

**DEPARTMENT OF ENVIRONMENTAL QUALITY BOARDS**

**REVISIONS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Margaret Dayton**

House Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**Committee Note:**

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

**General Description:**

This bill changes the composition of each board created under Title 19, Environmental Quality Code, requires specific qualifications for a board member, subjects a board member to certain requirements, transfers some powers and duties from the boards to the executive director or division directors, and gives rulemaking authority to the department.

**Highlighted Provisions:**

This bill:

- ▶ gives rulemaking authority to the Department of Environmental Quality to create attendance standards and conflicts of interest procedures for board members and to make procedural rules for adjudicative proceedings;
- ▶ changes the composition of each board created under Title 19, Environmental Quality Code;
- ▶ establishes qualifications for board members;
- ▶ requires board members to comply with attendance standards and conflict of interest procedures;



- 28           ▶ provides for the executive director of the Department of Environmental Quality to
- 29 take final dispositive action on an adjudicative proceeding under Title 19,
- 30 Environmental Quality Code;
- 31           ▶ transfers powers and duties from a board to a division director;
- 32           ▶ provides for certain division boards to approve enforcement settlements negotiated
- 33 by a division director that exceed \$25,000; and
- 34           ▶ makes technical changes.

**35 Money Appropriated in this Bill:**

36           None

**37 Other Special Clauses:**

38           This bill provides an effective date.

**39 Utah Code Sections Affected:**

40 AMENDS:

- 41           **19-1-105**, as enacted by Laws of Utah 1991, Chapter 112
- 42           **19-1-201**, as last amended by Laws of Utah 2010, Chapter 17
- 43           **19-1-301**, as last amended by Laws of Utah 2009, Chapter 377
- 44           **19-2-102**, as last amended by Laws of Utah 2008, Chapter 68
- 45           **19-2-103**, as last amended by Laws of Utah 2010, Chapter 286
- 46           **19-2-104**, as last amended by Laws of Utah 2011, Chapter 174
- 47           **19-2-105**, as last amended by Laws of Utah 2005, Chapter 2
- 48           **19-2-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 49           **19-2-108**, as last amended by Laws of Utah 2009, Chapter 377
- 50           **19-2-109**, as last amended by Laws of Utah 2010, Chapter 90
- 51           **19-2-109.1**, as last amended by Laws of Utah 2011, Chapter 297
- 52           **19-2-109.2**, as last amended by Laws of Utah 2010, Chapters 286 and 324
- 53           **19-2-110**, as last amended by Laws of Utah 2009, Chapter 377
- 54           **19-2-115**, as last amended by Laws of Utah 2011, Chapter 297
- 55           **19-2-116**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 56           **19-2-117**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 57           **19-2-120**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 58           **19-3-102**, as last amended by Laws of Utah 2001, Chapter 314

- 59           **19-3-103**, as last amended by Laws of Utah 2010, Chapter 286
- 60           **19-3-103.5**, as last amended by Laws of Utah 2009, Chapter 377
- 61           **19-3-104**, as last amended by Laws of Utah 2009, Chapter 183
- 62           **19-3-105**, as last amended by Laws of Utah 2007, Chapter 26
- 63           **19-3-106.4**, as last amended by Laws of Utah 2009, Chapter 183
- 64           **19-3-108**, as enacted by Laws of Utah 1991, Chapter 112
- 65           **19-3-109**, as last amended by Laws of Utah 2008, Chapter 382
- 66           **19-3-111**, as last amended by Laws of Utah 2008, Chapter 382
- 67           **19-4-102**, as last amended by Laws of Utah 2008, Chapter 51
- 68           **19-4-103**, as last amended by Laws of Utah 2010, Chapter 286
- 69           **19-4-104**, as last amended by Laws of Utah 2009, Chapter 377
- 70           **19-4-106**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 71           **19-4-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 72           **19-4-109**, as last amended by Laws of Utah 2008, Chapter 382
- 73           **19-5-102 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapters 155,
- 74 297, and 304
- 75           **19-5-103**, as last amended by Laws of Utah 2010, Chapter 286
- 76           **19-5-104 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapter 304
- 77           **19-5-105.5**, as enacted by Laws of Utah 2011, Chapter 155
- 78           **19-5-106**, as last amended by Laws of Utah 1995, Chapter 114
- 79           **19-5-107**, as last amended by Laws of Utah 1998, Chapter 271
- 80           **19-5-108**, as last amended by Laws of Utah 1995, Chapter 114
- 81           **19-5-111**, as last amended by Laws of Utah 2009, Chapter 377
- 82           **19-5-112**, as last amended by Laws of Utah 2009, Chapter 377
- 83           **19-5-113**, as last amended by Laws of Utah 2008, Chapter 382
- 84           **19-5-114**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 85           **19-5-115**, as last amended by Laws of Utah 2011, Chapters 297 and 340
- 86           **19-6-102**, as last amended by Laws of Utah 2011, Chapter 366
- 87           **19-6-102.1**, as enacted by Laws of Utah 1996, Chapter 230
- 88           **19-6-102.6**, as last amended by Laws of Utah 2008, Chapter 382
- 89           **19-6-103**, as last amended by Laws of Utah 2010, Chapter 286

- 90 **19-6-104**, as last amended by Laws of Utah 2009, Chapter 377
- 91 **19-6-105**, as last amended by Laws of Utah 2008, Chapter 382
- 92 **19-6-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 93 **19-6-108**, as last amended by Laws of Utah 2011, Chapters 133 and 297
- 94 **19-6-108.3**, as last amended by Laws of Utah 2008, Chapters 250 and 382
- 95 **19-6-109**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 96 **19-6-112**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 97 **19-6-117**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 98 **19-6-119**, as last amended by Laws of Utah 2006, Chapter 251
- 99 **19-6-120**, as last amended by Laws of Utah 2010, Chapter 391
- 100 **19-6-402**, as last amended by Laws of Utah 2010, Chapter 324
- 101 **19-6-403**, as last amended by Laws of Utah 2008, Chapters 56 and 382
- 102 **19-6-404**, as last amended by Laws of Utah 1997, Chapter 172
- 103 **19-6-405.3**, as last amended by Laws of Utah 2010, Chapter 186
- 104 **19-6-405.7**, as last amended by Laws of Utah 2002, Chapter 256
- 105 **19-6-407**, as last amended by Laws of Utah 1997, Chapter 172
- 106 **19-6-408**, as last amended by Laws of Utah 2009, Chapter 183
- 107 **19-6-409**, as last amended by Laws of Utah 2010, Chapter 186
- 108 **19-6-411**, as last amended by Laws of Utah 1998, Chapter 95
- 109 **19-6-412**, as last amended by Laws of Utah 1997, Chapter 172
- 110 **19-6-413**, as last amended by Laws of Utah 2011, Chapter 297
- 111 **19-6-414**, as last amended by Laws of Utah 1997, Chapter 172
- 112 **19-6-416**, as last amended by Laws of Utah 1999, Chapter 21
- 113 **19-6-416.5**, as enacted by Laws of Utah 1994, Chapter 297
- 114 **19-6-417**, as last amended by Laws of Utah 1997, Chapter 172
- 115 **19-6-418**, as last amended by Laws of Utah 1998, Chapter 255
- 116 **19-6-419**, as last amended by Laws of Utah 2010, Chapter 186
- 117 **19-6-420**, as last amended by Laws of Utah 1998, Chapter 255
- 118 **19-6-421**, as last amended by Laws of Utah 1997, Chapter 172
- 119 **19-6-423**, as last amended by Laws of Utah 2010, Chapter 186
- 120 **19-6-424**, as last amended by Laws of Utah 1997, Chapter 172

- 121           **19-6-424.5**, as last amended by Laws of Utah 1998, Chapter 255
- 122           **19-6-425**, as last amended by Laws of Utah 1997, Chapter 172
- 123           **19-6-428**, as last amended by Laws of Utah 2006, Chapter 107
- 124           **19-6-601**, as enacted by Laws of Utah 1991, Chapter 122 and renumbered and amended
- 125 by Laws of Utah 1991, Chapter 112
- 126           **19-6-606**, as last amended by Laws of Utah 1996, Chapter 79
- 127           **19-6-703**, as last amended by Laws of Utah 2010, Chapter 324
- 128           **19-6-704**, as last amended by Laws of Utah 2009, Chapter 377
- 129           **19-6-705**, as last amended by Laws of Utah 1997, Chapter 186
- 130           **19-6-706**, as last amended by Laws of Utah 2010, Chapter 324
- 131           **19-6-710**, as last amended by Laws of Utah 1997, Chapter 186
- 132           **19-6-711**, as enacted by Laws of Utah 1993, Chapter 283
- 133           **19-6-712**, as last amended by Laws of Utah 2009, Chapter 388
- 134           **19-6-717**, as enacted by Laws of Utah 1993, Chapter 283
- 135           **19-6-718**, as enacted by Laws of Utah 1993, Chapter 283
- 136           **19-6-721**, as last amended by Laws of Utah 2008, Chapter 382
- 137           **19-6-803**, as last amended by Laws of Utah 2008, Chapter 382
- 138           **19-6-804**, as last amended by Laws of Utah 2002, Chapter 256
- 139           **19-6-806**, as last amended by Laws of Utah 2009, Chapter 183
- 140           **19-6-811**, as last amended by Laws of Utah 2002, Chapter 256
- 141           **19-6-817**, as last amended by Laws of Utah 2002, Chapter 256
- 142           **19-6-819**, as last amended by Laws of Utah 2008, Chapter 382
- 143           **19-6-820**, as last amended by Laws of Utah 2001, Chapter 165
- 144           **19-6-821**, as last amended by Laws of Utah 2008, Chapter 382
- 145           **19-6-1002**, as enacted by Laws of Utah 2006, Chapter 187
- 146           **19-6-1003**, as last amended by Laws of Utah 2009, Chapter 183
- 147           **19-6-1004**, as enacted by Laws of Utah 2006, Chapter 187
- 148           **19-6-1005**, as enacted by Laws of Utah 2006, Chapter 187
- 149           **19-6-1102**, as enacted by Laws of Utah 2009, Chapter 340
- 150           **19-6-1104**, as enacted by Laws of Utah 2009, Chapter 340
- 151           **19-8-106**, as enacted by Laws of Utah 1997, Chapter 247

- 152 **19-8-119**, as last amended by Laws of Utah 2009, Chapter 356
- 153 **41-6a-1644**, as last amended by Laws of Utah 2009, Chapter 333
- 154 **59-1-403**, as last amended by Laws of Utah 2011, Chapters 46, 344, and 410
- 155 **72-6-106.5**, as enacted by Laws of Utah 2009, Chapter 340

157 *Be it enacted by the Legislature of the state of Utah:*

158 Section 1. Section **19-1-105** is amended to read:

159 **19-1-105. Divisions of department -- Control by division directors.**

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

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

162 Act;

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

164 Water Act;

165 (c) the Division of Environmental Response and Remediation, to administer:

166 (i) Title 19, Chapter 6, [~~Parts 3 and 4~~] Part 3, Hazardous Substances Mitigation Act;

167 and

168 (ii) Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

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

170 Control Act;

171 (e) the Division of Solid and Hazardous Waste, to administer:

172 (i) Title 19, Chapter 6, [~~Parts 1, 2, and 5~~] Part 1, Solid and Hazardous Waste Act; [~~and~~]

173 (ii) Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;

174 (iii) Title 19, Chapter 6, Part 5, Solid Waste Management Act;

175 (iv) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal;

176 (v) Title 19, Chapter 6, Part 7, Used Oil Management Act;

177 (vi) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act;

178 (vii) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act;

179 (viii) Title 19, Chapter 6, Part 11, Industrial Byproduct Reuse; and

180 (ix) Title 19, Chapter 6, Part 12, Disposal of Electronic Waste Program; and

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

182 (2) Each division is under the immediate direction and control of a division director

183 appointed by the executive director.

