means tire sections, tire chips, tire shreddings, rubber, steel, fabric, or other similar materials derived from waste tires.

(16) "Mobile facility" means a mobile facility capable of cutting waste tires on site so the waste tires may be effectively disposed of by burial, such as in a landfill.

(17) "New motor vehicle" means a motor vehicle which has never been titled or registered.

(18) "Passenger tire equivalent" means a measure of mixed sizes of tires where each 25 pounds of whole tires or material derived from waste tires is equal to one waste tire.

(19) "Proceeds of the fee" means the money collected by the commission from payment of the recycling fee including interest and penalties on delinquent payments.

(20) "Recycler" means a person who:

(a) annually uses, or can reasonably be expected within the next year to use, a minimum of 100,000 waste tires generated in the state or 1,000 tons of waste tires generated in the state to recover energy or produce energy, crumb rubber, chipped tires, or an ultimate product; and

(b) is registered as a recycler in accordance with Section 19-6-806.

(21) "Recycling fee" means the fee provided for in Section 19-6-805.

(22) "Shredded waste tires" means waste tires or material derived from waste tires that has been reduced to a six inch square or smaller.

(23)

(a) "Storage" means the placement of waste tires in a manner that does not constitute disposal of the waste tires.

(b) "Storage" does not include:

(i) the use of waste tires as ballast to maintain covers on agricultural materials or to maintain covers at a construction site;

(ii) the storage for five or fewer days of waste tires or material derived from waste tires that are to be recycled or applied to a beneficial use; or

(iii) the storage of a waste tire before the tire is:

(A) resold wholesale or retail; or

(B) recapped.

(24)

(a) "Store" means to place waste tires in a manner that does not constitute disposal of the waste tires.

(b) "Store" does not include:

(i) to use waste tires as ballast to maintain covers on agricultural materials or to maintain covers at a construction site; or

(ii) to store for five or fewer days waste tires or material derived from waste tires that are to be recycled or applied to a beneficial use.

(25) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a vehicle in which a person or property is or may be transported or drawn upon a highway.

(26) "Tire retailer" means any person engaged in the business of selling new tires either as replacement tires or as part of a new vehicle sale.

(27)

(a) "Ultimate product" means a product that has as a component materials derived from waste tires and that the director finds has a demonstrated market.

(b) "Ultimate product" includes pyrolized materials derived from:

(i) waste tires; or
(ii) chipped tires.
(c) "Ultimate product" does not include a product regarding which a waste tire remains after the product is disposed of or disassembled.
(28) "Waste tire" means:
(a) a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect; or
(b) a tire that a tire retailer removes from a vehicle for replacement with a new or used tire.
(29) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.
(30)
(a) "Waste tire transporter" means a person or entity engaged in picking up or transporting at one time more than 10 whole waste tires, or the equivalent amount of material derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal.
(b) "Waste tire transporter" includes any person engaged in the business of collecting, hauling, or transporting waste tires or who performs these functions for another person, except as provided in Subsection (30)(c).
(c) "Waste tire transporter" does not include:
(i) a person transporting waste tires generated solely by:
(A) that person's personal vehicles;
(B) a commercial vehicle fleet owned or operated by that person or that person's employer;
(C) vehicles sold, leased, or purchased by a motor vehicle dealership owned or operated by that person or that person's employer; or
(D) a retail tire business owned or operated by that person or that person's employer;
(ii) a solid waste collector operating under a license issued by a unit of local government as defined in Section 63M-5-103, or a local health department;
(iii) a recycler of waste tires;
(iv) a person transporting tires by rail as a common carrier subject to federal regulation; or
(v) a person transporting processed or chipped tires.

Amended by Chapter 451, 2015 General Session

19-6-804 Restrictions on disposal and transfer of tires -- Penalties.
(1)
(a) An individual, including a waste tire transporter, may not dispose of more than four whole tires at one time in a landfill or any other location in the state authorized by the director to receive waste tires, except for purposes authorized by board rule.
(b) Tires are exempt from this Subsection (1) if the original tire has a rim diameter greater than 24.5 inches.
(c) No person, including a waste tire transporter, may dispose of waste tires or store waste tires in any manner not allowed under this part or rules made under this part.
(2) The operator of the landfill or other authorized location shall direct that the waste tires be disposed in a designated area to facilitate retrieval if a market becomes available for the disposed waste tires or material derived from waste tires.
(3) An individual, including a waste tire transporter, may dispose of shredded waste tires in a landfill in accordance with Section 19-6-812, and may also, without reimbursement, dispose in a landfill materials derived from waste tires that do not qualify for reimbursement under Section 19-6-812, but the landfill shall dispose of the material in accordance with Section 19-6-812.

(4) A tire retailer may only transfer ownership of a waste tire described in Subsection 19-6-803(28)(b) to:
(a) a person who purchases it for the person's own use and not for resale; or
(b) a waste tire transporter that:
(i) is registered in accordance with Section 19-6-806; and
(ii) agrees to transport the tire to:
(A) a tire retailer that sells the tire wholesale or retail; or
(B) a recycler.
(5)
(a) An individual, including a waste tire transporter, violating this section is subject to enforcement proceedings and a civil penalty of not more than $100 per waste tire or per passenger tire equivalent disposed of in violation of this section. A warning notice may be issued prior to taking further enforcement action under this Subsection (5).
(b) A civil proceeding to enforce this section and collect penalties under this section may be brought in the district court where the violation occurred by the director, the local health department, or the county attorney having jurisdiction over the location where the tires were disposed in violation of this section.
(c) Penalties collected under this section shall be deposited in the fund.

Amended by Chapter 263, 2012 General Session
Amended by Chapter 360, 2012 General Session

19-6-805 Recycling fee.
(1)
(a) A recycling fee is imposed upon each purchase from a tire retailer of a new tire by a consumer. The fee shall be paid by the consumer to the tire retailer at the time the new tire is purchased.
(b) The recycling fee does not apply to recapped or resold used tires.
(2) The fee for each tire with a rim diameter up to and including 24.5 inches, single or dual bead capacity is $1.

Amended by Chapter 165, 2001 General Session

19-6-806 Registration of waste tire transporters and recyclers.
(1)
(a) The director shall register each applicant for registration to act as a waste tire transporter if the applicant meets the requirements of this section.
(b) An applicant for registration as a waste tire transporter shall:
(i) submit an application in a form prescribed by the director;
(ii) pay a fee as determined by the board under Section 63J-1-504;
(iii) provide the name and business address of the operator;
(iv) provide proof of liability insurance or other form of financial responsibility in an amount determined by board rule, but not more than $300,000, for any liability the waste tire transporter may incur in transporting waste tires; and
(v) meet requirements established by board rule.
(c) The holder of a registration under this section shall advise the director in writing of any changes in application information provided to the director within 20 days of the change.

(d) If the director has reason to believe a waste tire transporter has disposed of tires other than as allowed under this part, the director shall conduct an investigation and, after complying with the procedural requirements of Title 63G, Chapter 4, Administrative Procedures Act, may revoke the registration.

(2)

(a) The director shall register each applicant for registration to act as a waste tire recycler if the applicant meets the requirements of this section.

(b) An applicant for registration as a waste tire recycler shall:

(i) submit an application in a form prescribed by the director;

(ii) pay a fee as determined by the board under Section 63J-1-504;

(iii) provide the name and business address of the operator of the recycling business;

(iv) provide proof of liability insurance or other form of financial responsibility in an amount determined by board rule, but not more than $300,000, for any liability the waste tire recycler may incur in storing and recycling waste tires;

(v) engage in activities as described under the definition of recycler in Section 19-6-803; and

(vi) meet requirements established by board rule.

(c) The holder of a registration under this section shall advise the director in writing of any changes in application information provided to the director within 20 days of the change.

(d) If the director has reason to believe a waste tire recycler has falsified any information provided in an application for partial reimbursement under this section, the director shall, after complying with the procedural requirements of Title 63G, Chapter 4, Administrative Procedures Act, revoke the registration.

(3) The board shall establish a uniform fee for registration which shall be imposed by any unit of local government or local health department that requires a registration fee as part of the registration of waste tire transporters or waste tire recyclers.

Amended by Chapter 360, 2012 General Session

19-6-807 Special revenue fund -- Creation -- Deposits.

(1) There is created an expendable special revenue fund entitled the "Waste Tire Recycling Fund."

(2) The fund shall consist of:

(a) the proceeds of the fee imposed under Section 19-6-805; and

(b) penalties collected under this part.

(3) Money in the fund shall be used for:

(a) partial reimbursement of the costs of transporting, processing, recycling, or disposing of waste tires as provided in this part; and

(b) payment of administrative costs of local health departments as provided in Section 19-6-817.

(4) The Legislature may appropriate money from the fund to pay for costs of the Department of Environmental Quality in administering and enforcing this part.

Amended by Chapter 400, 2013 General Session

19-6-808 Payment of recycling fee -- Administrative charge.

(1) A tire retailer shall pay the recycling fee to the commission:

(a) monthly on or before the last day of the month immediately following the last day of the previous month if:

(i) the tire retailer is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or

(ii) the tire retailer is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or
(b) quarterly on or before the last day of the month immediately following the last day of the previous quarter if the tire retailer is required to file a sales and use tax return with the commission quarterly under Section 59-12-108.
(2) The payment shall be accompanied by a form prescribed by the commission.
(3)
(a) The proceeds of the fee shall be transferred by the commission to the fund for payment of partial reimbursement.
(b) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a fee under Section 19-6-805.
(4)
(a) The commission shall administer, collect, and enforce the fee authorized under this part in accordance with the same procedures used in the administration, collection, and enforcement of the state sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, and Title 59, Chapter 1, General Taxation Policies.
(b) A tire retailer may retain 2-1/2% of the recycling fee collected under this part for the cost of collecting the fee.
(c) The exemptions provided in Section 59-12-104 do not apply to this part.
(5) The fee imposed by this part is in addition to all other state, county, or municipal fees and taxes imposed on the sale of new tires.

Amended by Chapter 309, 2011 General Session

19-6-809 Partial reimbursement.
(1)
(a) A recycler may submit an application under Section 19-6-813 to the local health department having jurisdiction over the applicant's business address for partial reimbursement for the cost of transporting and processing a waste tire or a material derived from a waste tire that:
(i) meets the requirements of Subsections (3) and (4); and
(ii) is used within the state for:
(A) energy recovery or production;
(B) the creation of an ultimate product;
(C) the production of crumb rubber, if a contract exists for the sale of the crumb rubber for use, either within or outside the state, as a component in an ultimate product;
(D) the production of a chipped tire, if:
(I) the chipped tire is beneficially used, either within or outside the state; and
(II) a contract exists for the sale of the chipped tire; or
(E) a use defined in rule as recycling.
(b) A recycler is not eligible to receive partial reimbursement for transportation or processing costs related to the creation of an ultimate product if:
(i) the recycler used crumb rubber as a component of the ultimate product; and
(ii) the recycler, or another recycler, previously received under this section partial reimbursement for transportation or processing costs related to the production of the crumb rubber.
(c) A recycler who qualifies under this section for partial reimbursement may waive the reimbursement and request in writing that the reimbursement be paid to a person who:
(i) delivers a waste tire or material derived from a waste tire to the recycler; or

(ii) processes the waste tire before the recycler receives the waste tire or a material derived from the waste tire for recycling.
(d) A recycler is not eligible to receive partial reimbursement for transportation or processing costs for baling:
(i) whole waste tires; or
(ii) materials derived from waste tires that are larger than shredded waste tires.
(2) Subject to the limitations in Section 19-6-816, a recycler is entitled to:
(a) $65 as partial reimbursement for each ton of waste tires or material derived from waste tires converted to crumb rubber, if a contract exists for the sale of the crumb rubber for use as a component in an ultimate product;
(b) $50 as partial reimbursement for each ton of waste tires or material derived from waste tires recycled, other than as crumb rubber; and
(c) $20 as partial reimbursement for each ton of chipped tires used for a beneficial use.
(3)
(a) A recycler is eligible for a partial reimbursement if the recycler establishes, in cooperation with a tire retailer or transporter, or both, a reasonable schedule to remove waste tires in sufficient quantities to allow for economic transportation of waste tires located in a municipality, as defined in Section 10-1-104, within the state.
(b) A recycler who is eligible for partial reimbursement under Subsection (3)(a) may also receive partial reimbursement for recycling a tire received from a location within the state other than those associated with a retail tire business, including a waste tire from a waste tire pile or an abandoned waste tire pile, as provided by Section 19-6-810.
(4) A recycler who applies for partial reimbursement under Subsection (1) shall demonstrate to the local health department identified in Subsection (1)(a) that:
(a) the waste tire or material derived from a waste tire that qualifies for the reimbursement was:
(i)
(A) removed and transported by a registered waste tire transporter, a recycler, or a tire retailer; or
(B) generated by a private person who:
(I) is not a waste tire transporter as defined in Section 19-6-803; and
(II) brings the waste tire to the recycler; and
(ii) generated in the state; and
(b) if the tire is from a waste tire pile or abandoned waste tire pile, the recycler complied with the requirements of Section 19-6-810.

Amended by Chapter 263, 2012 General Session

19-6-810 Recycling waste tires from abandoned waste tire piles and other waste tire piles.
(1) A recycler may be reimbursed for recycling or beneficial use of waste tires from an abandoned waste tire pile within the state if:
(a) prior to recycling or the beneficial use of any of the waste tires, the recycler receives an affidavit from the local health department of the jurisdiction where the waste tire pile is located, stating:
(i) the waste tire pile is abandoned; and
(ii) the local health department has not been able to:
(A) locate the persons responsible for the waste tire pile; or
(B) cause the persons responsible for the waste tire pile to remove it;
(b) the waste tire transporter who transports the waste tires to the recycler:

(i) is registered;
(ii) has received from the local health department an affidavit stating it has authorized the transporter to remove the waste tires and deliver them to a recycler; and
(iii) provides a copy of the affidavit to the recycler; and
(c) the recycler provides to the local health department:
(i) proof of compliance with this Subsection (1) in the required form; and
(ii) the information required under Section 19-6-809.
(2) A recycler may receive partial reimbursement for recycling or the beneficial use of waste tires from waste tire piles within the state that are not abandoned if:
(a) prior to recycling or the beneficial use of any of the waste tires, the recycler receives an affidavit from the local health department of the jurisdiction where the waste tire pile is located, stating the waste tire pile is not abandoned;
(b) the recycler obtains an affidavit from the owner of the waste tire pile or the owner's authorized designee stating:
(i) the waste tires are from a pile to which no tires have been added after June 30, 1991; or
(ii) if the waste tires are from a waste tire pile to which waste tires have been added after June 30, 1991, all the waste tires provided to the recycler were generated within the state;
(c) the waste tires are transported to the recycler by a registered waste tire transporter, who provides a manifest to the recycler; and
(d) the recycler provides to the local health department:
(i) proof of compliance with this Subsection (2) in the required form; and
(ii) the information required under Section 19-6-809.

Amended by Chapter 165, 2001 General Session

19-6-811 Funding for management of certain landfill or abandoned waste tire piles -- Limitations.

(1)
(a) A county or municipality may apply to the director for payment from the fund for costs of a waste tire transporter or recycler to remove waste tires from an abandoned waste tire pile or a landfill waste tire pile operated by a state or local governmental entity and deliver the waste tires to a recycler.
(b) The director may authorize a maximum reimbursement of:
(i) 100% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the waste tires to a recycler, if no waste tires have been added to the abandoned waste tire pile or landfill waste tire pile on or after July 1, 2001; or
(ii) 60% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the waste tires to a recycler, if waste tires have been added to the abandoned waste tire pile or landfill waste tire pile on or after July 1, 2001.
(c) The director may deny an application for payment of waste tire pile removal and delivery costs, if the director determines that payment of the costs will result in there not being sufficient money in the fund to pay expected reimbursements for recycling or beneficial use under Section 19-6-809 during the next quarter.
(2)
(a) The maximum number of miles for which the director may reimburse for transportation costs incurred by a waste tire transporter under this section, is the number of miles, one way,

between the location of the waste tire pile and the State Capitol Building, in Salt Lake City, Utah, or to the recycler, whichever is less.

(b) This maximum number of miles available for reimbursement applies regardless of the location of the recycler to which the waste tires are transported under this section.

(c) The director shall, upon request, advise any person preparing a bid under this section of the maximum number of miles available for reimbursement under this Subsection (2).

(d) The cost under this Subsection (2) shall be calculated based on the cost to transport one ton of waste tires one mile.

(3)

(a) The county or municipality shall through a competitive bidding process make a good faith attempt to obtain a bid for the removal of the landfill or abandoned waste tire pile and transport to a recycler.

(b) The county or municipality shall submit to the director:

(i)

(A)

(I) a statement from the local health department stating the landfill waste tire pile is operated by a state or local governmental entity and consists solely of waste tires diverted from the landfill waste stream;

(II) a description of the size and location of the landfill waste tire pile; and

(III) landfill records showing the origin of the waste tires; or

(B) a statement from the local health department that the waste tire pile is abandoned; and

(ii)

(A) the bid selected by the county or municipality; or

(B) if no bids were received, a statement to that fact.

(4)

(a) If a bid is submitted, the director shall determine if the bid is reasonable, taking into consideration:

(i) the location and size of the landfill or abandoned waste tire pile;

(ii) the number and size of any other landfill or abandoned waste tire piles in the area; and

(iii) the current market for waste tires of the type in the landfill or abandoned waste tire pile.

(b) The director shall advise the county or municipality within 30 days of receipt of the bid whether or not the bid is determined to be reasonable.

(5)

(a) If the bid is found to be reasonable, the county or municipality may proceed to have the landfill or abandoned waste tire pile removed pursuant to the bid.

(b) The county or municipality shall advise the director that the landfill or abandoned waste tire pile has been removed.

(6) The recycler or waste tire transporter that removed the landfill or abandoned waste tires pursuant to the bid shall submit to the director a copy of the manifest, which shall state:

(a) the number or tons of waste tires transported;

(b) the location from which they were removed;

(c) the recycler to which the waste tires were delivered; and

(d) the amount charged by the transporter or recycler.

(7) Upon receipt of the information required under Subsection (6), and determination that the information is complete, the director shall, within 30 days after receipt authorize the Division of Finance to reimburse the waste tire transporter or recycler the amount established under this section.

Amended by Chapter 360, 2012 General Session

19-6-812 Landfilling shredded tires -- Reimbursement.

(1) A waste tire may be disposed of in a landfill if:
  (a) the land fill is operated in compliance with the requirements of Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;
  (b) the waste tire is shredded; and
  (c) the waste tire is stored in a segregated cell or other landfill facility that ensures that the disposed shredded waste tire is in a clean and accessible condition so that the waste tire may be reasonably retrieved and recycled at a future time.
(2) The owner or operator of a landfill may apply to the local health department having jurisdiction over the applicant's business address for reimbursement of $20 per ton of waste tires placed in the landfill if:
  (a) the waste tires are disposed in compliance with Subsection (1);
  (b) the waste tires are generated from within the state; and
  (c) the application includes:
    (i) the site from which the waste tires are removed;
    (ii) the landfill where the waste tires are disposed; and
    (iii) the amount of shredded tires disposed.
(3) An application for reimbursement under this section is substantially the same as the application process required of recyclers applying for partial reimbursement under Section 19-6-813.
(4) A waste tire, for which reimbursement is paid under this section, is not eligible for additional reimbursement under this part.

Amended by Chapter 66, 2008 General Session

19-6-813 Application for partial reimbursement -- Penalty.

(1) An application for partial reimbursement shall be in the format prescribed by the local health department and shall include:
  (a) the recycler's name and a brief description of the recycler's business;
  (b) the quantity, in tons, of waste tires recycled or used in a beneficial use;
  (c) originals or copies of log books, receipts, bills of lading, or other similar documents to establish the tonnage of waste tires recycled or used in a beneficial use;
  (d) a description of how the waste tires were recycled;
  (e) proof that is satisfactory to the local health department that the waste tires were recycled or used in a beneficial use; and
  (f) the affidavit of the recycler warranting that the recycled waste tires or waste tires used for a beneficial use for which reimbursement is sought meet the requirements of Subsection 19-6-809(4).
(2) In addition to any other penalty imposed under Section 19-6-821 or 19-6-822 or by any other law, any person who knowingly or intentionally provides false information to the local health department under Subsection (1):
  (a) is ineligible to receive any further reimbursement under this part; and
  (b) shall return to the Division of Finance any reimbursement previously received for deposit in the fund.

Amended by Chapter 256, 2002 General Session

19-6-814 Local health department responsibility.

(1) A local health department that has received an application for partial reimbursement from a recycler shall within 15 calendar days after receiving the application:
  (a) review the application for completeness;
  (b) conduct an on-site investigation of the recycler's waste tire use if the application is the initial application of the recycler; and
  (c) submit the recycler's application for partial reimbursement together with a brief written report of the results of the investigation and the dollar amount approved for payment to the Division of Finance.
(2) If the local health department approves a dollar amount for partial reimbursement which is less than the amount requested by the recycler, the local health department shall submit its written report of the investigation and recommendation to the recycler at least five days prior to submitting the report and recommendation to the Division of Finance.

Amended by Chapter 297, 2011 General Session

19-6-815 Payment by Division of Finance.

(1) The Division of Finance is authorized to pay the recycler partial reimbursements described in Section 19-6-809 from the fund.
(2) The Division of Finance shall pay the dollar amount of partial reimbursement approved by the local health department to the recycler within the next payment period established by rule of the Division of Finance, after receipt of the local health department's report and recommendation.

Amended by Chapter 256, 2002 General Session

19-6-816 Limitations on reimbursement.

(1) The costs reimbursed under this part may not exceed the money in the fund.
(2) If applications for reimbursement under Section 19-6-809, 19-6-811, or 19-6-812 during any month exceed the money in the fund, the Division of Finance shall prorate the amount of all claims for reimbursement for the month and defer payment of the remainder.
(3) The amount remaining unpaid on a claim for reimbursement shall be treated as a new application for reimbursement in the next succeeding month until the unpaid amount is $500 or less, at which time the balance of the claim shall be paid in full.

Amended by Chapter 256, 2002 General Session

19-6-817 Administrative fees to local health departments -- Reporting by local health departments.

(1)
  (a) The Division of Finance shall pay quarterly to the local health departments from the fund $5 per ton of tires for which a partial reimbursement is made under this part.
  (b) The payment under Subsection (1)(a) shall be allocated among the local health departments in accordance with recommendations of the Utah Association of Local Health Officers.
  (c) The recommendation shall be based on the efforts expended and the costs incurred by the local health departments in enforcing this part and rules made under this part.
(2)

(a) Each local health department shall track all waste tires removed from abandoned waste tire piles within its jurisdiction, to determine the amount of waste tires removed and the recycler to which they are transported.
(b) The local health department shall report this information quarterly to the director.

Amended by Chapter 360, 2012 General Session

19-6-818 Local health department rules.
(1) In accordance with Section 26A-1-121, the local health department shall make regulations to:
(a) develop an application form; and
(b) establish the procedure to apply for reimbursement.
(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to implement this part.
(3) The local health departments shall take into consideration the removal schedule of tire transporters or recyclers in a geographical area when making regulations governing the storage of waste tires at any business that generates waste tires, pending removal of those waste tires for recycling.