184 (3) ~~(a) [Each]~~ A division director shall possess the ~~[necessary]~~ administrative skills and  
185 training ~~[to adequately qualify him for his position]~~ necessary to perform the duties of division  
186 director. ~~[He]~~

187 (b) A division director shall ~~[have graduated]~~ hold one of the following degrees from  
188 an accredited college or university ~~[with]:~~

189 ~~[(a)]~~ (i) a four-year degree in physical or biological science or engineering;

190 ~~[(b)]~~ (ii) a related degree; or

191 ~~[(c)]~~ (iii) a degree in law.

192 (4) ~~[Each director may be removed at the will of the]~~ The executive director may  
193 remove a division director at will.

194 (5) A division director shall serve as the executive secretary to the policymaking board,  
195 created in Section 19-1-106, that has rulemaking authority over the division director's division.

196 Section 2. Section **19-1-201** is amended to read:

197 **19-1-201. Powers and duties of department -- Rulemaking authority.**

198 (1) The department shall:

199 (a) enter into cooperative agreements with the Department of Health to delineate  
200 specific responsibilities to assure that assessment and management of risk to human health  
201 from the environment are properly administered;

202 (b) consult with the Department of Health and enter into cooperative agreements, as  
203 needed, to ensure efficient use of resources and effective response to potential health and safety  
204 threats from the environment, and to prevent gaps in protection from potential risks from the  
205 environment to specific individuals or population groups; ~~[and]~~

206 (c) coordinate implementation of environmental programs to maximize efficient use of  
207 resources by developing, with local health departments, a Comprehensive Environmental  
208 Service Delivery Plan that:

209 (i) recognizes that the department and local health departments are the foundation for  
210 providing environmental health programs in the state;

211 (ii) delineates the responsibilities of the department and each local health department  
212 for the efficient delivery of environmental programs using federal, state, and local authorities,  
213 responsibilities, and resources;

214 (iii) provides for the delegation of authority and pass through of funding to local health  
215 departments for environmental programs, to the extent allowed by applicable law, identified in  
216 the plan, and requested by the local health department; and

217 (iv) is reviewed and updated annually[-]; and

218 (d) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
219 Rulemaking Act, as follows:

220 (i) for a board created in Section 19-1-106, rules regarding:

221 (A) board meeting attendance; and

222 (B) conflicts of interest procedures; and

223 (ii) rules that govern an adjudicative proceeding, consistent with Section 19-1-301 and  
224 Title 63G, Chapter 4, Administrative Procedures Act.

225 (2) The department may:

226 (a) investigate matters affecting the environment;

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

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

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

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

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

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

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

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

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



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

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

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

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

258 (3) In providing service under Subsection (2)(m), the department may not provide  
259 service in a manner that impairs any other person's service from the department.

260 Section 3. Section **19-1-301** is amended to read:

261 **19-1-301. Adjudicative proceedings.**

262 (1) As used in this section, "dispositive action" is a final agency action that:

263 (a) [~~a board~~] the executive director takes following an adjudicative proceeding on a  
264 request for agency action; and

265 (b) is subject to judicial review under Section 63G-4-403.

266 (2) (a) The department and its boards shall comply with the procedures and  
267 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

268 (b) The procedures for an adjudicative proceeding conducted by an administrative law  
269 judge are governed by:

270 (i) Title 63G, Chapter 4, Administrative Procedures Act;

271 (ii) rules adopted by a board as authorized by:

272 (A) Subsection 63G-4-102(6); and

273 (B) this title; and

274 (iii) the Utah Rules of Civil Procedure, in the absence of a procedure established under  
275 Subsection (2)(b)(i) or (ii).

276 (3) ~~[An]~~ Except as provided in Section 19-2-113, an administrative law judge shall  
277 hear a party's request for agency action ~~[made to a board created in Section 19-1-106].~~

278 (4) The executive director shall appoint an administrative law judge who:

279 (a) is a member in good standing of the Utah State Bar;

280 (b) has a minimum of:

281 (i) 10 years of experience practicing law; and

282 (ii) five years of experience practicing in the field of:

283 (A) environmental compliance;

284 (B) natural resources;

285 (C) regulation by an administrative agency; or

286 (D) a field related to a field listed in Subsections (4)(b)(ii)(A) through (C); and

287 (c) has a working knowledge of the federal laws and regulations and state statutes and  
288 rules applicable to a request for agency action.

289 (5) In appointing an administrative law judge who meets the qualifications listed in  
290 Subsection (4), the executive director may:

291 (a) compile a list of persons who may be engaged as an administrative law judge pro  
292 tempore by mutual consent of the parties to an adjudicative proceeding;

293 (b) appoint an assistant attorney general as an administrative law judge pro tempore; or

294 (c) (i) appoint an administrative law judge as an employee of the department; and

295 (ii) assign the administrative law judge responsibilities in addition to conducting an  
296 adjudicative proceeding.

297 (6) (a) An administrative law judge ~~[shall]~~:

298 (i) shall conduct an adjudicative proceeding;

299 (ii) may take any action that is not a dispositive action; and

300 (iii) shall submit to the ~~[board]~~ executive director a proposed dispositive action,  
301 including:

302 (A) written findings of fact;

303 (B) written conclusions of law; and

304 (C) a recommended order.

305 (b) ~~[A board]~~ The executive director may:

306 (i) approve, approve with modifications, or disapprove a proposed dispositive action

307 submitted to the [~~board~~] executive director under Subsection (6)(a); or

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

310 (c) In making a decision regarding a dispositive action, the executive director may seek  
311 the advice of, and consult with:

312 (i) the assistant attorney general assigned to the department; or

313 (ii) a special master who:

314 (A) is appointed by the executive director; and

315 (B) is an expert in the subject matter of the proposed dispositive action.

316 (d) The executive director shall base a final dispositive action on the record of the  
317 proceeding before the administrative law judge.

318 (7) To conduct an adjudicative proceeding, an administrative law judge may:

319 (a) compel:

320 (i) the attendance of a witness; and

321 (ii) the production of a document or other evidence;

322 (b) administer an oath;

323 (c) take testimony; and

324 (d) receive evidence as necessary.

325 (8) A party may appear before an administrative law judge in person, through an agent  
326 or employee, or as provided by a board rule.

327 (9) (a) An administrative law judge [~~or board member~~] or the executive director may  
328 not [~~communicate~~] participate in an ex parte communication with a party to an adjudicative  
329 proceeding regarding the merits of the adjudicative proceeding unless notice and an  
330 opportunity to be heard are afforded to all parties.

331 (b) [~~An~~] If an administrative law judge or [board member who] the executive director  
332 receives an ex parte communication, the person who receives the ex parte communication shall  
333 place the communication into the public record of the proceedings and afford all parties an  
334 opportunity to comment on the information.

335 (10) Nothing in this section limits a party's right to an adjudicative proceeding under  
336 Title 63G, Chapter 4, Administrative Procedures Act.

337 Section 4. Section **19-2-102** is amended to read:

338 **19-2-102. Definitions.**

339 As used in this chapter:

340 (1) "Air contaminant" means any particulate matter or any gas, vapor, suspended solid,  
341 or any combination of them, excluding steam and water vapors.

342 (2) "Air contaminant source" means all sources of emission of air contaminants  
343 whether privately or publicly owned or operated.

344 (3) "Air pollution" means the presence in the ambient air of one or more air  
345 contaminants in the quantities and duration and under conditions and circumstances as is or  
346 tends to be injurious to human health or welfare, animal or plant life, or property, or would  
347 unreasonably interfere with the enjoyment of life or use of property, as determined by the rules  
348 adopted by the board.

349 (4) "Ambient air" means the surrounding or outside air.

350 (5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite  
351 (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

352 (6) "Asbestos-containing material" means any material containing more than 1%  
353 asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M, National  
354 Emission Standard for Asbestos.

355 (7) "Asbestos inspection" means an activity undertaken to determine the presence or  
356 location, or to assess the condition of, asbestos-containing material or suspected  
357 asbestos-containing material, whether by visual or physical examination, or by taking samples  
358 of the material.

359 (8) (a) "Board" means the Air Quality Board.

360 (b) "Board" means, as used in Sections 19-2-123 through 19-2-126, the Air Quality  
361 Board or the Water Quality Board.

362 (9) "Clean school bus" has the same meaning as defined in 42 U.S.C. Sec. 16091.

363 (10) [~~Executive secretary~~] "Director" means the [~~executive secretary of the board~~]  
364 director of the Division of Air Quality.

365 (11) "Division" means the Division of Air Quality, created in Subsection  
366 19-1-105(1)(a).

367 [~~H~~] (12) (a) "Facility" means machinery, equipment, structures, or any part or  
368 accessories of them, installed or acquired for the primary purpose of controlling or disposing of

369 air pollution.

370 (b) "Facility" does not include an air conditioner, fan, or other similar facility for the  
371 comfort of personnel.

372 ~~[(12)]~~ (13) "Friable asbestos-containing material" means any material containing more  
373 than 1% asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M,  
374 National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce  
375 to powder when dry.

376 ~~[(13)]~~ (14) "Indirect source" means a facility, building, structure, or installation which  
377 attracts or may attract mobile source activity that results in emissions of a pollutant for which  
378 there is a national standard.

379 ~~[(14)]~~ (15) (a) "Pollution control facility" or "facility" means, as used in Sections  
380 19-2-123 through 19-2-126, any land, structure, building, installation, excavation, machinery,  
381 equipment, or device, or any addition to, reconstruction, replacement or improvement of, land  
382 or an existing structure, building, installation, excavation, machinery, equipment, or device  
383 reasonably used, erected, constructed, acquired, or installed by any person if the primary  
384 purpose of the use, erection, construction, acquisition, or installation is the prevention, control,  
385 or reduction of air or water pollution by:

386 (i) the disposal or elimination of or redesign to eliminate waste and the use of treatment  
387 works for industrial waste as defined in Title 19, Chapter 5, Water Quality Act; or

388 (ii) the disposal, elimination, or reduction of or redesign to eliminate or reduce air  
389 contaminants or air pollution or air contamination sources and the use of air cleaning devices.

390 (b) "Pollution control facility" or "facility" does not include air conditioners, septic  
391 tanks, or other facilities for human waste, nor any property installed, constructed, or used for  
392 the moving of sewage to the collection facilities of a public or quasi-public sewerage system.

393 Section 5. Section **19-2-103** is amended to read:

394 **19-2-103. Members of board -- Appointment -- Terms -- Organization -- Per diem**  
395 **and expenses.**

396 (1) The board ~~[comprises 11 members, one of whom shall be]~~ consists of the following  
397 nine members:

398 (a) (i) the executive director ~~[and 10 of whom];~~ or

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

400 (b) the following eight members, who shall be nominated by the executive director and  
401 appointed by the governor with the consent of the Senate[-]:

402 (i) one representative who:

403 (A) is not connected with industry;

404 (B) is an expert in air quality matters; and

405 (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist  
406 with relevant training and experience;

407 (ii) two government representatives who do not represent the federal government;

408 (iii) one representative from the mining or manufacturing industry;

409 (iv) one representative from the fuels industry;

410 (v) one representative from the public who represents a nongovernmental organization;

411 (vi) one representative from the public who is trained and experienced in public health;

412 and

413 (vii) one Utah-licensed practicing attorney who is knowledgeable about air quality  
414 regulatory issues.

415 (2) ~~[The members]~~ A member of the board shall:

416 (a) be knowledgeable [of] about air pollution matters [and shall be:], as evidenced by a  
417 professional degree, a professional accreditation, or documented experience;

418 ~~[(a) a practicing physician and surgeon licensed in the state not connected with~~  
419 ~~industry;]~~

420 ~~[(b) a registered professional engineer who is not from industry;]~~

421 ~~[(c) a representative from municipal government;]~~

422 ~~[(d) a representative from county government;]~~

423 ~~[(e) a representative from agriculture;]~~

424 ~~[(f) a representative from the mining industry;]~~

425 ~~[(g) a representative from manufacturing;]~~

426 ~~[(h) a representative from the fuel industry; and]~~

427 ~~[(i) two representatives of the public not representing or connected with industry, at~~  
428 ~~least one of whom represents organized environmental interests;]~~

429 (b) be a resident of Utah;

430 (c) attend board meetings in accordance with the attendance rules made by the

431 department under Subsection 19-1-201(1)(d)(i)(A); and

432 (d) comply with all applicable statutes, rules, and policies, including the conflict of  
433 interest rules made by the department under Subsection 19-1-201(1)(d)(ii)(B).

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

436 (4) ~~[The]~~ A majority of the members of the board may not derive any significant  
437 portion of their income from persons subject to permits or orders under this chapter. ~~[Any~~  
438 ~~potential conflict of interest of any member or the executive secretary, relevant to the interests~~  
439 ~~of the board, shall be adequately disclosed.]~~

440 ~~[(5) Members serving on the Air Conservation Committee created by Laws of Utah~~  
441 ~~1981, Chapter 126, as amended, shall serve as members of the board throughout the terms for~~  
442 ~~which they were appointed.]~~

443 ~~[(6)]~~ (5) (a) ~~[Except as required by Subsection (6)(b), members]~~ Members shall be  
444 appointed for a term of four years.

445 (b) Notwithstanding the requirements of Subsection ~~[(6)]~~ (5)(a), the governor shall, at  
446 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
447 board members are staggered so that approximately half of the board is appointed every two  
448 years.

449 ~~[(7)]~~ (6) A member may serve more than one term.

450 ~~[(8)]~~ (7) A member shall hold office until the expiration of the member's term and until  
451 the member's successor is appointed, but not more than 90 days after the expiration of the  
452 member's term.

453 ~~[(9)]~~ (8) When a vacancy occurs in the membership for any reason, the replacement  
454 shall be appointed for the unexpired term.

455 ~~[(10)]~~ (9) The board shall elect annually a chair and a vice chair from its members.

456 ~~[(11)]~~ (10) (a) The board shall meet at least quarterly~~[-and special].~~

457 (b) Special meetings may be called by the chair upon ~~[his]~~ the chair's own initiative,  
458 upon the request of the ~~[executive secretary]~~ director, or upon the request of three members of  
459 the board.

460 ~~[(b)]~~ (c) Three days' notice shall be given to each member of the board ~~[prior to]~~ before  
461 any meeting.

462            [~~(12)~~] (11) [~~Six~~] Five members constitute a quorum at any meeting, and the action of a  
463 majority of members present is the action of the board.

464            [~~(13)~~] (12) A member may not receive compensation or benefits for the member's  
465 service, but may receive per diem and travel expenses in accordance with:

466            (a) Section 63A-3-106;

467            (b) Section 63A-3-107; and

468            (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
469 63A-3-107.

470            Section 6. Section **19-2-104** is amended to read:

471            **19-2-104. Powers of board.**

472            (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah  
473 Administrative Rulemaking Act:

474            (a) regarding the control, abatement, and prevention of air pollution from all sources  
475 and the establishment of the maximum quantity of air contaminants that may be emitted by any  
476 air contaminant source;

477            (b) establishing air quality standards;

478            (c) requiring persons engaged in operations which result in air pollution to:

479            (i) install, maintain, and use emission monitoring devices, as the board finds necessary;

480            (ii) file periodic reports containing information relating to the rate, period of emission,  
481 and composition of the air contaminant; and

482            (iii) provide access to records relating to emissions which cause or contribute to air  
483 pollution;

484            (d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter  
485 II - Asbestos Hazard Emergency Response, and reviewing and approving asbestos management  
486 plans submitted by local education agencies under that act;

487            (e) establishing a requirement for a diesel emission opacity inspection and maintenance  
488 program for diesel-powered motor vehicles;

489            (f) implementing an operating permit program as required by and in conformity with  
490 Titles IV and V of the federal Clean Air Act Amendments of 1990;

491            (g) establishing requirements for county emissions inspection and maintenance  
492 programs after obtaining agreement from the counties that would be affected by the



493 requirements;

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

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

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

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

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

507 (3) (a) The board may:

508 ~~[(a)]~~ (i) hold a hearing that is not an adjudicative proceeding relating to any aspect of,  
 509 or matter in, the administration of this chapter ~~[and compel the attendance of witnesses and the~~  
 510 ~~production of documents and other evidence, administer oaths and take testimony, and receive~~  
 511 ~~evidence as necessary];~~

512 ~~[(ii) receive a proposed dispositive action from an administrative law judge as provided~~  
 513 ~~by Section 19-1-301; and]~~

514 ~~[(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~  
 515 ~~action; or]~~

516 ~~[(B) return the proposed dispositive action to the administrative law judge for further~~  
 517 ~~action as directed;]~~

518 (ii) order the director to:

519 ~~[(b)]~~ (A) issue orders necessary to enforce the provisions of this chapter~~[-];~~

520 (B) enforce the orders by appropriate administrative and judicial proceedings~~[-and];~~ or

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

522 ~~[(c) settle or compromise any civil action initiated to compel compliance with this~~  
 523 ~~chapter and the rules made under this chapter;]~~

524 ~~[(d) secure necessary scientific, technical, administrative, and operational services,~~  
525 ~~including laboratory facilities, by contract or otherwise;]~~

526 ~~[(e) prepare and develop a comprehensive plan or plans for the prevention, abatement,~~  
527 ~~and control of air pollution in this state;]~~

528 ~~(iii) advise, consult, contract, and cooperate with other agencies of the state, local~~  
529 ~~governments, industries, other states, interstate or interlocal agencies, the federal government,~~  
530 ~~or interested persons or groups.~~

531 ~~(b) The board shall:~~

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

533 ~~(A) review a settlement negotiated by the director in accordance with Subsection~~  
534 ~~19-2-107(2)(b)(viii) that requires a civil penalty of \$25,000 or more; and~~

535 ~~(B) approve or disapprove the settlement;~~

536 ~~[(f)] (ii) encourage voluntary cooperation by persons and affected groups to achieve the~~  
537 ~~purposes of this chapter;~~

538 ~~[(g) encourage local units of government to handle air pollution within their respective~~  
539 ~~jurisdictions on a cooperative basis and provide technical and consultative assistance to them;]~~

540 ~~[(h) encourage and conduct studies, investigations, and research relating to air~~  
541 ~~contamination and air pollution and their causes, effects, prevention, abatement, and control;]~~

542 ~~[(i) determine by means of field studies and sampling the degree of air contamination~~  
543 ~~and air pollution in all parts of the state;]~~

544 ~~[(j) monitor the effects of the emission of air contaminants from motor vehicles on the~~  
545 ~~quality of the outdoor atmosphere in all parts of this state and take appropriate action with~~  
546 ~~respect to them;]~~

547 ~~[(k) collect and disseminate information and conduct educational and training~~  
548 ~~programs relating to air contamination and air pollution;]~~

549 ~~[(l) advise, consult, contract, and cooperate with other agencies of the state, local~~  
550 ~~governments, industries, other states, interstate or interlocal agencies, the federal government,~~  
551 ~~and with interested persons or groups;]~~

552 ~~[(m) consult, upon request, with any person proposing to construct, install, or~~  
553 ~~otherwise acquire an air contaminant source in the state concerning the efficacy of any~~  
554 ~~proposed control device, or system for this source, or the air pollution problem which may be~~

555 related to the source, device, or system, but a consultation does not relieve any person from  
556 compliance with this chapter, the rules adopted under it, or any other provision of law;]

557 [~~(n)~~ accept, receive, and administer grants or other funds or gifts from public and  
558 private agencies, including the federal government, for the purpose of carrying out any of the  
559 functions of this chapter;]

560 [~~(o)~~ (iii) require the owner and operator of each new source which directly emits or  
561 has the potential to emit 100 tons per year or more of any air contaminant or the owner or  
562 operator of each existing source which by modification will increase emissions or have the  
563 potential of increasing emissions by 100 tons per year or more of any air contaminant, to pay a  
564 fee sufficient to cover the reasonable costs of:

565 [(i)] (A) reviewing and acting upon the notice required under Section 19-2-108; and

566 [(ii)] (B) implementing and enforcing requirements placed on the sources by any  
567 approval order issued pursuant to notice, not including any court costs associated with any  
568 enforcement action;

569 [~~(p)~~ assess and collect noncompliance penalties as required in Section 120 of the  
570 federal Clean Air Act, 42 U.S.C. Sec. 7420;]

571 [(q)] (iv) meet the requirements of federal air pollution laws;

572 [(r)] (v) establish work practice, certification, and clearance air sampling requirements  
573 for persons who:

574 [(i)] (A) contract for hire to conduct demolition, renovation, salvage, encapsulation  
575 work involving friable asbestos-containing materials, or asbestos inspections;

576 [(ii)] (B) conduct work described in Subsection (3)[~~(r)~~(i)](b)(v)(A) in areas to which  
577 the general public has unrestrained access or in school buildings that are subject to the federal  
578 Asbestos Hazard Emergency Response Act of 1986;

579 [(iii)] (C) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,  
580 Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

581 [(iv)] (D) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et  
582 seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

583 [(s)] (vi) establish certification requirements for persons required under 15 U.S.C.A.  
584 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency  
585 Response, to be accredited as inspectors, management planners, abatement project designers,

586 asbestos abatement contractors and supervisors, or asbestos abatement workers;

587       ~~[(+)]~~ (vii) establish certification requirements for asbestos project monitors, which shall  
588 provide for experience-based certification of persons who, prior to establishment of the  
589 certification requirements, had received relevant asbestos training, as defined by rule, and had  
590 acquired at least 1,000 hours of experience as project monitors;

591       ~~[(+)]~~ (viii) establish certification procedures and requirements for certification of the  
592 conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the  
593 tax credit granted in Section 59-7-605 or 59-10-1009;

594       ~~[(+)]~~ (ix) establish a program to certify private sector air quality permitting  
595 professionals (AQPP), as described in Section 19-2-109.5;

596       ~~[(+)]~~ (x) establish certification requirements for persons required under 15 U.S.C.A.  
597 2601 et seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited  
598 as inspectors, risk assessors, supervisors, project designers, or abatement workers; and

599       ~~[(+)]~~ (xi) assist the State Board of Education in adopting school bus idling reduction  
600 standards and implementing an idling reduction program in accordance with Section  
601 41-6a-1308.