Amended by Chapter 382, 2008 General Session

19-6-819 Powers and duties of the board.
(1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part. For these purposes the board shall establish by rule:
(a) conditions and procedures for acting to issue or revoke a registration as a waste tire recycler or transporter under Section 19-6-806;
(b) the amount of liability insurance or other financial responsibility the applicant is required to have to qualify for registration under Section 19-6-806, which amount may not be more than $300,000 for any liability the waste tire transporter or recycler may incur in recycling or transporting waste tires;
(c) the form and amount of financial assurance required for a site or facility used to store waste tires, which amount shall be sufficient to ensure the cleanup or removal of waste tires from that site or facility;
(d) standards and required documentation for tracking and record keeping of waste tires subject to regulation under this part, including:
(i) manifests for handling and transferring waste tires;
(ii) records documenting date, quantities, and size or type of waste tires transported, processed, transferred, or sold;
(iii) records documenting persons between whom transactions under this Subsection (1)(d) occurred and the amounts of waste tires involved in those transactions; and
(iv) requiring that documentation under this Subsection (1)(d) be submitted on a quarterly basis, and that this documentation be made available for public inspection;
(e) authorize inspections and audits of waste tire recycling, transportation, or storage facilities and operations subject to this part;
(f) standards for payments authorized under Sections 19-6-809, 19-6-810, 19-6-811, and 19-6-812;
(g) regarding applications to the director for reimbursements under Section 19-6-811, the content of the reimbursement application form and the procedure to apply for reimbursement;
(h) requirements for the storage of waste tires, including permits for storage;

(i) the types of energy recovery or other appropriate environmentally compatible uses eligible for reimbursement, which:
(i) shall include pyrolization, but not retreading; and
(ii) shall apply to all waste tire recycling and beneficial use reimbursements within the state;
(j) the applications of waste tires that are not eligible for reimbursement;
(k) the applications of waste tires that are considered to be the storage or disposal of waste tires; and
(l) provisions governing the storage or disposal of waste tires, including the process for issuing permits for waste tire storage sites.
(2) The board may:
(a) require retention and submission of the records required under this part;
(b) require audits of the records and record keeping procedures required under this part and rules made under this part, except that audits of records regarding the fee imposed and collected by the commission under Sections 19-6-805 and 19-6-808 are the responsibility of the commission; and
(c) as necessary, make rules requiring additional information as the board determines necessary to effectively administer Section 19-6-812, which rules may not place an undue burden on the operation of landfills.

Amended by Chapter 360, 2012 General Session

19-6-820 Powers and duties of the director.
(1) The director shall:
(a) administer and enforce the rules and orders of the board;
(b) issue and revoke registrations for waste tire recyclers and transporters; and
(c) require forms, analyses, documents, maps, and other records as the director finds necessary to:
(i) issue recycler and transporter registrations;
(ii) authorize reimbursements under Section 19-6-811;
(iii) inspect a site, facility, or activity regulated under this part; and
(iv) issue permits for and inspect waste tire storage sites.
(2) The director may:
(a) authorize any division employee to enter any site or facility regulated under this part at reasonable times and upon presentation of credentials, for the purpose of inspection, audit, or sampling:
(i) at the site or facility; or
(ii) of the records, operations, or products;
(b) as authorized by the board, enforce board rules by issuing orders which are subsequently subject to the board's amendment or revocation; and
(c) coordinate with federal, state, and local governments, and other agencies, including entering into memoranda of understanding, to:
(i) ensure effective regulation of waste tires under this part;
(ii) minimize duplication of regulation; and
(iii) encourage responsible recycling of waste tires.

Amended by Chapter 360, 2012 General Session

19-6-821 Violations -- Civil proceedings and penalties -- Orders.

(1) A person who violates any provision of this part or any order, permit, plan approval, or rule issued or adopted under this part is subject to a civil penalty of not more than $10,000 per day for each day of violation as determined in a civil hearing under Title 63G, Chapter 4, Administrative Procedures Act, except:
  (a) any violation of Subsection 19-6-804(1), (3), or (4) is subject to the penalty under Subsection 19-6-804(5) rather than the penalties under this section; and
  (b) any violation of Subsection 19-6-808(1), (2), or (3) regarding payment of the recycling fee by the tire retailer is subject to penalties as provided in Subsection 19-6-808(4) rather than the penalties under this section.
(2) The director may bring an action in the name of the state to restrain a person from continuing a violation of this part and to require the person to perform necessary remediation regarding a violation of this part.
(3) When the director finds a situation exists in violation of this part that presents an immediate threat to the public health or welfare, the director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures Act.
(4) The director may revoke the registration of a waste tire recycler or transporter who violates any provision of this part or any order, plan approval, permit, or rule issued or adopted under this part.
(5) The director may revoke the tire storage permit for a storage facility that is in violation of any provision of this part or any order, plan approval, permit, or rule issued or adopted under this part.
(6) If a person has been convicted of violating a provision of this part prior to a finding by the director of a violation of the same provision in an administrative hearing, the director may not assess a civil monetary penalty under this section for the same offense for which the conviction was obtained.
(7) All penalties collected under this section shall be deposited in the fund.

Amended by Chapter 263, 2012 General Session
Amended by Chapter 360, 2012 General Session

19-6-822 Criminal penalties.

A person is guilty of a third degree felony if the person knowingly or intentionally provides or submits false information under the following provisions:
(1) Subsection 19-6-809(1)(a);
(2) Subsection 19-6-809(1)(c);
(3) Subsection 19-6-809(4);
(4) Subsection 19-6-810(1)(c);
(5) Subsection 19-6-810(2)(d);
(6) Subsection 19-6-811(3)(b);
(7) Subsection 19-6-811(6);
(8) Subsection 19-6-812(2); or
(9) Subsection 19-6-813(1).

Repealed and Re-enacted by Chapter 263, 2012 General Session

19-6-823 Exception.

The provisions of this part do not apply to waste tires from any device moved exclusively by human power.

Renumbered and Amended by Chapter 51, 2000 General Session

Part 9
Illegal Drug Operations Site Reporting and Decontamination Act

19-6-901 Title.

This part is known as the "Illegal Drug Operations Site Reporting and Decontamination Act."

Enacted by Chapter 249, 2004 General Session

19-6-902 Definitions.

As used in this part:

(1) "Board" means the Waste Management and Radiation Control Board, as defined in Section 19-1-106, within the Department of Environmental Quality.

(2) "Certified decontamination specialist" means an individual who has met the standards for certification as a decontamination specialist and has been certified by the board under Subsection 19-6-906(2).

(3) "Contaminated" or "contamination" means:

(a) polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long-term health hazards; or

(b) that a property is polluted by hazardous materials as a result of the use, production, or presence of methamphetamine in excess of decontamination standards adopted by the Department of Health under Section 26-51-201.

(4) "Contamination list" means a list maintained by the local health department of properties:

(a) reported to the local health department under Section 19-6-903; and

(b) determined by the local health department to be contaminated.

(5)

(a) "Decontaminated" means property that at one time was contaminated, but the contaminants have been removed.

(b) "Decontaminated" for a property that was contaminated by the use, production, or presence of methamphetamine means that the property satisfies decontamination standards adopted by the Department of Health under Section 26-51-201.

(6) "Hazardous materials":

(a) has the same meaning as "hazardous or dangerous material" as defined in Section 58-37d-3; and

(b) includes any illegally manufactured controlled substances.

(7) "Health department" means a local health department under Title 26A, Local Health Authorities.

(8) "Owner of record":

(a) means the owner of real property as shown on the records of the county recorder in the county where the property is located; and

(b) may include an individual, financial institution, company, corporation, or other entity.

(9) "Property":

(a) means any real property, site, structure, part of a structure, or the grounds surrounding a structure; and

(b) includes single-family residences, outbuildings, garages, units of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers, manufactured housing, shops, or booths.

(10) "Reported property" means property that is the subject of a law enforcement report under Section 19-6-903.

Amended by Chapter 451, 2015 General Session

19-6-903 Law enforcement reporting and records -- Removal from list.

(1)

(a) When any state or local law enforcement agency in the course of its official duties observes any paraphernalia of a clandestine drug laboratory operation, including chemicals or equipment used in the manufacture of unlawful drugs, the agency shall report the location where the items were observed to the local health department.

(b)

(i) The law enforcement officer shall make the report under Subsection (1)(a) at the location where the observation occurred, if making the report at that time will not compromise an ongoing investigation.

(ii) If the report cannot be made at the location, the report shall be made as soon afterward as is practical.

(c) The report under Subsection (1)(a) shall include:

(i) the date of the observation;

(ii) the name of the reporting agency and the case number of the case that involves the location of the observation;

(iii) the contact information of the officer involved, including name and telephone number;

(iv) the address of the location and descriptions of the property that may be contaminated; and

(v) a brief description of the evidence at the location that led to the belief the property at the location may be contaminated.

(2) The law enforcement agency shall forward to the local health department copies of the reports made under Subsection (1).

(3)

(a) Upon receipt of a complaint or a report from law enforcement regarding possibly contaminated property, the local health officer or his designee shall determine if reasonable evidence exists that the property is contaminated.

(b) The local health department shall place property considered to be contaminated on a contamination list.

(4) The local health departments shall maintain searchable records of the properties on their contamination lists and shall:

(a) make the records reasonably available to the public;

(b) provide written notification to persons requesting access to the records that the records are only advisory in determining if specific property has been contaminated by clandestine drug lab activity; and

(c) remove the contaminated property from the list when the following conditions have been met:

(i) the local health department has monitored the decontamination process and, after documenting that the test results meet decontamination standards, has authorized the removal of or purging of the contamination information from the department's records; or

(ii) a certified decontamination specialist submits a report to the local health department stating that the property is decontaminated.

Enacted by Chapter 249, 2004 General Session

19-6-904 Decontamination specialist reporting to local health departments.

(1) A certified decontamination specialist is required to report to the local health department the location of any property that is the subject of decontamination work by that decontamination specialist. The report shall be submitted prior to commencement of the decontamination work.

(2) The report under Subsection (1) shall include:

(a) sufficient information to allow the local health department to investigate and verify the location of the property, including the address and description of the property; and

(b) a proposed work plan for decontaminating the property.

(3) Upon completion of the decontamination process, a report certifying that the property is decontaminated shall be submitted to the local health department within 30 days.

Enacted by Chapter 249, 2004 General Session

19-6-905 Notification of property owner -- Notification of municipality or county.

(1)

(a) If the local health department determines a property is contaminated, it shall notify the owner of record that the property has been placed on the contamination list and shall provide to the owner information regarding remediation options and the requirements necessary to clean up the property, obtain certification that the property is decontaminated, and remove the property from the contamination list.

(b) The notification shall include a deadline for the owner to provide to the local health department information on how the owner plans to address the contamination.

(c) This part does not require that decontamination be conducted by a certified decontamination specialist. However, upon completion of the decontamination, the property must be determined to be decontaminated in accordance with Subsection 19-6-903(4)(c) in order to be removed from the contamination list.

(2) If the local health department does not receive a response from the owner of record within the time period specified in the notice, or the owner of record advises the local health department that the owner does not intend to take action or that the reported property will be abandoned, the local health department shall notify the municipality in which the reported property is located, or the county, if the location is in an unincorporated area, of the owner of record's response or lack of response.

Enacted by Chapter 249, 2004 General Session

19-6-906 Decontamination standards -- Specialist certification standards -- Rulemaking.

(1) The Department of Health shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in consultation with the local health departments and the Department of Environmental Quality, to establish:

(a) decontamination and sampling standards and best management practices for the inspection and decontamination of property and the disposal of contaminated debris under this part;

(b) appropriate methods for the testing of buildings and interior surfaces, and furnishings, soil, and septic tanks for contamination; and

(c) when testing for contamination may be required.

(2) The Department of Environmental Quality Waste Management and Radiation Control Board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in consultation with the Department of Health and local health departments, to establish within the Department of Environmental Quality Division of Environmental Response and Remediation:
  (a) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and
  (b) a process for revoking the certification of a decontamination specialist who fails to maintain the certification standards.
(3) All rules made under this part shall be consistent with other state and federal requirements.
(4) The board has authority to enforce the provisions under Subsection (2).

Amended by Chapter 451, 2015 General Session

Part 10
Mercury Switch Removal Act

19-6-1001 Title.
This part is known as the "Mercury Switch Removal Act."

Enacted by Chapter 187, 2006 General Session

19-6-1002 Definitions.
(1) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.
(2) "Director" means the director of the Division of Waste Management and Radiation Control.
(3) "Division" means the Division of Waste Management and Radiation Control created in Section 19-1-105.
(4) "Manufacturer" means the last person in the production or assembly process of a vehicle.
(5) "Mercury switch" means a mercury-containing capsule that is part of a convenience light switch assembly installed in a vehicle's hood or trunk.
(6) "Person" means an individual, a firm, an association, a partnership, a corporation, the state, or a local government.
(7) "Plan" means a plan for removing and collecting mercury switches from vehicles.
(8) "Vehicle" means any passenger automobile or car, station wagon, truck, van, or sport utility vehicle that may contain one or more mercury switches.

Amended by Chapter 451, 2015 General Session

19-6-1003 Board and director powers.
(1) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules:
  (a) governing administrative proceedings under this part;
  (b) specifying the terms and conditions under which the director shall approve, disapprove, revoke, or review a plan submitted by a manufacturer; and
  (c) governing reports and educational materials required by this part.
(2) These rules shall include:

(a) time requirements for plan submission, review, approval, and implementation;
(b) a public notice and comment period for a proposed plan; and
(c) safety standards for the collection, packaging, transportation, storage, recycling, and disposal of mercury switches.
(3) The director may:
(a) review and approve or disapprove plans, specifications, or other data related to mercury switch removal;
(b) enforce a rule by issuing a notice, an order, or both;
(c) initiate an administrative action to compel compliance with this part and any rules adopted under this part; or
(d) request the attorney general to bring an action for injunctive relief and enforcement of this part, including imposition of the penalty described in Section 19-6-1006.
(4) The director shall establish a fee to cover the costs of a plan's review by following the procedures and requirements of Section 63J-1-504.

Amended by Chapter 360, 2012 General Session

19-6-1004 Mercury switch collection plan -- Reimbursement for mercury switch removal.
(1)
(a) Each manufacturer of any vehicle sold within this state, individually or in cooperation with other manufacturers, shall submit a plan, accompanied by a fee, to the director.
(b) If the director disapproves a plan, the manufacturer shall submit an amended plan within 90 days.
(c) A manufacturer shall submit an updated plan within 90 days of any change in the information required by Subsection (2).
(d) The director may require the manufacturer to modify the plan at any time upon finding that an approved plan as implemented has failed to meet the requirements of this part.
(e) If the manufacturer does not know or is uncertain about whether or not a switch contains mercury, the plan shall presume that the switch contains mercury.
(2) The plan shall include:
(a) the make, model, and year of any vehicle, including current and anticipated future production models, sold by the manufacturer that may contain one or more mercury switches;
(b) the description and location of each mercury switch for each make, model, and year of vehicle;
(c) education materials that include:
(i) safe and environmentally sound methods for mercury switch removal; and
(ii) information about hazards related to mercury and the proper handling of mercury;
(d) a method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to an authorized recycling, storage, or disposal facility;
(e) a procedure for the transfer of information among persons involved with the plan to comply with reporting requirements; and
(f) a method to implement and finance the plan, which shall include the prompt reimbursement by the manufacturer of costs incurred by a person removing and collecting mercury switches.
(3) In order to ensure that the costs of removal and collection of mercury switches are not borne by any other person, the manufacturers of vehicles sold in the state shall pay:
(a) a minimum of $5 for each mercury switch removed by a person as partial compensation for the labor and other costs incurred in removing the mercury switch;

(b) the cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities;
(c) the cost of shipping mercury switches to recycling, storage, or disposal facilities;
(d) the cost of recycling, storage, or disposal of mercury switches;
(e) the cost of the preparation and distribution of educational materials; and
(f) the cost of maintaining all appropriate record-keeping systems.
(4) Manufacturers of vehicles sold within this state shall reimburse a person for each mercury switch removed and collected without regard to the date on which the mercury switch is removed and collected.
(5) The manufacturer shall ensure that plan implementation occurs by July 1, 2007.

Amended by Chapter 360, 2012 General Session

19-6-1005 Reporting requirements.
(1) Each manufacturer that is required to implement a plan shall submit, either individually or in cooperation with other manufacturers, an annual report on the plan's implementation to the director within 90 days after the anniversary of the date on which the manufacturer is required to begin plan implementation.
(2) The report shall include:
(a) the number of mercury switches collected;
(b) the number of mercury switches for which the manufacturer has provided reimbursement;
(c) a description of the successes and failures of the plan; and
(d) a statement that details the costs required to implement the plan.

Amended by Chapter 360, 2012 General Session

19-6-1006 Penalties.
A manufacturer who fails to submit, modify, or implement a plan according to this part and rules enacted under this part is subject to a civil penalty of not more than $1,000 per day per violation as determined in an administrative proceeding conducted according to the board's rules.

Enacted by Chapter 187, 2006 General Session

Part 11
Industrial Byproduct Reuse

19-6-1101 Title.
This part is known as "Industrial Byproduct Reuse."

Enacted by Chapter 340, 2009 General Session

19-6-1102 Definitions.
As used in this part:
(1) "Board" means the Waste Management and Radiation Control Board created under Section 19-1-106.
(2) "Director" means the director of the Division of Waste Management and Radiation Control.

(3) "Division" means the Division of Waste Management and Radiation Control created in Section 19-1-105.
(4)
(a) "Industrial byproduct" means an industrial residual, including:
(i) inert construction debris;
(ii) fly ash;
(iii) bottom ash;
(iv) slag;
(v) flue gas emission control residuals generated primarily from the combustion of coal or other fossil fuel;
(vi) residual from the extraction, beneficiation, and processing of an ore or mineral;
(vii) cement kiln dust; or
(viii) contaminated soil extracted as a result of a corrective action subject to an operation plan under Part 1, Solid and Hazardous Waste Act.
(b) "Industrial byproduct" does not include material that:
(i) causes a public nuisance or public health hazard; or
(ii) is a hazardous waste under Part 1, Solid and Hazardous Waste Act.
(5) "Public project" means a project of the Department of Transportation to construct:
(a) a highway or road;
(b) a curb;
(c) a gutter;
(d) a walkway;
(e) a parking facility;
(f) a public transportation facility; or
(g) a facility, infrastructure, or transportation improvement that benefits the public.
(6) "Reuse" means to use an industrial byproduct in place of a raw material.

Amended by Chapter 451, 2015 General Session

19-6-1103 Rulemaking.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules to implement this part, including:
(1) a streamlined application procedure designed to encourage and allow reuse of an industrial byproduct in a public project; and
(2) reasonable, objective standards for demonstrating, without regard to the industrial byproduct's source, the safety of the reuse and future reuse of an industrial byproduct.

Enacted by Chapter 340, 2009 General Session

19-6-1104 Applications for industrial byproduct reuse -- Approval by the director.

(1) A person may submit to the director an application for reuse of an industrial byproduct from an inactive industrial site, as defined in Section 17C-1-102.
(2) The director shall respond to an application submitted under Subsection (1) within 60 days of the day on which the director determines the application is complete.
(3) The director shall approve an application submitted under Subsection (1) if the applicant shows:
(a) the industrial byproduct meets the applicable health risk standard;
(b) the industrial byproduct satisfies the applicable toxicity characteristic leaching procedure; and

(c) the proposed method of installation and type of reuse meet the applicable health risk standard.

Amended by Chapter 360, 2012 General Session

Part 12
Disposal of Electronic Waste Program

19-6-1201 Title.

This part is known as the "Disposal of Electronic Waste Program."

Enacted by Chapter 213, 2011 General Session

19-6-1202 Definitions.

As used in this part:

(1) "Collection":
- (a) means the aggregation of consumer electronic devices from consumers; and
- (b) includes all the activities up to the time a consumer electronic device is delivered to a recycler.

(2)
- (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing a logical, arithmetic, or storage function, including:
  - (i) a laptop computer;
  - (ii) a desktop computer; or
  - (iii) a tablet computer.
- (b) "Computer" includes the following permanently affixed to or incorporated into a device described in Subsection (2)(a):
  - (i) a cable cord;
  - (ii) permanent wiring;
  - (iii) a central processing unit; or
  - (iv) a monitor.
- (c) "Computer" does not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, a server, or similar device.

(3) "Consumer" means a person who owns or uses a covered electronic device that is purchased primarily for personal or home business use.

(4) "Consumer electronic device" means the following products sold to a consumer:
- (a) a computer;
- (b) a computer peripheral;
- (c) a television; or
- (d) a television peripheral.

(5) "Eligible program" means a collection, reuse, or recycling system for a consumer electronic device, including:
- (a) a system by which a manufacturer, manufacturer's designee, or other private entity offers a consumer an option to return a consumer electronic device by mail;

(b) a system using a physical collection site that a manufacturer, manufacturer's designee, or other private or public entity provides for a consumer to return a covered consumer electronic device; or
(c) a system that uses a collection event held by a manufacturer, manufacturer's designee, or other private or public entity at which a consumer may return a consumer electronic device.
(6) "Manufacturer" means a person who:
(a) manufactures a consumer electronic device under a brand the person owns or is licensed to use; or
(b) assumes the responsibilities and obligations of a person described in Subsection (6)(a).
(7) "Peripheral" means a keyboard, printer, or other device that:
(a) is sold exclusively for external use with a television or computer; and
(b) provides input into or output from a television or computer.
(8)
(a) "Recycling" means the process of collecting and preparing electronic products for:
(i) use in a manufacturing process; or
(ii) recovery of reusable materials followed by delivery of reusable materials for use.
(b) "Recycling" does not include destruction by incineration, waste-to-energy incineration, or other similar processes or land disposal.
(9) "Reuse" means electronic waste:
(a) that is tested and determined to be in good working order; and
(b) that is removed from the waste stream to use for the same purpose for which it was manufactured, including the continued use of the whole system or components.
(10)
(a) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract of a consumer electronic device to a consumer.
(b) "Sell" or "sale" does not include:
(i) the sale, resale, lease, or transfer of used consumer electronic devices; or
(ii) a manufacturer's or a distributor's wholesale transaction with a distributor or retailer involving a consumer electronic device.
(11) "Television" means a display system primarily intended to receive video programming via broadcast, cable, or satellite transmission.

Enacted by Chapter 213, 2011 General Session

19-6-1203 Reporting requirements.
(1) On or after July 1, 2011, a manufacturer may not offer a consumer electronic device for sale in the state unless the manufacturer, either individually, through a group manufacturer organization, or through the manufacturer's industry trade group, prepares and submits, subject to Subsection (2), a report on or before August 1 of each year to the department.
(2) The report required under Subsection (1):
(a) shall include a list of eligible programs, subject to Subsection (3); and
(b) may include:
(i) an existing collection, transportation, or recycling system for a consumer electronic device; and
(ii) an eligible program offered by:
(A) a consumer electronic device recycler;
(B) a consumer electronic device repair shop;
(C) a recycler of other commodities;

(D) a reuse organization;
(E) a not-for-profit corporation;
(F) a retailer; or
(G) another similar operation, including a local government collection event.
(3) The list required in Subsection (2)(a) may be in the form of a geographic map identifying the type and location of an eligible program.