602       (4) Any rules adopted under this chapter shall be consistent with provisions of federal  
603 laws, if any, relating to control of motor vehicles or motor vehicle emissions.

604       (5) Nothing in this chapter authorizes the board to require installation of or payment for  
605 any monitoring equipment by the owner or operator of a source if the owner or operator has  
606 installed or is operating monitoring equipment that is equivalent to equipment which the board  
607 would require under this section.

608       (6) The board may not require testing for asbestos or related materials on a residential  
609 property with four or fewer units.

610       (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the  
611 following that are subject to the authority granted to the director under Section 19-2-107 or  
612 19-2-108:

613       (a) a permit;

614       (b) a license;

615       (c) a registration;

616       (d) a certification; or

617 (e) another administrative authorization made by the director.

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

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

622 Section 7. Section **19-2-105** is amended to read:

623 **19-2-105. Duties of board.**

624 The board, in conjunction with the governing body of each county identified in Section  
625 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the  
626 inspection and maintenance program developed under Section 41-6a-1643 including issues  
627 relating to:

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

636 Section 8. Section **19-2-107** is amended to read:

637 **19-2-107. Director -- Appointment -- Powers.**

638 (1) The executive [~~secretary~~] director shall [~~be appointed by the executive~~] appoint the  
639 director [~~, with the approval of the board, and~~]. The director shall serve under the  
640 administrative direction of the executive director.

641 (2) (a) The [~~executive secretary may~~] director shall:

642 [~~(a) develop programs for the prevention, control, and abatement of new or existing air~~  
643 ~~pollution resources of the state;~~]

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

646 [~~(b)~~] (ii) advise, consult, and cooperate with other agencies of the state, the federal  
647 government, other states and interstate agencies, and [~~with~~] affected groups, political

648 subdivisions, and industries in furtherance of the purposes of this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

677 (b) The director may:

678 ~~(i)~~ (i) employ full-time employees necessary to carry out this chapter;

679 ~~[(d)]~~ (ii) ~~[as authorized by the board,]~~ subject to the provisions of this chapter,  
680 authorize any employee or representative of the department to enter at reasonable time and  
681 upon reasonable notice in or upon public or private property for the purposes of inspecting and  
682 investigating conditions and plant records concerning possible air pollution;

683 ~~[(e)]~~ (iii) encourage, participate in, or conduct studies, investigations, research, and  
684 demonstrations relating to air pollution and its causes [of it], effects, prevention, abatement,  
685 and control, as advisable and necessary for the discharge of duties assigned under this chapter,  
686 including the establishment of inventories of pollution sources;

687 ~~[(f)]~~ (iv) collect and disseminate information relating to air pollution and the  
688 prevention, control, and abatement of it;

689 ~~[(g) as authorized by the board subject to the provisions of this chapter, enforce rules~~  
690 ~~through the issuance of orders, including:]~~

691 ~~[(i) prohibiting or abating discharges of wastes affecting ambient air;]~~

692 ~~[(ii) requiring the construction of new control facilities or any parts of new control~~  
693 ~~facilities or the modification, extension, or alteration of existing control facilities or any parts~~  
694 ~~of new control facilities; or]~~

695 ~~[(iii) the adoption of other remedial measures to prevent, control, or abate air~~  
696 ~~pollution;]~~

697 ~~[(h) review plans, specifications, or other data relative to pollution control systems or~~  
698 ~~any part of the systems provided in this chapter;]~~

699 (v) cooperate with studies and research relating to air pollution and its control,  
700 abatement, and prevention;

701 (vi) subject to Subsection (3), upon request, consult concerning the following with any  
702 person proposing to construct, install, or otherwise acquire an air contaminant source in Utah:

703 (A) the efficacy of any proposed control device or proposed control system for the  
704 source; or

705 (B) the air pollution problem that may be related to the source, device, or system;

706 (vii) accept, receive, and administer grants or other funds or gifts from public and  
707 private agencies, including the federal government, for the purpose of carrying out any of the  
708 functions of this chapter;

709 (viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise any civil action

710 initiated by the division to compel compliance with this chapter or the rules made under this  
711 chapter; or

712 ~~[(i)]~~ (ix) as authorized by the board[;] and subject to the provisions of this chapter,  
713 exercise all incidental powers necessary to carry out the purposes of this chapter, including  
714 certification to any state or federal authorities for tax purposes the fact of construction,  
715 installation, or acquisition of any facility, land, building, machinery, or equipment or any part  
716 of them, in conformity with this chapter[;].

717 ~~[(j) cooperate with any person in studies and research regarding air pollution, its~~  
718 ~~control, abatement, and prevention; and]~~

719 ~~[(k) represent the state with the specific concurrence of the executive director in all~~  
720 ~~matters pertaining to interstate air pollution, including interstate compacts and similar~~  
721 ~~agreements.]~~

722 (3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the  
723 requirements of this chapter, the rules adopted under this chapter, or any other provision of  
724 law.

725 Section 9. Section **19-2-108** is amended to read:

726 **19-2-108. Notice of construction or modification of installations required --**  
727 **Authority of director to prohibit construction -- Hearings -- Limitations on authority of**  
728 **board -- Inspections authorized.**

729 (1) ~~[The board shall require that notice]~~ Notice shall be given to the ~~[executive~~  
730 ~~secretary]~~ director by any person planning to construct a new installation which will or might  
731 reasonably be expected to be a source or indirect source of air pollution or to make  
732 modifications to an existing installation which will or might reasonably be expected to increase  
733 the amount of or change the character or effect of air contaminants discharged, so that the  
734 installation may be expected to be a source or indirect source of air pollution, or by any person  
735 planning to install an air cleaning device or other equipment intended to control emission of air  
736 contaminants.

737 (2) (a) (i) The ~~[executive secretary]~~ director may require, as a condition precedent to  
738 the construction, modification, installation, or establishment of the air contaminant source or  
739 indirect source, the submission of plans, specifications, and other information as he finds  
740 necessary to determine whether the proposed construction, modification, installation, or



741 establishment will be in accord with applicable rules in force under this chapter.

742 (ii) Plan approval for an indirect source may be delegated by the ~~[executive secretary]~~  
743 director to a local authority when requested and upon assurance that the local authority has and  
744 will maintain sufficient expertise to insure that the planned installation will meet the  
745 requirements established by law.

746 (b) If within 90 days after the receipt of plans, specifications, or other information  
747 required under this subsection, the ~~[executive secretary]~~ director determines that the proposed  
748 construction, installation, or establishment or any part of it will not be in accord with the  
749 requirements of this chapter or applicable rules or that further time, not exceeding three  
750 extensions of 30 days each, is required by the ~~[board]~~ director to adequately review the plans,  
751 specifications, or other information, he shall issue an order prohibiting the construction,  
752 installation, or establishment of the air contaminant source or sources in whole or in part.

753 (3) In addition to any other remedies, any person aggrieved by the issuance of an order  
754 either granting or denying a request for the construction of a new installation, and prior to  
755 invoking any such other remedies shall, upon request, in accordance with the rules of the board,  
756 be entitled to a hearing conducted by an administrative law judge as provided by Section  
757 19-1-301. ~~[Following the hearing and the receipt by the board of the proposed dispositive~~  
758 ~~action from the administrative law judge, the board may affirm, modify, or withdraw the~~  
759 ~~permit.]~~

760 (4) Any features, machines, and devices constituting parts of or called for by plans,  
761 specifications, or other information submitted under Subsection (1) shall be maintained in good  
762 working order.

763 (5) This section does not authorize the ~~[board]~~ director to require the use of machinery,  
764 devices, or equipment from a particular supplier or produced by a particular manufacturer if the  
765 required performance standards may be met by machinery, devices, or equipment otherwise  
766 available.

767 (6) (a) Any authorized officer, employee, or representative of the ~~[board]~~ director may  
768 enter and inspect any property, premise, or place on or at which an air contaminant source is  
769 located or is being constructed, modified, installed, or established at any reasonable time for  
770 the purpose of ascertaining the state of compliance with this chapter and the rules adopted  
771 under it.

772 (b) (i) A person may not refuse entry or access to any authorized representative of the  
773 ~~[board]~~ director who requests entry for purposes of inspection and who presents appropriate  
774 credentials.

775 (ii) A person may not obstruct, hamper, or interfere with any inspection.

776 (c) If requested, the owner or operator of the premises shall receive a report setting  
777 forth all facts found which relate to compliance status.

778 Section 10. Section **19-2-109** is amended to read:

779 **19-2-109. Air quality standards -- Hearings on adoption -- Orders of director --**  
780 **Adoption of emission control requirements.**

781 (1) (a) The board, in adopting standards of quality for ambient air, shall conduct public  
782 hearings.

783 (b) Notice of any public hearing for the consideration, adoption, or amendment of air  
784 quality standards shall specify the locations to which the proposed standards apply and the  
785 time, date, and place of the hearing.

786 (c) The notice shall be:

787 (i) (A) published at least twice in any newspaper of general circulation in the area  
788 affected; and

789 (B) published on the Utah Public Notice Website created in Section 63F-1-701, at least  
790 20 days before the public hearing; and

791 (ii) mailed at least 20 days before the public hearing to the chief executive of each  
792 political subdivision of the area affected and to other persons the ~~[executive secretary]~~ director  
793 has reason to believe will be affected by the standards.

794 (d) The adoption of air quality standards or any modification or changes to air quality  
795 standards shall be by order of the ~~[executive secretary]~~ director following formal action of the  
796 board with respect to the standards.

797 (e) The order shall be published:

798 (i) in a newspaper of general circulation in the area affected; and

799 (ii) as required in Section 45-1-101.

800 (2) (a) The board may establish emission control requirements by rule that in its  
801 judgment may be necessary to prevent, abate, or control air pollution that may be statewide or  
802 may vary from area to area, taking into account varying local conditions.

803 (b) In adopting these requirements, the board shall give notice and conduct public  
804 hearings in accordance with the requirements in Subsection (1).

805 Section 11. Section **19-2-109.1** is amended to read:

806 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

807 (1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

808 (a) "EPA" means the federal Environmental Protection Agency.

809 (b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

810 (c) "Operating permit" means a permit issued by the [~~executive secretary~~] director to  
811 sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air  
812 Act.

813 (d) "Program" means the air pollution operating permit program established under this  
814 section to comply with Title V of the 1990 Clean Air Act.