Amended by Chapter 13, 2016 General Session
Amended by Chapter 143, 2016 General Session

19-6-1204 Public education program.
(1) Effective January 1, 2012, a manufacturer may not offer a consumer electronic device for sale in the state unless the manufacturer individually, through a group manufacturer organization, or through the manufacturer's industry trade group establishes and implements, in accordance with Subsection (2), a public education program regarding the eligible programs.
(2)
(a) The public education program required under Subsection (1) shall:
(i) inform a consumer about eligible programs; and
(ii) use manufacturer-developed customer outreach materials, such as packaging inserts, company websites, and other communication methods, to inform a consumer about eligible programs.
(b) A manufacturer described in Subsection (1) shall work with the department and other interested parties to develop educational materials that inform consumers about an eligible program.

Enacted by Chapter 213, 2011 General Session

19-6-1205 Local government arrangement.
If a local government enters into an arrangement with a manufacturer to facilitate consumer electronics recycling in accordance with this part, the local government may enter into the arrangement without requiring a request for proposal or similar competitive procurement process required by law.

Enacted by Chapter 213, 2011 General Session

Chapter 7
Environmental Self-Evaluation Act

19-7-101 Title.
This chapter is known as the "Environmental Self-Evaluation Act."

Enacted by Chapter 304, 1995 General Session

19-7-102 Purposes.
The purpose of this chapter is to:

(1) enhance the environment through voluntary compliance with environmental laws; and
(2) provide incentives to voluntarily identify and remedy environmental compliance problems.

Enacted by Chapter 304, 1995 General Session

19-7-103 Definitions.

As used in this chapter:

(1) "Administrative proceeding" means an adjudicatory proceeding conducted by the department or other government entity with authority to enforce any environmental law, including any notice of violation proceeding, any department proceeding listed in Section 19-1-305, or any proceeding conducted pursuant to Title 63G, Chapter 4, Administrative Procedures Act.
(2) "Environmental audit report" means any document, information, report, finding, communication, note, drawing, graph, chart, photograph, survey, suggestion, or opinion, whether in preliminary, draft, or final form, prepared as the result of or in response to an environmental self-evaluation.
(3) "Environmental law" means any requirement contained in this title, or in rules made under this title, or in any rules, orders, permits, licenses, or closure plans issued or approved by the department, or in any other provision or ordinance addressing protection of the environment.
(4) "Environmental self-evaluation" means a self-initiated assessment, audit, or review, not otherwise expressly required by an environmental law, that is performed to determine whether a person is in compliance with environmental laws. A person may perform an environmental self-evaluation through the use of employees or the use of outside consultants.

Amended by Chapter 382, 2008 General Session

19-7-104 Unlawful disclosure -- Environmental audit report.

(1) Information that is divulged, disseminated, or otherwise disclosed in violation of Utah Rules of Evidence, Rule 508, may not be admitted as evidence in an administrative or judicial proceeding.
(2) If any person, including a department employee or a presiding hearing officer, divulges or disseminates any part of the information contained in an environmental audit report and that report is privileged under Utah Rules of Evidence, Rule 508, the privilege is not waived except as provided under Utah Rules of Evidence, Rule 508(d)(1).
(3) An environmental audit report obtained pursuant to an in camera review is a protected record for purposes of Title 63G, Chapter 2, Government Records Access and Management Act, and a department employee or attorney representing the department may not disclose the report except in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

19-7-105 Privilege in administrative proceeding.

An environmental audit report is privileged in accordance with and to the extent provided by Utah Rules of Evidence, Rule 508, Environmental Self-Evaluation Privilege, in any administrative proceeding.

Enacted by Chapter 304, 1995 General Session

19-7-106 In camera review -- Burden of proof.

(1) The person seeking disclosure of an environmental audit report shall request an in camera review of the audit report by a court of record.
(2)
  (a) If a court of record determines through in camera review that all or part of an environmental audit report is not privileged, the court shall order the disclosure of the nonprivileged portions of the environmental audit report.
  (b) The privileged portions of the environmental audit report may not be disclosed.
(3) The person asserting the environmental self-evaluation privilege has the burden of establishing a prima facie case of privilege.
(4) The person seeking disclosure of an environmental audit report has the burden of proving that the environmental audit report is not privileged or excepted pursuant to the Utah Rules of Evidence, Rule 508.

Enacted by Chapter 304, 1995 General Session

19-7-107 Privileged communications.
(1) A person or an officer or employee of that person who performs an environmental self-evaluation, as defined by Section 19-7-103, or assists in the preparation of an environmental audit report, as defined by Section 19-7-103, or a consultant hired for the purpose of performing an environmental self-evaluation or audit report cannot be examined without the consent of the person for which the environmental self-evaluation is conducted unless ordered to testify by a court.
(2) Subsection (1) does not apply if the environmental self-evaluation or audit report is subject to discovery or is admissible under Utah Rules of Evidence, Rule 508.

Enacted by Chapter 304, 1995 General Session

19-7-108 Scope of chapter.
This chapter shall apply to all administrative and judicial proceedings commenced on or after March 21, 1995.

Enacted by Chapter 304, 1995 General Session

19-7-109 Incentives for voluntary disclosure and compliance -- Waiver of civil penalties.
(1) As used in this section, "regulated entity" means any person, business, or other entity subject to regulation under Title 19, Environmental Quality Code.
(2) The department shall waive civil penalties for an instance of noncompliance with an environmental law or requirement:
  (a) that a regulated entity discovered through an environmental self-evaluation;
  (b) that a regulated entity voluntarily disclosed to the department in writing within 21 days after the entity's discovery of the violation;
  (c) that a regulated entity remedied or corrected within 60 days after discovery of the violation, or within a reasonable amount of time if the violation cannot be remedied within 60 days; and
  (d) regarding which the regulated entity submitted to the department a written outline of reasonable steps the regulated entity will take to prevent a recurrence.
(3) The department may not waive penalties under Subsection (2) if:
  (a) the instance of noncompliance resulted from a lack of due diligence in complying with environmental laws, taking into account the size and nature of the regulated entity;

(b) the instance of noncompliance is a recurrence of a similarly caused specific violation or a violation of the specific terms of a judicial or administrative consent order or agreement;
(c) the instance of noncompliance resulted from reckless or willful disregard of environmental laws;
(d) the regulated entity conducted the environmental self-evaluation for a fraudulent purpose;
(e) the department had already initiated a compliance investigation at the time of the disclosure and the regulated entity had been advised of or was aware of the investigation;
(f) the instance of noncompliance was discovered pursuant to a legally mandated monitoring, testing, or sampling requirement prescribed by law, rule, permit, order, or consent agreement; or
(g) the instance of noncompliance resulted in serious actual harm or imminent and substantial endangerment to human health or the environment.

(4)
(a) To the extent the instance of noncompliance resulted in an economic benefit or competitive advantage over other similar regulated entities that did achieve compliance, the department may seek a civil penalty to recover the monetary amount of the economic benefit or competitive advantage resulting from the incidence of noncompliance.
(b) Action under this Subsection (4) is not prohibited by Subsection (2).

(5) This section does not limit the department's discretion in reducing penalties for noncompliance with an environmental law which may not fully qualify for waiver under this section, but which the department determines should be appropriately reduced.

Amended by Chapter 181, 2002 General Session

Chapter 8
Voluntary Cleanup Program

19-8-101 Title.

This chapter is known as the "Voluntary Cleanup Program."

Enacted by Chapter 247, 1997 General Session

19-8-102 Definitions.

As used in this chapter:

(1) "Account" means the Environmental Voluntary Cleanup restricted account created under Section 19-8-103.
(2) "Agreement" means a voluntary cleanup agreement under this chapter.
(3) "Applicant" means the person:
(a) who submits an application to participate in a voluntary cleanup agreement under this chapter; or
(b) who enters into a voluntary cleanup agreement made under this chapter with the executive director.
(4) "Completion" means, regarding property covered by an agreement:
(a) no further response actions are necessary; or

(b) the applicant is satisfactorily maintaining the engineering controls, remediation systems, postclosure care, and institutional controls to the extent required pursuant to the voluntary cleanup agreement.
(5) "Contaminant" means:
(a) hazardous materials as defined in Section 19-6-302;
(b) hazardous substance as defined in Section 19-6-302;
(c) hazardous waste as defined in Section 19-6-102;
(d) hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table One, 40 C.F.R. 261.24;
(e) pollution as defined in Section 19-5-102;
(f) regulated substance as defined in Section 19-6-402; and
(g) solid waste as defined in Section 19-6-102.
(6) "Environmental assessment" means the assessment described in Section 19-8-107.
(7) "Executive director" means the executive director of the Utah Department of Environmental Quality or the executive director's representative.
(8) "Program" means the Voluntary Environmental Cleanup Program created under this chapter.
(9) "Response action" means the cleanup or removal of a contaminant from the environment.
(10) "Solid waste" has the same meaning as defined in Section 19-6-102.

Enacted by Chapter 247, 1997 General Session

19-8-103 Creation of restricted account -- Purposes.
(1) There is created within the General Fund the Environmental Voluntary Cleanup restricted account.
(2) The account shall be used to fund department administration and oversight of voluntary cleanups initiated under this chapter.
(3) The account may earn interest, which shall be deposited in the account, to be used for the purposes under this section.

Enacted by Chapter 247, 1997 General Session

19-8-104 Program.
(1) There is created under this chapter and within the Department of Environmental Quality the Voluntary Environmental Cleanup Program.
(2) The program shall be administered by the executive director.
(3) The program shall be funded by application fees and imposed oversight costs as provided in this chapter.

Enacted by Chapter 247, 1997 General Session

19-8-105 Eligibility and exceptions -- Grounds for application rejection by executive director.
Subject to Section 19-8-106, any site is eligible for participation in the voluntary cleanup program created under this chapter except:
(1) a treatment, storage, or disposal facility regulated under 42 U.S.C. 6901 et seq.;
(2) that portion of a site that is on the national priorities list; or
(3) that portion of a site for which a state or federal enforcement action is existing or pending against the applicant for remediation of the contaminants described in the application.

Amended by Chapter 200, 2005 General Session

19-8-106 Rejection of application -- Notice to applicant -- Resubmission procedure.

(1) The executive director may in his sole discretion reject an application prior to accepting the application fee, and return the application fee to the applicant if:
  (a) the executive director has reason to believe that a working relationship with the applicant cannot be achieved; or
  (b) the application site is not eligible under Section 19-8-105.
(2)
  (a) The executive director may reject an application after processing the application if:
    (i) the application is not complete or is not accurate; or
    (ii) the applicant has not demonstrated financial capability to perform the voluntary cleanup.
  (b) The applicant is not entitled to refund of an application fee for an application rejected under this Subsection (2).
(3) An application rejected under Subsection (1) or (2) shall be promptly returned to the applicant with a letter of explanation.
(4)
  (a) If the executive director rejects an application because it is incomplete or inaccurate, the executive director shall, not later than 60 days after receipt of the application, provide to the applicant a list in writing of all information needed to make the application complete or accurate, as appropriate.
  (b) The applicant may submit for a second time an application rejected due to inaccuracy or incompleteness without submitting an additional application fee.

Amended by Chapter 360, 2012 General Session

19-8-107 Participation application -- Procedure.