815 (e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990 Clean  
816 Air Act and implementing federal regulations.

817 (2) (a) A person may not operate any source of air pollution required to have a permit  
818 under Title V of the 1990 Clean Air Act without having obtained an operating permit from the  
819 [~~executive secretary~~] director under procedures the board establishes by rule.

820 (b) A person is not required to submit an operating permit application until the  
821 governor has submitted an operating permit program to the EPA.

822 (c) Any operating permit issued under this section may not become effective until the  
823 day after the EPA issues approval of the permit program or November 15, 1995, whichever  
824 occurs first.

825 (3) (a) Operating permits issued under this section shall be for a period of five years  
826 unless the [~~board~~] director makes a written finding, after public comment and hearing, and  
827 based on substantial evidence in the record, that an operating permit term of less than five years  
828 is necessary to protect the public health and the environment of the state.

829 (b) The [~~executive secretary~~] director may issue, modify, or renew an operating permit  
830 only after providing public notice, an opportunity for public comment, and an opportunity for a  
831 public hearing.

832 (c) The [~~executive secretary~~] director shall, in conformity with the 1990 Clean Air Act  
833 and implementing federal regulations, revise the conditions of issued operating permits to

834 incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990  
835 Clean Air Act, if the remaining period of the permit is three or more years.

836 (d) The ~~[executive secretary]~~ director may terminate, modify, revoke, or reissue an  
837 operating permit for cause.

838 (4) (a) The board shall establish a proposed annual emissions fee that conforms with  
839 Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources  
840 required to obtain a permit. The emissions fee established under this section is in addition to  
841 fees assessed under Section 19-2-108 for issuance of an approval order.

842 (b) In establishing the fee the board shall comply with the provisions of Section  
843 63J-1-504 that require a public hearing and require the established fee to be submitted to the  
844 Legislature for its approval as part of the department's annual appropriations request.

845 (c) The fee shall cover all reasonable direct and indirect costs required to develop and  
846 administer the program and the small business assistance program established under Section  
847 19-2-109.2. The ~~[board]~~ director shall prepare an annual report of the emissions fees collected  
848 and the costs covered by those fees under this Subsection (4).

849 (d) The fee shall be established uniformly for all sources required to obtain an  
850 operating permit under the program and for all regulated pollutants.

851 (e) The fee may not be assessed for emissions of any regulated pollutant if the  
852 emissions are already accounted for within the emissions of another regulated pollutant.

853 (f) An emissions fee may not be assessed for any amount of a regulated pollutant  
854 emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

855 (5) Emissions fees ~~[for the period: (a) of July 1, 1992, through June 30, 1993, shall be~~  
856 ~~based on the most recent emissions inventory prepared by the executive secretary; and (b)]~~  
857 accrued on and after July 1, 1993, but before issuance of an operating permit, shall be based on  
858 the most recent emissions inventory, unless a source elects prior to July 1, 1992, to base the fee  
859 on allowable emissions, if applicable for a regulated pollutant.

860 (6) After an operating permit is issued the emissions fee shall be based on actual  
861 emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a  
862 permit, to base the fee during the period of the permit on allowable emissions for that regulated  
863 pollutant.

864 (7) If the owner or operator of a source subject to this section fails to timely pay an

865 annual emissions fee, the [~~executive secretary~~] director may:

866 (a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus  
867 interest on the fee computed at 12% annually; or

868 (b) revoke the operating permit.

869 (8) The owner or operator of a source subject to this section may contest an emissions  
870 fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4,  
871 Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (8).

872 (a) The owner or operator shall pay the fee under protest prior to being entitled to a  
873 hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to  
874 contest the fee or penalty under this section.

875 (b) A request for a hearing under this Subsection (8) shall be made after payment of the  
876 emissions fee and within six months after the emissions fee was due.

877 (9) To reinstate an operating permit revoked under Subsection (7) the owner or  
878 operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all  
879 outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

880 (10) All emissions fees and penalties collected by the department under this section  
881 shall be deposited in the General Fund as the Air Pollution Operating Permit Program  
882 dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by  
883 the department in developing and administering the program and the small business assistance  
884 program under Section 19-2-109.2.

885 (11) Failure of the [~~executive secretary~~] director to act on any operating permit  
886 application or renewal is a final administrative action only for the purpose of obtaining judicial  
887 review by any of the following persons to require the [~~executive secretary~~] director to take  
888 action on the permit or its renewal without additional delay:

889 (a) the applicant;

890 (b) any person who participated in the public comment process; or

891 (c) any other person who could obtain judicial review of that action under applicable  
892 law.

893 Section 12. Section **19-2-109.2** is amended to read:

894 **19-2-109.2. Small business assistance program.**

895 (1) The board shall establish a small business stationary source technical and

896 environmental compliance assistance program that conforms with Title V of the 1990 Clean  
897 Air Act to assist small businesses to comply with state and federal air pollution laws.

898 (2) There is created the Compliance Advisory Panel to advise and monitor the program  
899 created in Subsection (1). The seven panel members are:

900 (a) two members who are not owners or representatives of owners of small business  
901 stationary air pollution sources, selected by the governor to represent the general public;

902 (b) four members who are owners or who represent owners of small business stationary  
903 sources selected by leadership of the Utah Legislature as follows:

904 (i) one member selected by the majority leader of the Senate;

905 (ii) one member selected by the minority leader of the Senate;

906 (iii) one member selected by the majority leader of the House of Representatives; and

907 (iv) one member selected by the minority leader of the House of Representatives; and

908 (c) one member selected by the executive director to represent the Division of Air  
909 Quality, Department of Environmental Quality.

910 (3) (a) Except as required by Subsection (3)(b), as terms of current panel members  
911 expire, the department shall appoint each new member or reappointed member to a four-year  
912 term.

913 (b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the  
914 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
915 panel members are staggered so that approximately half of the panel is appointed every two  
916 years.

917 (4) Members may serve more than one term.

918 (5) Members shall hold office until the expiration of their terms and until their  
919 successors are appointed, but not more than 90 days after the expiration of their terms.

920 (6) When a vacancy occurs in the membership for any reason, the replacement shall be  
921 appointed for the unexpired term.

922 (7) Every two years, the panel shall elect a chair from its members.

923 (8) (a) The panel shall meet as necessary to carry out its duties. Meetings may be  
924 called by the chair, the [~~executive secretary~~] director, or upon written request of three of the  
925 members of the panel.

926 (b) Three days' notice shall be given to each member of the panel prior to a meeting.

927 (9) Four members constitute a quorum at any meeting, and the action of the majority of  
928 members present is the action of the panel.

929 (10) A member may not receive compensation or benefits for the member's service, but  
930 may receive per diem and travel expenses in accordance with:

931 (a) Section 63A-3-106;

932 (b) Section 63A-3-107; and

933 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
934 63A-3-107.

935 Section 13. Section **19-2-110** is amended to read:

936 **19-2-110. Violations -- Notice to violator -- Corrective action orders --**

937 **Conference, conciliation, and persuasion by board -- Hearings.**

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

944 (b) In lieu of beginning an adjudicative proceeding under Subsection (1)(a), the board  
945 may initiate an action pursuant to Section 19-2-115.

946 (2) Nothing in this chapter prevents the [~~board~~] director from making efforts to obtain  
947 voluntary compliance through warning, conference, conciliation, persuasion, or other  
948 appropriate means.

949 (3) Hearings may be held before an administrative law judge as provided by Section  
950 19-1-301.

951 Section 14. Section **19-2-115** is amended to read:

952 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

953 (1) As used in this section, the terms "knowingly," "willfully," and "criminal  
954 negligence" shall mean as defined in Section 76-2-103.

955 (2) (a) A person who violates this chapter, or any rule, order, or permit issued or made  
956 under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for  
957 each violation.

958 (b) Subsection (2)(a) also applies to rules made under the authority of Section  
959 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,  
960 Subchapter II - Asbestos Hazard Emergency Response.

961 (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances  
962 Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the  
963 amounts specified in that section and shall be used in accordance with that section.

964 (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under  
965 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person  
966 knowingly violates any of the following under this chapter:

967 (a) an applicable standard or limitation;

968 (b) a permit condition; or

969 (c) a fee or filing requirement.

970 (4) A person is guilty of a third degree felony and is subject to imprisonment under  
971 Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:

972 (a) makes any false material statement, representation, or certification, in any notice or  
973 report required by permit; or

974 (b) renders inaccurate any monitoring device or method required to be maintained by  
975 this chapter or applicable rules made under this chapter.

976 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty  
977 under Section 19-2-109.1.

978 (6) A person who willfully violates Section 19-2-120 is guilty of a class A  
979 misdemeanor.

980 (7) A person who knowingly violates any requirement of an applicable implementation  
981 plan adopted by the board, more than 30 days after having been notified in writing by the  
982 [~~executive secretary~~] director that the person is violating the requirement, knowingly violates  
983 an order issued under Subsection 19-2-110(1)(a), or knowingly handles or disposes of asbestos  
984 in violation of a rule made under this chapter is guilty of a third degree felony and subject to  
985 imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation  
986 in the case of the first offense, and not more than \$50,000 per day of violation in the case of  
987 subsequent offenses.

988 (8) (a) As used in this section:



989 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C.  
990 7412 or any extremely hazardous substance listed under 42 U.S.C. 11002(a)(2).

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

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

998 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under  
999 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with  
1000 criminal negligence:

1001 (A) releases into the ambient air any hazardous air pollutant; and

1002 (B) places another person in imminent danger of death or serious bodily injury.

1003 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is  
1004 carrying out the employee's normal activities and who is not a part of senior management  
1005 personnel or a corporate officer.

1006 (c) A person is guilty of a second degree felony and is subject to imprisonment under  
1007 Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:

1008 (i) knowingly releases into the ambient air any hazardous air pollutant; and

1009 (ii) knows at the time that the person is placing another person in imminent danger of  
1010 death or serious bodily injury.

1011 (d) If a person is an organization, it shall, upon conviction of violating Subsection  
1012 (8)(c), be subject to a fine of not more than \$1,000,000.

1013 (e) (i) A defendant who is an individual is considered to have acted knowingly under  
1014 Subsections (8)(c) and (d), if:

1015 (A) the defendant's conduct placed another person in imminent danger of death or  
1016 serious bodily injury; and

1017 (B) the defendant was aware of or believed that there was an imminent danger of death  
1018 or serious bodily injury to another person.

1019 (ii) Knowledge possessed by a person other than the defendant may not be attributed to

1020 the defendant.

1021 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual  
1022 knowledge, including evidence that the defendant took affirmative steps to be shielded from  
1023 receiving relevant information.

1024 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the  
1025 conduct charged was freely consented to by the person endangered and that the danger and  
1026 conduct charged were reasonably foreseeable hazards of:

1027 (A) an occupation, a business, a profession; or

1028 (B) medical treatment or medical or scientific experimentation conducted by  
1029 professionally approved methods and the other person was aware of the risks involved prior to  
1030 giving consent.

1031 (ii) The defendant has the burden of proof to establish any affirmative defense under  
1032 this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.

1033 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law,  
1034 all penalties assessed and collected under the authority of this section shall be deposited in the  
1035 General Fund.

1036 (b) The department may reimburse itself and local governments from money collected  
1037 from civil penalties for extraordinary expenses incurred in environmental enforcement  
1038 activities.

1039 (c) The department shall regulate reimbursements by making rules in accordance with  
1040 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

1041 (i) define qualifying environmental enforcement activities; and

1042 (ii) define qualifying extraordinary expenses.

1043 Section 15. Section **19-2-116** is amended to read:

1044 **19-2-116. Injunction or other remedies to prevent violations -- Civil actions not**  
1045 **abridged.**

1046 (1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of  
1047 the rules adopted under it or any orders made under it by injunction or other appropriate  
1048 remedy. The ~~board~~ director has the power to institute and maintain in the name of the state  
1049 any and all enforcement proceedings.

1050 (2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect

1051 substantively or procedurally the right of any person to damages or other relief on account of  
 1052 injury to persons or property and to maintain any action or other appropriate proceeding for this  
 1053 purpose.

1054 (3) (a) In addition to any other remedy created in this chapter, the director may initiate  
 1055 an action for appropriate injunctive relief:

1056 (i) upon failure of any person to comply with:

1057 (A) any provision of this chapter ~~[or]~~;

1058 (B) any rule adopted under ~~[it]~~ this chapter; or

1059 (C) any final order made by the board, the ~~[executive secretary]~~ director, or the  
 1060 executive director; and

1061 (ii) when it appears necessary for the protection of health and welfare~~[- the board may~~  
 1062 ~~initiate through its executive secretary an action for appropriate injunctive relief]~~.

1063 (b) The attorney general shall bring injunctive relief actions on request.

1064 (c) A bond is not required.

1065 Section 16. Section **19-2-117** is amended to read:

1066 **19-2-117. Attorney general as legal advisor to board -- Duties of attorney general**  
 1067 **and county attorneys.**

1068 (1) The attorney general is the legal advisor to the board and ~~[its executive secretary]~~  
 1069 the director and shall defend them or any of them in all actions or proceedings brought against  
 1070 them or any of them.

1071 (2) The county attorney in the county in which a cause of action arises may, upon  
 1072 request of the board or ~~[its executive secretary]~~ the director, bring any action, civil or criminal,  
 1073 to abate a condition which exists in violation of, or to prosecute for the violation of or to  
 1074 enforce, this chapter or the standards, orders, or rules of the board or the ~~[executive secretary]~~  
 1075 director issued under this chapter.

1076 (3) The ~~[board or its executive secretary]~~ director may bring any action and be  
 1077 represented by the attorney general.

1078 (4) In the event any person fails to comply with a cease and desist order of the board or  
 1079 ~~[its executive secretary]~~ the director that is not subject to a stay pending administrative or  
 1080 judicial review, the ~~[board]~~ director may~~[- through its executive secretary,]~~ initiate an action  
 1081 for, and is entitled to, injunctive relief to prevent any further or continued violation of the

1082 order.

1083 Section 17. Section **19-2-120** is amended to read:

1084 **19-2-120. Information required of owners or operators of air contaminant**  
1085 **sources.**

1086 The owner or operator of any stationary air contaminant source in the state shall furnish  
1087 to the ~~[board]~~ director the reports required ~~[under]~~ by rules made in accordance with Section  
1088 19-2-104 and any other information the ~~[board]~~ director finds necessary to determine whether  
1089 the source is in compliance with state and federal regulations and standards. The information  
1090 shall be correlated with applicable emission standards or limitations and shall be available to  
1091 the public during normal business hours at the office of the ~~[department]~~ division.

1092 Section 18. Section **19-3-102** is amended to read:

1093 **19-3-102. Definitions.**

1094 As used in this chapter:

1095 (1) "Board" means the Radiation Control Board created under Section 19-1-106.

1096 (2) (a) "Broker" means a person who performs one or more of the following functions  
1097 for a generator:

1098 (i) arranges for transportation of the radioactive waste;

1099 (ii) collects or consolidates shipments of radioactive waste; or

1100 (iii) processes radioactive waste in some manner.

1101 (b) "Broker" does not include a carrier whose sole function is to transport the  
1102 radioactive waste.

1103 (3) "Byproduct material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).

1104 (4) "Class B and class C low-level radioactive waste" has the same meaning as in 10  
1105 CFR 61.55.

1106 ~~[(5) "Executive secretary" means the executive secretary of the board.]~~

1107 (5) "Director" means the director of the Division of Radiation Control.

1108 (6) "Division" means the Division of Radiation Control, created in Subsection  
1109 19-1-105(1)(d).

1110 ~~[(6)]~~ (7) "Generator" means a person who:

1111 (a) possesses any material or component:

1112 (i) that contains radioactivity or is radioactively contaminated; and

1113 (ii) for which the person foresees no further use; and

1114 (b) transfers the material or component to:

1115 (i) a commercial radioactive waste treatment or disposal facility; or

1116 (ii) a broker.

1117 ~~[(7)]~~ (8) (a) "High-level nuclear waste" means spent reactor fuel assemblies,  
1118 dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and  
1119 defense-related wastes.

1120 (b) "High-level nuclear waste" does not include medical or institutional wastes,  
1121 naturally-occurring radioactive materials, or uranium mill tailings.

1122 ~~[(8)]~~ (9) (a) "Low-level radioactive waste" means waste material which contains  
1123 radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or  
1124 quantities which exceed applicable federal or state standards for unrestricted release.

1125 (b) "Low-level radioactive waste" does not include waste containing more than 100  
1126 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor  
1127 material classified as either high-level waste or waste which is unsuited for disposal by  
1128 near-surface burial under any applicable federal regulations.

1129 ~~[(9)]~~ (10) "Radiation" means ionizing and nonionizing radiation, including gamma  
1130 rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

1131 ~~[(10)]~~ (11) "Radioactive" means any solid, liquid, or gas which emits radiation  
1132 spontaneously from decay of unstable nuclei.

1133 Section 19. Section **19-3-103** is amended to read:

1134 **19-3-103. Radiation Control Board -- Members -- Organization -- Meetings -- Per**  
1135 **diem and expenses.**

1136 (1) The board ~~[created under Section 19-1-106 comprises 13]~~ consists of the following  
1137 nine members~~[, one of whom shall be]~~:

1138 (a) (i) ~~the executive director~~~~[,]; or [his designee, and the remainder of whom shall be]~~

1139 (ii) an employee of the department designated by the executive director; and

1140 (b) the following eight members, who shall be nominated by the executive director and  
1141 appointed by the governor with the consent of the Senate~~[,];~~:

1142 (i) one representative who is:

1143 (A) a health physicist; or

- 1144 (B) a professional employed in the field of radiation safety;  
 1145 (ii) two government representatives who do not represent the federal government;  
 1146 (iii) one representative from the radioactive waste management industry;  
 1147 (iv) one representative from the uranium milling industry;  
 1148 (v) one representative from the public who represents a nongovernmental organization;  
 1149 (vi) one representative from the public who is trained and experienced in public health;  
 1150 and  
 1151 (vii) one Utah-licensed practicing attorney who is knowledgeable about radiation  
 1152 control regulatory issues.
- 1153 ~~[(2) No more than six appointed members shall be from the same political party.]~~  
 1154 ~~[(3)] (2) [The appointed members] A member of the board shall:~~  
 1155 ~~(a) be knowledgeable about radiation protection [and shall be as follows:], as~~  
 1156 ~~evidenced by a professional degree, a professional accreditation, or documented experience;~~  
 1157 ~~[(a) one physician;]~~  
 1158 ~~[(b) one dentist;]~~  
 1159 ~~[(c) one health physicist or other professional employed in the field of radiation safety;]~~  
 1160 ~~[(d) three representatives of regulated industry, at least one of whom represents the~~  
 1161 ~~radioactive waste management industry, and at least one of whom represents the uranium~~  
 1162 ~~milling industry;]~~  
 1163 ~~[(e) one registrant or licensee representative from academia;]~~  
 1164 ~~[(f) one representative of a local health department;]~~  
 1165 ~~[(g) one elected county official; and]~~  
 1166 ~~[(h) three members of the general public, at least one of whom represents organized~~  
 1167 ~~environmental interests;]~~  
 1168 (b) be a resident of Utah;  
 1169 (c) attend board meetings in accordance with the attendance rules made by the  
 1170 department under Subsection 19-1-201(1)(d)(i)(A); and  
 1171 (d) comply with all applicable statutes, rules, and policies, including the conflict of  
 1172 interest rules made by the department under Subsection 19-1-201(1)(d)(ii)(B).  
 1173 (3) No more than five appointed members shall be from the same political party.  
 1174 (4) (a) Except as required by Subsection (4)(b), as terms of current board members

1175 expire, the governor shall appoint each new member or reappointed member to a four-year  
1176 term.

1177 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the  
1178 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
1179 board members are staggered so that approximately half of the board is appointed every two  
1180 years.

1181 (5) Each board member is eligible for reappointment to more than one term.

1182 (6) Each board member shall continue in office until the expiration of his term and  
1183 until a successor is appointed, but not more than 90 days after the expiration of his term.

1184 (7) When a vacancy occurs in the membership for any reason, the replacement shall be  
1185 appointed for the unexpired term by the governor, after considering recommendations by the  
1186 department and with the consent of the Senate.

1187 (8) The board shall annually elect a chair and vice chair from its members.

1188 (9) The board shall meet at least quarterly. Other meetings may be called by the chair,  
1189 by the ~~[executive secretary]~~ director, or upon the request of three members of the board.

1190 (10) Reasonable notice shall be given each member of the board prior to any meeting.

1191 (11) ~~[Seven]~~ Five members constitute a quorum. The action of a majority of the  
1192 members present is the action of the board.

1193 (12) A member may not receive compensation or benefits for the member's service, but  
1194 may receive per diem and travel expenses in accordance with:

1195 (a) Section 63A-3-106;

1196 (b) Section 63A-3-107; and

1197 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
1198 63A-3-107.