(1) To participate in the voluntary cleanup program an applicant shall:
  (a) submit to the department an application and application fee under Subsection (2); and
  (b) pay to the department all costs of the department's oversight of the voluntary cleanup.
(2) An application submitted under this section shall:
  (a) be on a form provided by the executive director;
  (b) contain pertinent information regarding the applicant and the applicant's ability to perform the voluntary cleanup, including the applicant's financial capability;
  (c) include pertinent information regarding the site, including property ownership, current property use, proposed property use, prior and present contact with regulatory programs that relate to the environmental condition of the property, and response action objectives;
  (d) provide any other background information requested by the executive director;
  (e) include an environmental assessment of the actual or threatened release of the contaminant at the site addressed by the application;
  (f) be accompanied by an application fee as established under Section 19-8-117; and
  (g) be submitted according to schedules set by department rules.
(3) The environmental assessment required under Subsection (2) shall include:
  (a) a legal description of the site;
  (b) a description of the physical characteristics of the site;
  (c) the operational history of the site to the extent known by the applicant;

(d) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, and where the contamination is located; and
(e) relevant information of which the applicant is aware concerning the potential for human and environmental exposure to contamination at the site.
(4) If the executive director accepts an application fee, the department shall take action on the application in the order in which it is received, but in all circumstances within 60 days of the receipt of the application by the department.
(5) Fees collected under this section shall be deposited in the General Fund in the Environmental Voluntary Cleanup Account created under Section 19-8-103.

Enacted by Chapter 247, 1997 General Session

19-8-108 Voluntary agreement -- Procedure and establishment.
(1)
(a) Before the executive director may evaluate any detailed plan or report regarding the remediation goals and proposed methods of remediation, the applicant and the executive director shall have entered into a voluntary cleanup agreement under this chapter.
(b) The agreement shall establish the terms and conditions for the evaluation of investigation, remediation, and status reports.
(2) Before the applicant may initiate any response action covered by an agreement, a voluntary cleanup agreement shall have been signed by the applicant and the executive director, except that the applicant may take emergency measures as necessary, but shall coordinate these measures with the appropriate emergency response authorities.
(3) A voluntary cleanup agreement shall provide for:
(a) recovery by the department of all reasonable costs:
(i) incurred in the voluntary cleanup in the review and oversight of the applicant's work plan and reports and as a result of the department's field activities regarding the cleanup;
(ii) attributable to the voluntary cleanup agreement; and
(iii) in excess of the amount of fees submitted by the applicant under Section 19-8-107; and
(b) a schedule of payments by the applicant to the department, to be made by the applicant for recovery of all department costs attributable to the voluntary cleanup program, including:
(i) direct and indirect costs of overhead, salaries, equipment, and utilities;
(ii) legal, management, and support costs; and
(iii) appropriate tasks, deliverables, and schedules.
(4) A voluntary cleanup agreement shall:
(a) identify all statutes and rules with which the applicant shall comply;
(b) describe any work plan or report the applicant shall submit to the executive director for review, including a final report that provides all information necessary for the executive director to confirm that all work contemplated by the voluntary cleanup agreement has been completed;
(c) include a schedule for submitting the information required by Subsection (4)(b); and
(d) state the technical standards to be applied in evaluating the work plans and reports.
(5) If an agreement under this section is not established between the applicant and the executive director within 30 days after good faith negotiations between the parties have been initiated:
(a) the applicant or the executive director may, upon providing written notice to the other party, withdraw from the negotiations; and
(b) the applicant's application fee is not refundable.

(6) The department may not initiate an enforcement action against an applicant regarding a contamination or release, or any activity that resulted in the contamination or release if the applicant:
  (a) is in compliance with this chapter regarding the contamination or release; and
  (b) has entered into a voluntary cleanup agreement that is in effect under this chapter regarding the contamination or release.

Enacted by Chapter 247, 1997 General Session

19-8-109 Termination of agreement -- Cost recovery.

(1) An agreement established under this chapter may be terminated by the executive director or the applicant by giving 15 days prior notice, in writing, to the other party.
(2)
  (a) Only those costs incurred or obligated by the executive director prior to the date of termination of the agreement are recoverable under an agreement terminated under this section. Any unused amounts already paid by the applicant to the department as of the date of termination, other than the application fee, are refundable to the applicant.
  (b) The executive director shall provide to the applicant written and itemized notification of all costs for which the applicant is liable under this Subsection (2) within 90 days after the date the agreement is terminated.
(3) If the applicant does not pay to the executive director the department's costs incurred in the voluntary cleanup within 90 days after the date the applicant receives written notice under Subsection (2)(b), the executive director may request the state attorney general to bring a court action in the name of the state to recover the amount the applicant owes under this section, and reasonable attorney's fees and court costs.
(4) Termination of an agreement under this section does not affect any right of the:
  (a) executive director to recover costs under any other law; or
  (b) department to take enforcement and other action as allowed by law.

Enacted by Chapter 247, 1997 General Session

19-8-110 Voluntary cleanup work plans and reports.

(1) After the applicant and the executive director have signed the voluntary cleanup agreement, the applicant shall prepare and submit the appropriate work plans and reports to the executive director as provided in the agreement.
(2) The executive director shall review and evaluate the work plans and reports for accuracy, quality, and completeness.
(3) The executive director may approve a voluntary cleanup work plan or report, or if he does not approve the work plan or a report, he shall notify the applicant in writing concerning additional information or commitments necessary to obtain approval.
(4) At any time during the evaluation of a work plan or report, the executive director may request the applicant to submit additional or corrected information.
(5) After considering the proposed future use of the property that is the subject of the agreement, the executive director may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases on the property if the applicant's response actions under the agreement:
  (a) will be completed in a manner that protects human health and the environment;

(b) will not cause, contribute to, or exacerbate discharges, releases, or threatened releases on the property that are not required to be removed or remedied under the work plan; and
(c) will not interfere with or substantially increase the costs of response actions to address any remaining discharges, releases, or threatened releases resulting from releases initially generated on the property.

Enacted by Chapter 247, 1997 General Session

19-8-111 Certificate of completion.
(1) If the executive director determines that an applicant has completed a voluntary cleanup in accordance with the agreement entered into under this chapter, the executive director shall within 30 days after the determination issue to the applicant a certificate of completion.
(2) The certificate of completion shall:
(a) acknowledge the protection from liability provided by Section 19-8-113;
(b) state the proposed future use of the property as defined under the voluntary cleanup agreement;
(c) provide a legal description of the property and identify the owner of the property; and
(d) state the applicant has complied with the voluntary cleanup agreement and has met the requirements of Sections 19-8-108 and 19-8-110.
(3) The executive director shall upon issuance of the certificate of completion record a copy in the real property records of the county in which the site is located.

Enacted by Chapter 247, 1997 General Session

19-8-112 Denial of certificate of completion -- Appeal.
(1) If the executive director determines the applicant has not successfully completed a voluntary cleanup in accordance with an agreement entered into under this chapter, the executive director shall:
(a) notify the applicant and the current owner of the property that is the subject of the agreement of the denial of a certificate of completion; and
(b) provide to the applicant a list in writing of the reasons for the denial.
(2) The applicant may appeal the determination of the executive director as provided in Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

19-8-113 Applicant's release from liability.
(1)
(a) An applicant who is not responsible for the contaminant or contamination under the provisions listed in Subsection (1)(b) at the time the applicant applies to enter into a voluntary cleanup agreement under this chapter is released by issuance of a certificate of completion under Section 19-8-111 from all liability to the state for cleanup of property covered by the certificate and from all liability for claims arising under state law for contribution regarding matters addressed by the certificate of completion, except for any releases or consequences the applicant causes.
(b) Provisions referred to in Subsection (1)(a) are: Title 19, Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; or Title 19, Chapter 6, Part 4, Underground Storage Tank Act.

(2) There is no release from liability under this chapter if a certificate of completion is obtained by fraud, misrepresentation, or the knowing failure to disclose material information.
(3)
(a) After a certificate of completion is issued under this chapter, an owner who then acquires property covered by the certificate, or a lender who then makes a loan secured by property covered by the certificate, is released from all liability to the state regarding property covered by the certificate for cleanup of contamination released before the date of the certificate, and from all liability for claims arising under state law for contribution regarding matters addressed by the certificate of completion, except under Subsection (3)(b).
(b) A release of liability under Subsection (3)(a) is not available to an owner or lender under Subsection (3)(a) who:
(i) was originally responsible for a release or contamination under Title 19, Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; or Title 19, Chapter 6, Part 4, Underground Storage Tank Act;
(ii) changes the land use from the use specified in the certificate of completion if the changed use or uses may reasonably be expected to result in increased risks to human health or the environment; or
(iii) causes further releases on the property covered by the certification.
(c) A release under this Subsection (3) is subject to the limitations of Subsection (2).
(4) The executive director may issue enforceable written assurances to a contiguous property owner of real property stating that no enforcement action under this part may be initiated against the contiguous property owner and providing the owner protection from state law cost recovery and contribution actions.

Amended by Chapter 200, 2005 General Session

19-8-114 Additional permits not required.
(1) Response action conducted as part of a voluntary cleanup agreement under this chapter does not require a state or local environmental permit, except as required by a program delegated to the state by the federal government under this title.
(2) The department shall by rule require that the applicant conducting the voluntary cleanup under this chapter comply with any federal or state standard, requirement, criterion, or limitation to which the response action would otherwise be subject if a permit were required.

Enacted by Chapter 247, 1997 General Session

19-8-115 Rules -- Public notice -- Participation.
The department shall make rules as necessary to administer this chapter. The rules shall include provisions for public participation by, and notice to, affected property owners regarding voluntary cleanup decisions.

Enacted by Chapter 247, 1997 General Session

19-8-116 Reservation of applicant's and department's causes of action.
(1) This chapter does not release, discharge, or in any way affect any claims, causes of action, or demands in law or equity the applicant or the department may have against any person not a party to the agreement, for any liability it may have arising out of or relating in any way

to the generation, storage, treatment, handling, transportation, release, or disposal of any contaminants, including transportation to or from the site covered by the agreement.
(2) Subject to Section 19-8-119, this chapter does not affect the applicant's right to seek contribution, indemnity, or any other available remedy against any party other than the department who is responsible or liable for contribution, indemnity, or otherwise for any amounts which have been or will be expended by the applicant in connection with the site.

Amended by Chapter 200, 2005 General Session

19-8-117 Program report and budget allocations -- Fee schedule.
(1)
(a) For applications submitted on or after May 5, 1997 through June 30, 1998, the application fee under this chapter is $2,000.
(b) Regarding applications submitted on and after July 1, 1998, the executive director shall annually calculate the costs to administer the voluntary cleanup program under this chapter and shall establish the fees for the program under Section 63J-1-504.
(2) All fees under Subsection (1) shall be deposited in the account created under Section 19-8-103.

Amended by Chapter 183, 2009 General Session

19-8-118 Cleanups conducted prior to May 5, 1997.
(1) A person who has completed a response action prior to May 5, 1997, at a site that would have been eligible for participation in the program under this chapter, may submit an application to the executive director under Section 19-8-107 for a certificate of completion under Section 19-8-111.
(2) The application shall include information required by department rules concerning the property addressed by the application and the response action conducted at the site.
(3) The executive director and applicant shall identify in the voluntary agreement any necessary studies to be conducted by the applicant to demonstrate the cleanup has been completed as provided in Section 19-8-110.
(4) Applications submitted under this section are subject to Sections 19-8-110 through 19-8-113 to the extent those sections are applicable.

Enacted by Chapter 247, 1997 General Session

19-8-119 Apportionment or contribution.
(1) Any party who incurs costs under a voluntary agreement entered into under this part in excess of his liability may seek contribution in an action in district court from any other party who is or may be liable under Subsection 19-6-302(21) or 19-6-402(26) for the excess costs after providing written notice to any other party that the party bringing the action has entered into a voluntary agreement and will incur costs.
(2) In resolving claims made under Subsection (1), the court shall allocate costs using the standards in Subsection 19-6-310(2).

Amended by Chapter 227, 2014 General Session

19-8-120 Creation of Brownfields Fund -- Purposes -- Loan and grant eligibility -- Loan restrictions -- Rulemaking.

(1) As used in this section, "brownfield" has the same meaning as in 42 U.S.C. Sec. 9601(39).
(2) There is created an enterprise fund known as the Brownfields Fund.
(3) The fund is created to enable the state to use federal funding as available to provide capital for a revolving loan fund and to provide funds for grants to carry out cleanup activities at brownfield sites.
(4) The sources of fund money are:
(a) federal grant money;
(b) principal and interest received from the repayment of loans made under this section; and
(c) all investment income derived from fund money.
(5) The executive director may make loans and grants in accordance with this section from the fund to applicants who meet the criteria under the terms of the federal grant money in the fund.
(6) The executive director shall consider loan and grant applications under Subsection (5) to determine whether the application meets the objectives established by the federal grant.
(7) Loans made under this section shall:
(a) be for no greater amount than allowed by the federal grant;
(b) have a fixed annual interest rate as allowed by the federal grant;
(c) have a term as allowed by the federal grant;
(d) be made on the condition the loan applicant obtains adequate security for the loan as established by administrative rules made under Subsection (9); and
(e) comply with administrative rules made under Subsection (9).
(8) Grants made under this section shall:
(a) be for no greater amount than allowed by the federal grant; and
(b) comply with administrative rules made under Subsection (9).
(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall make rules establishing:
(a) form, content, and procedure for loan and grant applications;
(b) criteria and procedures for prioritizing loan and grant applications;
(c) requirements and procedures for securing loans and grants;
(d) procedures for making the loans;
(e) procedures for administering and ensuring repayment of loans, including late payment penalties; and
(f) procedures for recovering on defaulted loans.
(10) The decisions of the executive director in loaning money from the fund, making grants, and otherwise administering the fund are not subject to Title 63G, Chapter 4, Administrative Procedures Act.
(11) Funding for the cost of administration of the fund shall be consistent with the terms of the federal grant.
(12) The executive director may enter into agreements with public entities or private funding organizations to perform any task associated with administration of the fund.

Amended by Chapter 382, 2008 General Session

Chapter 10
Environmental Institutional Control Act

19-10-101 Title -- Scope.

(1) This chapter is known as the "Environmental Institutional Control Act."
(2)
(a) This chapter applies to an environmental institutional control created before May 1, 2006.
(b) Title 57, Chapter 25, Uniform Environmental Covenants Act, governs an environmental covenant created on or after May 1, 2006.

Amended by Chapter 51, 2006 General Session

19-10-102 Definitions.

As used in this chapter:
(1) "Environmental institutional control" or "institutional control" means with respect to real property, any deed restriction, restrictive covenant, easement, reservation, environmental notice, engineering control, or other restriction or obligation that is designed to protect human health or the environment and:
(a) is established in connection with a cleanup or risk assessment that is reviewed, overseen, conducted, or administered by the department; and
(b)
(i) limits the use of the real property, groundwater, or surface water;
(ii) limits activities that may be performed on or at the property; or
(iii) requires maintenance of any engineering or other control.
(2) "Executive director" means the executive director of the state Department of Environment Quality or the executive director's designated representative.

Enacted by Chapter 44, 2003 General Session

19-10-103 Establishment of environmental institutional controls.

An owner of real property may, with the approval of the executive director, restrict the use of the real property by imposing on the real property appropriate environmental institutional controls to mitigate the risk posed to the public health, safety, or welfare, or the environment.

Enacted by Chapter 44, 2003 General Session

19-10-104 Requirements for creation of institutional control.

An environmental institutional control shall:
(1) be in writing and shall be recorded by the owner of the real property in the county recorder's office in the county where the real property is located;
(2) contain a legal description of the area of the real property that is subject to the institutional control;
(3) include a statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect the public health, safety, or welfare, or the environment;
(4) include a statement that the institutional control runs with the land and is binding on all successors in interest unless or until the institutional control is removed as provided in Section 19-10-105;
(5) include a statement acknowledging the department's right of access to the property at all reasonable times to verify that the institutional controls are being maintained;

(6) include a statement explaining how the institutional control can be modified or terminated and stating that if any person desires to cancel or modify the institutional control in the future, the person shall obtain prior written approval from the executive director pursuant to this chapter;
(7) include a notarized signature of the executive director indicating approval of the environmental institutional control; and
(8) include the notarized signature of the property owner indicating approval of the environmental institutional control.

Amended by Chapter 297, 2011 General Session

19-10-105 Termination of institutional control.
(1) An owner may request in writing that the executive director approve termination or modification of the environmental institutional control.
(2) An environmental institutional control may be terminated or modified, in whole or in part, if the executive director determines an unacceptable risk is not posed to public health, safety, or welfare, or the environment.
(3)
  (a) The executive director shall review the request and provide to the owner a written decision approving or denying the request within 120 days from the executive director's receipt of the request.
  (b) If the executive director denies the request, the executive director shall send the owner a written explanation for the denial.
  (c) If the executive director approves an owner's request to terminate or modify all or a portion of the environmental institutional controls, the owner shall file the approval with the county recorder in the county in which the real property is located.

Enacted by Chapter 44, 2003 General Session

19-10-106 Enforcement and inspection regarding institutional controls.
(1) An environmental institutional control may be enforced or protected by a temporary restraining order or an injunction obtained in a court of competent jurisdiction by the department or other affected parties.
(2) In addition to injunctive relief, the department is entitled to recover costs for actions which, in its discretion, it may take in enforcing and protecting the institutional controls.
(3) The department may enter the property at reasonable times to ensure compliance with the environmental institutional controls.

Enacted by Chapter 44, 2003 General Session

19-10-107 Records regarding institutional controls.
The department shall maintain a record of the properties subject to environmental institutional controls established under this chapter. The department may archive the records.

Enacted by Chapter 44, 2003 General Session

19-10-108 Appeals of institutional control decisions.
Any determination by the executive director under this chapter may be appealed as provided in Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

Chapter 11
Western Interstate Nuclear Compact

Part 1
General Provisions

19-11-101 Title.

This chapter is known as the "Western Interstate Nuclear Compact."

Renumbered and Amended by Chapter 382, 2008 General Session

19-11-102 Definitions.

As used in this chapter:

(1) The words "the compact" or "this compact" mean the Western Interstate Nuclear Compact.

(2) The words "the board" mean the Western Interstate Nuclear Board.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2
Compact

19-11-201 Text of compact.

The Western Interstate Nuclear Compact is hereby enacted into law in the state of Utah and entered into with all other states legally joining therein, in the form substantially as follows:

ARTICLE I. POLICY AND PURPOSE

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the West and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a co-operative basis. It is the policy of the party states to undertake such co-operation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a co-operative effort in nuclear and related fields, to enhance the economy of the West and contribute to the individual and community well-being and the region's people.

ARTICLE II. THE BOARD

(a) There is hereby created an agency of the party states to be known as the Western Interstate Nuclear Board. The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which the member represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of the member's duties and the performance of the member's functions

thereon (either for the duration of the member's membership or for any lesser period of time) by a deputy or assistant, if the laws of the member's state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice-chairman, and treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(e) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (g) of this Article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the board.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

ARTICLE III. FINANCES

(a) The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under Article II(h) of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article II(h) hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board, and duly designated representatives of governments contributing to the board's support.

ARTICLE IV. ADVISORY COMMITTEES

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may co-operate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V. POWERS

The board shall have power to:

(a) Encourage and promote co-operation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the West with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(f) Conduct, or co-operate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial, commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(g) Organize and conduct, or assist and co-operate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

(h) Undertake such nonregulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the West.

(i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(j) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(k) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(l) Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

(m) Advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields.

(n) Cooperate with the Atomic Energy Commission, the National Aeronautics and Space Administration, the Office of Science and Technology, or any agencies successor thereto, and other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(o) Act as licensee, contractor or subcontractor of the United States Government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact.

(p) Prepare, publish and distribute (with or without charge) such reports, bulletins, newsletters or other materials as it deems appropriate.

(q) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to co-ordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents.

The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall co-ordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto.

Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states.

However, the plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances.

From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(r) Prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact.

(s) Undertake responsibilities imposed or necessarily involved with regional participation pursuant to such co-operative programs of the federal government as are useful in connection with the fields covered by this compact.

ARTICLE VI. MUTUAL AID

(a) Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such requests: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this

compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

ARTICLE VII. SUPPLEMENTARY AGREEMENTS

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate.

No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions to this Article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

ARTICLE VIII. OTHER LAWS AND RELATIONS

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the Atomic Energy Commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress; nor limit, diminish, affect, or otherwise impair, jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

ARTICLE IX. ELIGIBLE PARTIES,
ENTRY INTO FORCE AND WITHDRAWAL

(a) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law: provided, that it shall not become initially effective until enacted into law by five states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(d) Guam and American Samoa, or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. However, such participation shall not include the furnishing or receipt of mutual aid pursuant to Article VI, unless that Article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

ARTICLE X. SEVERABILITY AND CONSTRUCTION

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3
Utah Board Members

19-11-301 Utah member of board -- Designation.

The member of the board representing the state of Utah shall be designated by the governor of the state of Utah.

Renumbered and Amended by Chapter 382, 2008 General Session

19-11-302 Alternate member.

The alternate required pursuant to Article II(a) of the compact shall be designated by the board member representing this state and shall serve at the board member's pleasure.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 4
Board Bylaws

19-11-401 Bylaws of board to be filed.

Pursuant to Article II(j) of the compact, the board shall file copies of its bylaws and any amendments thereto with the Division of Archives.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 12
Pollution Control Act

Part 1
General Provisions

19-12-101 Title.

This chapter is known as the "Pollution Control Act."

Enacted by Chapter 24, 2014 General Session

19-12-102 Definitions.

As used in this chapter:

(1) "Air pollutant" means the same as that term is defined in Section 19-2-102.

(2) "Air pollutant source" means the same as that term is defined in Section 19-2-102.

(3) "Air pollution" means the same as that term is defined in Section 19-2-102.

(4) "Director" means:

(a) for purposes of an application or certification under this chapter related to air pollution, the director of the Division of Air Quality; or

(b) for purposes of an application or certification under this chapter related to water pollution, the director of the Division of Water Quality.

(5)

(a) "Freestanding pollution control property" means tangible personal property located in the state, regardless of whether a purchaser purchases the tangible personal property voluntarily or to comply with a requirement of a governmental entity, if:

(i) the primary purpose of the tangible personal property is the prevention, control, or reduction of air or water pollution by:

(A) the disposal or elimination of, or redesign to eliminate, waste, and the use of treatment works for industrial waste; or

(B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air pollutants, air pollution, or air contamination sources, and the use of one or more air cleaning devices; and

(ii) the tangible personal property is not used at, in the construction of, or incorporated into a pollution control facility.

(b) "Freestanding pollution control property" does not include:

(i) a consumable:

(A) chemical that is not reusable;

(B) cleaning material that is not reusable; or

(C) supply that is not reusable;
(ii) the following used for human waste:
(A) a septic tank; or
(B) other property;
(iii) property installed, constructed, or used for the moving of sewage to a collection facility of a public or quasi-public sewerage system;
(iv) the following used for the comfort of personnel:
(A) an air conditioner;
(B) a fan; or
(C) an item similar to Subsection (5)(b)(iv)(A) or (B); or
(v) office equipment or an office supply if the primary purpose of the office equipment or office supply is not the prevention, control, or reduction of air or water pollution by:
(A) the disposal or elimination of, or redesign to eliminate, waste, and the use of treatment works for industrial waste; or
(B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air pollutants, air pollution, or air contamination sources, and the use of one or more air cleaning devices.