1199 Section 20. Section **19-3-103.5** is amended to read:

1200 **19-3-103.5. Board authority and duties.**

1201 (1) The board may:

1202 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
1203 Rulemaking Act, that are necessary to implement the provisions of the Radiation Control Act;

1204 ~~[(a) require submittal of specifications or other information relating to licensing~~  
1205 ~~applications for radioactive materials or registration of radiation sources for review, approval,~~

1206 ~~disapproval, or termination;]~~  
1207       (b) order the director to:  
1208       ~~[(b)]~~ (i) issue orders necessary to enforce the provisions of this part[;];  
1209       (ii) enforce the orders by appropriate administrative and judicial proceedings[; and]; or  
1210       (iii) institute judicial proceedings to secure compliance with this part;  
1211       (c) (i) hold a hearing that is not an adjudicative proceeding ~~[and compel the attendance~~  
1212 ~~of witnesses, the production of documents, and other evidence, administer oaths and take~~  
1213 ~~testimony, and receive evidence it finds proper, or]; or~~  
1214       (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding[  
1215 ~~and authorize them to exercise the powers under this Subsection (1)];~~  
1216       ~~[(ii) receive a proposed dispositive action from an administrative law judge as provided~~  
1217 ~~by Section 19-1-301; and]~~  
1218       ~~[(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~  
1219 ~~action; or]~~  
1220       ~~[(B) return the proposed dispositive action to the administrative law judge for further~~  
1221 ~~action as directed;]~~  
1222       ~~[(d) settle or compromise any administrative or civil action initiated to compel~~  
1223 ~~compliance with this part or any rules adopted under this part;]~~  
1224       ~~[(e) advise, consult, cooperate with, and provide technical assistance to other agencies~~  
1225 ~~of the state and federal government, other states, interstate agencies, and affected groups,~~  
1226 ~~political subdivisions, industries, and other persons in carrying out the provisions of this part;]~~  
1227       ~~[(f) promote the planning and application of pollution prevention and radioactive waste~~  
1228 ~~minimization measures to prevent the unnecessary waste and depletion of natural resources;]~~  
1229       ~~[(g) cooperate with any persons in studies, research, or demonstration projects~~  
1230 ~~regarding radioactive waste management or control of radiation sources;]~~  
1231       ~~[(h)]~~ (d) accept, receive, and administer grants or other funds or gifts from public and  
1232 private agencies, including the federal government, for the purpose of carrying out any of the  
1233 functions of this part; or  
1234       ~~[(i) exercise all incidental powers necessary to carry out the purposes of this part;]~~  
1235       ~~[(j) submit an application to the U.S. Food and Drug Administration for approval as an~~  
1236 ~~accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of~~



1237 ~~1992;]~~  
1238 ~~[(k) accredit mammography facilities, pursuant to approval as an accrediting body from~~  
1239 ~~the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography~~  
1240 ~~Quality Standards Act of 1992; and]~~  
1241 ~~[(l) review the qualifications of and issue certificates of approval to individuals who~~  
1242 ~~survey mammography equipment and oversee quality assurance practices at mammography~~  
1243 ~~facilities.]~~  
1244 (e) order the director to impound radioactive material in accordance with Section  
1245 19-3-111.  
1246 (2) The board shall:  
1247 ~~[(a) receive a proposed dispositive action from an administrative law judge on an~~  
1248 ~~appeal of final decisions made by the executive secretary as provided by Section 19-1-301;]~~  
1249 ~~[(b)] (a) prepare a radioactive waste management plan in compliance with Section~~  
1250 ~~19-3-107 as soon as practicable; [and]~~  
1251 ~~[(c) impound radioactive material as authorized in Section 19-3-111.]~~  
1252 ~~[(3) Representatives of the board upon presentation of appropriate credentials may~~  
1253 ~~enter at reasonable times upon the premises of public and private properties subject to~~  
1254 ~~regulation under this part to perform inspections to insure compliance with this part and rules~~  
1255 ~~made by the board.]~~  
1256 (b) promote the planning and application of pollution prevention and radioactive waste  
1257 minimization measures to prevent the unnecessary waste and depletion of natural resources;  
1258 (c) to ensure compliance with applicable statutes and regulations:  
1259 (i) review a settlement negotiated by the director in accordance with Subsection  
1260 19-3-108(3)(b) that requires a civil penalty of \$25,000 or more; and  
1261 (ii) approve or disapprove the settlement;  
1262 (d) submit an application to the U.S. Food and Drug Administration for approval as an  
1263 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of  
1264 1992;  
1265 (e) accredit mammography facilities, pursuant to approval as an accrediting body from  
1266 the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography  
1267 Quality Standards Act of 1992; and

1268 (f) review the qualifications of, and issue certificates of approval to, individuals who:

1269 (i) survey mammography equipment; or

1270 (ii) oversee quality assurance practices at mammography facilities.

1271 (3) The board may not issue, amend, renew, modify, revoke, or terminate any of the

1272 following that are subject to the authority granted to the director under Section 19-3-108:

1273 (a) a permit;

1274 (b) a license;

1275 (c) a registration;

1276 (d) a certification; or

1277 (e) another administrative authorization made by the director.

1278 (4) A board member may not speak or act for the board unless the board member is

1279 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

1280 Section 21. Section **19-3-104** is amended to read:

1281 **19-3-104. Registration and licensing of radiation sources by department --**

1282 **Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.**

1283 (1) As used in this section:

1284 (a) "Decommissioning" includes financial assurance.

1285 (b) "Source material" and "byproduct material" have the same definitions as in 42

1286 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

1287 (2) The ~~[board]~~ division may require the registration or licensing of radiation sources

1288 that constitute a significant health hazard.

1289 (3) All sources of ionizing radiation, including ionizing radiation producing machines,

1290 shall be registered or licensed by the department.

1291 (4) The board may make rules:

1292 (a) necessary for controlling exposure to sources of radiation that constitute a  
1293 significant health hazard;

1294 (b) to meet the requirements of federal law relating to radiation control to ensure the  
1295 radiation control program under this part is qualified to maintain primacy from the federal

1296 government;

1297 (c) to establish:

1298 (i) board accreditation requirements and procedures for mammography facilities; and

1299 (ii) certification procedure and qualifications for persons who survey mammography  
1300 equipment and oversee quality assurance practices at mammography facilities; and

1301 (d) as necessary regarding the possession, use, transfer, or delivery of source and  
1302 byproduct material and the disposal of byproduct material to establish requirements for:

1303 (i) the licensing, operation, decontamination, and decommissioning, including financial  
1304 assurances; and

1305 (ii) the reclamation of sites, structures, and equipment used in conjunction with the  
1306 activities described in this Subsection (4).

1307 (5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and  
1308 byproduct material and the disposal of byproduct material at uranium mills or commercial  
1309 waste facilities, as provided in this Subsection (5).

1310 (b) On and after January 1, 2003 through March 30, 2003:

1311 (i) \$6,667 per month for uranium mills or commercial sites disposing of or  
1312 reprocessing byproduct material; and

1313 (ii) \$4,167 per month for those uranium mills the [~~executive secretary~~] director has  
1314 determined are on standby status.

1315 (c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection  
1316 (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an  
1317 amendment for agreement state status for uranium recovery regulation on or before March 30,  
1318 2003.

1319 (d) If the Nuclear Regulatory Commission does not grant the amendment for state  
1320 agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and  
1321 are not required to be paid until on and after the later date of:

1322 (i) October 1, 2003; or

1323 (ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for  
1324 agreement state status for uranium recovery regulation.

1325 (e) For the payment periods beginning on and after July 1, 2003, the department shall  
1326 establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the  
1327 restrictions under Subsection (5)(d).

1328 (f) The [~~department~~] division shall deposit fees it receives under this Subsection (5)  
1329 into the Environmental Quality Restricted Account created in Section 19-1-108.

1330 (6) (a) The [~~department~~] division shall assess fees for registration, licensing, and  
1331 inspection of radiation sources under this section.

1332 (b) The [~~department~~] division shall comply with the requirements of Section 63J-1-504  
1333 in assessing fees for licensure and registration.

1334 (7) The [~~department~~] division shall coordinate its activities with the Department of  
1335 Health rules made under Section 26-21a-203.

1336 (8) (a) Except as provided in Subsection (9), the board may not adopt rules, for the  
1337 purpose of the state assuming responsibilities from the United States Nuclear Regulatory  
1338 Commission with respect to regulation of sources of ionizing radiation, that are more stringent  
1339 than the corresponding federal regulations which address the same circumstances.

1340 (b) In adopting those rules, the board may incorporate corresponding federal  
1341 regulations by reference.

1342 (9) (a) The board may adopt rules more stringent than corresponding federal  
1343 regulations for the purpose described in Subsection (8) only if it makes a written finding after  
1344 public comment and hearing and based on evidence in the record that corresponding federal  
1345 regulations are not adequate to protect public health and the environment of the state.

1346 (b) Those findings shall be accompanied by an opinion referring to and evaluating the  
1347 public health and environmental information and studies contained in the record which form  
1348 the basis for the board's conclusion.

1349 (10) (a) The board shall by rule:

1350 (i) authorize independent qualified experts to conduct inspections required under this  
1351 chapter of x-ray facilities registered with the division; and

1352 (ii) establish qualifications and certification procedures necessary for independent  
1353 experts to conduct these inspections.

1354 (b) Independent experts under this Subsection (10) are not considered employees or  
1355 representatives of the division or the state when conducting the inspections.

1356 (11) (a) The board may by rule establish criteria for siting commercial low-level  
1357 radioactive waste treatment or disposal facilities, subject to the prohibition imposed by Section  
1358 19-3-103.7.

1359 (b) Subject to Subsection 19-3-105(10), any facility under Subsection (11)(a) for which  
1360 a radioactive material license is required by this section shall comply with those criteria.

1361 (c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive  
1362 material license until siting criteria have been established by the board. The criteria also apply  
1363 to facilities that have applied for but not received a radioactive material license.

1364 (12) The board shall by rule establish financial assurance requirements for closure and  
1365 postclosure care of radioactive waste land disposal facilities, taking into account existing  
1366 financial assurance requirements.

1367 Section 22. Section **19-3-105** is amended to read:

1368 **19-3-105. Definitions -- Legislative and gubernatorial approval required for**  
1369 **radioactive waste license -- Exceptions -- Application for new, renewed, or amended**  
1370 **license.**

1371 (1) As used in this section:

1372 (a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

1373 (b) (i) "Class A low-level radioactive waste" means:

1374 (A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

1375 (B) radium-226 up to a maximum radionuclide concentration level of 10,000  
1376 picocuries per gram.

1377 (ii) "Class A low-level radioactive waste" does not include:

1378 (A) uranium mill tailings;

1379 (B) naturally occurring radioactive materials; or

1380 (C) the following radionuclides if classified as "special nuclear material" under the  
1381 Atomic Energy Act of 1954, 42 U.S.C. 2014:

1382 (I) uranium-233; and

1383 (II) uranium-235 with a radionuclide concentration level greater than the concentration  
1384 limits for specific conditions and enrichments established by an order of the Nuclear

1385 Regulatory Commission:

1386 (Aa) to ensure criticality safety for a radioactive waste facility in the state; and

1387 (Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive  
1388 waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special  
1389 nuclear material exemption order.

1390 (c) (i) "Radioactive waste facility" or "facility" means a facility that receives, transfers,  
1391 stores, decays in storage, treats, or disposes of radioactive waste:

- 1392 (A) commercially for profit; or  
1393 (B) generated at locations other than the radioactive waste facility.  
1394 (ii) "Radioactive waste facility" does not include a facility that receives:  
1395 (A) alternate feed material for reprocessing; or  
1396 (B) radioactive waste from a location in the state designated as a processing site under  
1397 42 U.S.C. 7912(f).  
1398 (d) "Radioactive waste license" or "license" means a radioactive material license issued  
1399 by the [~~executive secretary~~] director under Subsection 19-3-108(2)[~~(c)(i)~~](d), to own, construct,  
1400 modify, or operate a radioactive waste facility.  
1401 (2) The provisions of this section are subject to the prohibition under Section  
1402 19-3-103.7.  
1403 (3) Subject to Subsection (10), a person may not own, construct, modify, or operate a  
1404 radioactive waste facility without:  
1405 (a) having received a radioactive waste license for the facility;  
1406 (b) meeting the requirements established by rule under Section 19-3-104;  
1407 (c) the approval of the governing body of the municipality or county responsible for  
1408 local planning and zoning where the radioactive waste is or will be located; and  
1409 (d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the  
1410 approval of the governor and the Legislature.  
1411 (4) Subject to Subsection (10), a new radioactive waste license application, or an  
1412 application to renew or amend an existing radioactive waste license, is subject to the  
1413 requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:  
1414 (a) specifies a different geographic site than a previously submitted application;  
1415 (b) would cost 50% or more of the cost of construction of the original radioactive  
1416 waste facility or the modification would result in an increase in capacity or throughput of a  
1417 cumulative total of 50% of the total capacity or throughput which was approved in the facility  
1418 license as of January 1, 1990, or the initial approval facility license if the initial license  
1419 approval is subsequent to January 1, 1990; or  
1420 (c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of  
1421 radioactive waste having a higher radionuclide concentration limit than allowed, under an  
1422 existing approved license held by the facility, for the specific type of waste to be received,

1423 transferred, stored, decayed in storage, treated, or disposed of.