(6)
(a) "Pollution control facility" means real property in the state, regardless of whether a purchaser purchases the real property voluntarily or to comply with a requirement of a governmental entity, if the primary purpose of the real property is the prevention, control, or reduction of air pollution or water pollution by:
(i) the disposal or elimination of, or redesign to eliminate:
(A) waste; and
(B) the use of treatment works for industrial waste; or
(ii)
(A) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air pollutants, air pollution, or air contamination sources; and
(B) the use of one or more air cleaning devices.
(b) "Pollution control facility" includes:
(i) an addition to real property described in Subsection (6)(a);
(ii) the reconstruction of real property described in Subsection (6)(a); or
(iii) an improvement to real property described in Subsection (6)(a).
(c) "Pollution control facility" does not include:
(i) a consumable:
(A) chemical that is not reusable;
(B) cleaning material that is not reusable; or
(C) supply that is not reusable;
(ii) the following used for human waste:
(A) a septic tank; or
(B) another facility;
(iii) property installed, constructed, or used for the moving of sewage to a collection facility of a public or quasi-public sewerage system;
(iv) the following used for the comfort of personnel:
(A) an air conditioner;
(B) a fan; or
(C) an item similar to Subsection (6)(c)(iv)(A) or (B); or

(v) office equipment or an office supply if the primary purpose of the office equipment or office supply is not the prevention, control, or reduction of air or water pollution by:
(A) the disposal or elimination of, or redesign to eliminate waste, and the use of treatment works for industrial waste; or
(B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air pollutants, air pollution, or air contamination sources, and the use of one or more air cleaning devices.
(7) "Treatment works" means the same as that term is defined in Section 19-5-102.
(8) "Waste" means the same as that term is defined in Section 19-5-102.
(9) "Water pollution" has the same meaning as "pollution" under Section 19-5-102.

Amended by Chapter 154, 2015 General Session

Part 2
Sales and Use Tax Provisions

19-12-201 Sales and use tax exemption for certain purchases or leases related to pollution control.
(1) Except as provided in Subsection (2), a purchase or lease of the following is exempt from a tax imposed under Title 59, Chapter 12, Sales and Use Tax Act:
(a) freestanding pollution control property;
(b) tangible personal property if the tangible personal property is:
(i) incorporated into freestanding pollution control property; or
(ii) used at, used in the construction of, or incorporated into a pollution control facility;
(c) a part, if the part is used in the repair or replacement of property described in Subsection (1)(a) or (b);
(d) a product transferred electronically, if the property transferred electronically is:
(i) incorporated into freestanding pollution control property; or
(ii) used at, used in the construction of, or incorporated into a pollution control facility; or
(e) a service, if the service is performed on:
(i) freestanding pollution control property;
(ii) a pollution control facility; or
(iii) property described in Subsection (1)(b), a part described in Subsection (1)(c), or a product described in Subsection (1)(d).
(2) A purchase or lease of the following is not exempt under this section:
(a) a consumable chemical that is not reusable;
(b) a consumable cleaning material that is not reusable; or
(c) a consumable supply that is not reusable.
(3) A purchase or lease of office equipment or an office supply is not exempt under this section if the primary purpose of the office equipment or office supply is not the prevention, control, or reduction of air or water pollution by:
(a) the disposal or elimination of, or redesign to eliminate, waste, and the use of treatment works for industrial waste; or
(b) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air pollutants, air pollution, or air pollution sources, and the use of one or more air cleaning devices.

Amended by Chapter 154, 2015 General Session

19-12-202 Certification required before claiming a sales and use tax exemption.

(1) Before a person may claim a sales and use tax exemption under Section 19-12-201, the person shall obtain certification issued in accordance with Section 19-12-303.

(2) For purposes of Subsection (1), if a certification relates to air pollution:

(a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the director of the Division of Air Quality; and

(b) the director of the Division of Air Quality shall perform the duties described in:

(i) Section 19-12-303 related to certification; and

(ii) Section 19-12-304 related to revocation of certification.

(3) For purposes of Subsection (1), if a certification relates to water pollution:

(a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the director of the Division of Water Quality; and

(b) the director of the Division of Water Quality shall perform the duties described in:

(i) Section 19-12-303 related to certification; and

(ii) Section 19-12-304 related to revocation of certification.

Enacted by Chapter 24, 2014 General Session

19-12-203 Refunds -- Interest.

(1) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a purchase or lease that would otherwise be exempt under Section 19-12-201, except that the director has not issued a certification under Section 19-12-303, may obtain a refund of the tax if:

(a) the director subsequently issues a certification under Section 19-12-303; and

(b) the person files a claim for the refund with the State Tax Commission on or before the earlier of:

(i) three years after the date the director issues the certification under Section 19-12-303; or

(ii) six years after the date the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act.

(2) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a purchase or lease that is exempt under Section 19-12-201, may obtain a refund of the tax if the person files a claim for the refund with the State Tax Commission within three years after the date the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act.

(3)

(a) If a person files a claim for a refund of taxes under Subsection (1) within 180 days after the date the director issues a certification under Section 19-12-303, interest shall be added to the amount of the refund the State Tax Commission grants:

(i) at the interest rate prescribed in Section 59-1-402; and

(ii) beginning on the date the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act, for which the person is claiming the refund.

(b) If a person files a claim for a refund of taxes under Subsection (1) more than 180 days after the date the director issues a certification under Section 19-12-303, interest shall be added to the amount of the refund the State Tax Commission grants:

(i) at the interest rate prescribed in Section 59-1-402; and

(ii) beginning 30 days after the date the person files the claim for a refund.

(4) If a person files a claim for a refund of taxes under Subsection (2), interest shall be added to the amount of the refund the State Tax Commission grants:

(a) at the interest rate prescribed in Section 59-1-402; and
(b) beginning 30 days after the date the person files the claim for the refund.

Enacted by Chapter 24, 2014 General Session

Part 3
Procedures for Certification and Revocation of Certification

19-12-301 Application for certification of a pollution control facility.
(1) The following may apply to the director for certification of a pollution control facility erected, constructed, installed, or acquired, or to be erected, constructed, installed, or acquired:
(a) an owner, including a contract purchaser, of a trade or business that includes a pollution control facility;
(b) a person who, as a lessee or in accordance with an agreement, conducts a trade or business that includes a pollution control facility; or
(c) a person who operates a pollution control facility in accordance with an agreement with a person described in Subsection (1)(a) or (b).
(2) A person may file an application under this section after:
(a) the person enters into a firm construction contract with another person; or
(b) construction has commenced.
(3) An application for certification under this section shall:
(a) be in a form the director prescribes; and
(b) contain:
(i) a description of the pollution control facility;
(ii) for a purchase or lease of property, a part, a product, or a service for which a person seeks to claim a sales and use tax exemption under Section 19-12-201, a description of the property, part, product, or service;
(iii) the existing or proposed operation procedure for the pollution control facility; and
(iv) a statement of the purpose served or to be served by the pollution control facility.
(4) The director may require an application to contain additional information the director finds necessary to determine whether to grant certification under Section 19-12-303.
(5) This section does not apply to the certification of freestanding pollution control property.

Enacted by Chapter 24, 2014 General Session

19-12-302 Application for certification of freestanding pollution control property.
(1) The following may apply to the director for certification of freestanding pollution control property:
(a) an owner, including a contract purchaser, of the freestanding pollution control property;
(b) a person who leases the freestanding pollution control property; or
(c) a person who operates the freestanding pollution control property under an agreement with a person described in Subsection (1)(a) or (b).
(2) An application for certification under this section shall:
(a) be in a form the director prescribes; and
(b) contain:
(i) a description of the freestanding pollution control property;

(ii) for a purchase or lease of property, a part, a product, or a service for which a person seeks to claim a sales and use tax exemption under Section 19-12-201, a description of the property, part, product, or service;
(iii) the existing or proposed operational procedure for the freestanding pollution control property; and
(iv) a statement of the purpose served or to be served by the freestanding pollution control property.
(3) The director may require an application to contain additional information the director finds necessary to determine whether to grant certification under Section 19-12-303.
(4) This section does not apply to the certification of a pollution control facility.

Enacted by Chapter 24, 2014 General Session

19-12-303 Certification of pollution control facility or freestanding pollution control property.
(1) The director shall issue a written certification to a person no later than 120 days after the date the person files an application under Section 19-12-301 or 19-12-302 if the director determines that:
(a) for a pollution control facility:
(i) the application meets the requirements of Subsection 19-12-301(3);
(ii) the facility that is the subject of the application is a pollution control facility;
(iii) the person who files the application is a person described in Subsection 19-12-301(1); and
(iv) the purchases or leases for which the person seeks to claim a sales and use tax exemption are exempt under Section 19-12-201; or
(b) for freestanding pollution control property:
(i) the application meets the requirements of Subsection 19-12-302(2);
(ii) the property that is the subject of the application is freestanding pollution control property;
(iii) the person who files the application is a person described in Subsection 19-12-302(1); and
(iv) the purchases or leases for which the person seeks to claim a sales and use tax exemption are exempt under Section 19-12-201.
(2) If the director denies certification under this section to a person who files an application, the director shall provide a written statement of the reason for the denial to the person no later than 120 days after the date the person files the application.
(3) The director may not require the certification of:
(a) a replacement of freestanding pollution control property; or
(b) property, a part, a product, or a service described in Subsections 19-12-201(1)(b) through (e) used or performed in a repair or replacement related to:
(i) a pollution control facility; or
(ii) freestanding pollution control property.
(4) The director may issue one certification under this section of two or more:
(a) pollution control facilities that constitute an operational unit; or
(b) freestanding pollution control properties that constitute an operational unit.
(5) If the director does not issue or deny a certification under this section within 120 days after the date a person files an application, the director shall issue a certification to the person at the person's request.

Enacted by Chapter 24, 2014 General Session

19-12-304 Revocation of certification.

(1) The director may revoke a certification issued under Section 19-12-303 if the director determines that:
  (a) the certification was obtained by fraud or gross misrepresentation; or
  (b)
    (i) for a pollution control facility, a requirement of Subsection 19-12-303(1)(a) is not met; or
    (ii) for freestanding pollution control property, a requirement of Subsection 19-12-303(1)(b) is not met.
(2) A shutdown of a pollution control facility or freestanding pollution control property due to force majeure, including obsolescence, is not cause to revoke the certification of the pollution control facility or freestanding pollution control property.
(3) The director shall provide notice of the director's determination to revoke a certification by issuing a notice of agency action.
(4) The holder of a certification may obtain judicial review of the decision of the director to revoke the certification.
(5) A revocation under this section is final and conclusive unless the holder of the certification obtains judicial review in accordance with Subsection (4).
(6) If a revocation is affirmed on appeal, the revocation is final on the date the holder receives the notice described in Subsection (3).
(7) If a revocation becomes final under this section, the director shall notify the State Tax Commission of the revocation.
(8) If the director revokes a certification under this section:
  (a) the prior sales and use tax exemptions the holder of the certification claimed under Section 19-12-201 are forfeited; and
  (b) the State Tax Commission shall collect taxes not paid by the holder of the certification:
    (i) as a result of claiming the sales and use tax exemptions under Subsection (8)(a); and
    (ii) to the extent permitted by Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

Enacted by Chapter 24, 2014 General Session

19-12-305 Rulemaking authority.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of a certification related to air pollution, the Air Quality Board may make rules establishing procedures for:
  (a) processing and evaluating an application for certification; and
  (b) the issuance and revocation of a certification.
(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of a certification related to water pollution, the Water Quality Board may make rules establishing procedures for:
  (a) processing and evaluating an application for certification; and
  (b) the issuance or revocation of a certification.

Enacted by Chapter 24, 2014 General Session