1424 (5) The requirements of Subsection (4)(c) do not apply to an application to renew or  
1425 amend an existing radioactive waste license if:

1426 (a) the radioactive waste facility requesting the renewal or amendment has received a  
1427 license prior to January 1, 2004; and

1428 (b) the application to renew or amend its license is limited to a request to approve the  
1429 receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level  
1430 radioactive waste.

1431 (6) A radioactive waste facility which receives a new radioactive waste license after  
1432 May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license  
1433 application, renewal, or amendment that requests approval to receive, transfer, store, decay in  
1434 storage, treat, or dispose of radioactive waste not previously approved under an existing license  
1435 held by the facility.

1436 (7) If the board finds that approval of additional radioactive waste license applications,  
1437 renewals, or amendments will result in inadequate oversight, monitoring, or licensure  
1438 compliance and enforcement of existing and any additional radioactive waste facilities, the  
1439 board shall suspend acceptance of further applications for radioactive waste licenses. The  
1440 board shall report the suspension to the Legislative Management Committee.

1441 (8) The ~~[board]~~ director shall review each proposed radioactive waste license  
1442 application to determine whether the application complies with the provisions of this chapter  
1443 and the rules of the board.

1444 (9) (a) If the radioactive waste license application is determined to be complete, the  
1445 ~~[board]~~ director shall issue a notice of completeness.

1446 (b) If the ~~[board]~~ director determines that the radioactive waste license application is  
1447 incomplete, the ~~[board]~~ director shall issue a notice of deficiency, listing the additional  
1448 information to be provided by the applicant to complete the application.

1449 (10) The requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(11) do  
1450 not apply to:

1451 (a) a radioactive waste license that is in effect on December 31, 2006, including all  
1452 amendments to the license that have taken effect as of December 31, 2006;

1453 (b) a license application for a facility in existence as of December 31, 2006, unless the

1454 license application includes an area beyond the facility boundary approved in the license  
1455 described in Subsection (10)(a); or

1456 (c) an application to renew or amend a license described in Subsection (10)(a), unless  
1457 the renewal or amendment includes an area beyond the facility boundary approved in the  
1458 license described in Subsection (10)(a).

1459 Section 23. Section **19-3-106.4** is amended to read:

1460 **19-3-106.4. Generator site access permits.**

1461 (1) A generator or broker may not transfer radioactive waste to a commercial  
1462 radioactive waste treatment or disposal facility in the state without first obtaining a generator  
1463 site access permit from the ~~[executive secretary]~~ director.

1464 (2) The board may make rules pursuant to Section 19-3-104 governing a generator site  
1465 access permit program.

1466 (3) (a) Except as provided in Subsection (3)(b), the ~~[department]~~ division shall  
1467 establish fees for generator site access permits in accordance with Section 63J-1-504.

1468 (b) On and after July 1, 2001 through June 30, 2002, the fees are:

1469 (i) \$1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per  
1470 year;

1471 (ii) \$500 for generators transferring less than 1,000 cubic feet of radioactive waste per  
1472 year; and

1473 (iii) \$5,000 for brokers.

1474 (c) The ~~[department]~~ division shall deposit fees received under this section into the  
1475 Environmental Quality Restricted Account created in Section 19-1-108.

1476 (4) This section does not apply to a generator or broker transferring radioactive waste  
1477 to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

1478 Section 24. Section **19-3-108** is amended to read:

1479 **19-3-108. Powers and duties of director.**

1480 (1) The executive director shall appoint ~~[an executive secretary, with the approval of~~  
1481 ~~the board, to]~~ the director. The director shall serve under the administrative direction of the  
1482 executive director.

1483 (2) The ~~[executive secretary may]~~ director shall:

1484 (a) develop programs to promote and protect the public from radiation sources in the



1485 state;

1486 (b) advise, consult, ~~[and] cooperate with,~~ and provide technical assistance to other  
1487 agencies, states, the federal government, political subdivisions, industries, and other [groups to  
1488 further the purposes of this chapter] persons in carrying out the provisions of the Radiation  
1489 Control Act;

1490 ~~[(c) as authorized by the board:]~~

1491 (c) receive specifications or other information relating to licensing applications for  
1492 radioactive materials or registration of radiation sources for review, approval, disapproval, or  
1493 termination;

1494 ~~[(i)]~~ (d) issue permits, licenses, registrations, [and] certifications, and other  
1495 administrative authorizations;

1496 ~~[(ii)]~~ (e) review and approve plans;

1497 ~~[(iii) enforce rules through the issuance of orders and]~~

1498 (f) assess penalties in accordance with Section 19-3-109;

1499 ~~[(iv)]~~ (g) impound radioactive material under Section 19-3-111; [and]

1500 ~~[(v) authorize employees or representatives of the department to enter at reasonable~~  
1501 ~~times and upon reasonable notice in and upon public or private property for the purpose of~~  
1502 ~~inspecting and investigating conditions and records concerning radiation sources:]~~

1503 (h) issue orders necessary to enforce the provisions of this part, enforce the orders by  
1504 appropriate administrative and judicial proceedings, or institute judicial proceedings to secure  
1505 compliance with this part; and

1506 (i) as authorized by the board and subject to the provisions of this chapter, act as  
1507 executive secretary of the board under the direction of the chairman of the board.

1508 (3) The director may:

1509 (a) cooperate with any person in studies, research, or demonstration projects regarding  
1510 radioactive waste management or control of radiation sources;

1511 (b) subject to Subsection 19-3-103.5(2)(c), settle or compromise any civil action  
1512 initiated by the division to compel compliance with this chapter or the rules made under this  
1513 chapter; or

1514 (c) authorize employees or representatives of the department to enter, at reasonable  
1515 times and upon reasonable notice, in and upon public or private property for the purpose of

1516 inspecting and investigating conditions and records concerning radiation sources.

1517 Section 25. Section **19-3-109** is amended to read:

1518 **19-3-109. Civil penalties -- Appeals.**

1519 (1) A person who violates any provision of Sections 19-3-104 through 19-3-113, any  
1520 rule or order issued under the authority of those sections, or the terms of a license, permit, or  
1521 registration certificate issued under the authority of those sections is subject to a civil penalty  
1522 not to exceed \$5,000 for each violation.

1523 (2) The [board] director may assess and make a demand for payment of a penalty under  
1524 this section and may compromise or remit that penalty.

1525 (3) In order to make demand for payment of a penalty assessed under this section, the  
1526 [board] director shall issue a notice of agency action, specifying, in addition to the  
1527 requirements for notices of agency action contained in Title 63G, Chapter 4, Administrative  
1528 Procedures Act:

1529 (a) the date, facts, and nature of each act or omission charged;

1530 (b) the provision of the statute, rule, order, license, permit, or registration certificate  
1531 that is alleged to have been violated;

1532 (c) each penalty that the bureau proposes to impose, together with the amount and date  
1533 of effect of that penalty; and

1534 (d) that failure to pay the penalty or respond may result in a civil action for collection.

1535 (4) A person notified according to Subsection (3) may request an adjudicative  
1536 proceeding.

1537 (5) Upon request by the [board] director, the attorney general may institute a civil  
1538 action to collect a penalty imposed under this section.

1539 (6) (a) Except as provided in Subsection (6)(b), the department shall deposit all money  
1540 collected from civil penalties imposed under this section into the General Fund.

1541 (b) The department may reimburse itself and local governments from money collected  
1542 from civil penalties for extraordinary expenses incurred in environmental enforcement  
1543 activities.

1544 (c) The department shall regulate reimbursements by making rules that:

1545 (i) define qualifying environmental enforcement activities; and

1546 (ii) define qualifying extraordinary expenses.

1547 Section 26. Section **19-3-111** is amended to read:

1548 **19-3-111. Impounding of radioactive material.**

1549 (1) The [~~board~~] director may impound the radioactive material of any person if:

1550 (a) the material poses an imminent threat or danger to the public health or safety; or

1551 (b) that person is violating:

1552 (i) any provision of Sections 19-3-104 through 19-3-113;

1553 (ii) any rules or orders enacted or issued under the authority of those sections; or

1554 (iii) the terms of a license, permit, or registration certificate issued under the authority

1555 of those sections.

1556 (2) Before any dispositive action may be taken with regard to impounded radioactive

1557 materials, the [~~board~~] director shall comply with the procedures and requirements of Title 63G,

1558 Chapter 4, Administrative Procedures Act.

1559 Section 27. Section **19-4-102** is amended to read:

1560 **19-4-102. Definitions.**

1561 As used in this chapter:

1562 (1) "Board" means the Drinking Water Board appointed under Section 19-4-103.

1563 (2) "Contaminant" means a physical, chemical, biological, or radiological substance or

1564 matter in water.

1565 [~~(3) "Executive secretary" means the executive secretary of the board.~~]

1566 (3) "Director" means the director of the Division of Drinking Water.

1567 (4) "Division" means the Division of Drinking Water, created in Subsection

1568 19-1-105(1)(b).

1569 [~~(4)~~] (5) (a) "Groundwater source" means an underground opening from or through

1570 which groundwater flows or is pumped from a subsurface water-bearing formation.

1571 (b) "Groundwater source" includes:

1572 (i) a well;

1573 (ii) a spring;

1574 (iii) a tunnel; or

1575 (iv) an adit.

1576 [~~(5)~~] (6) "Maximum contaminant level" means the maximum permissible level of a

1577 contaminant in water that is delivered to a user of a public water system.

1578 [6] (7) (a) "Public water system" means a system providing water for human  
1579 consumption and other domestic uses that:

- 1580 (i) has at least 15 service connections; or
- 1581 (ii) serves an average of 25 individuals daily for at least 60 days of the year.

1582 (b) "Public water system" includes:

- 1583 (i) a collection, treatment, storage, or distribution facility under the control of the  
1584 operator and used primarily in connection with the system; and
- 1585 (ii) a collection, pretreatment, or storage facility used primarily in connection with the  
1586 system but not under the operator's control.

1587 [7] (8) "Retail water supplier" means a person that:

- 1588 (a) supplies water for human consumption and other domestic uses to an end user; and
- 1589 (b) has more than 500 service connections.

1590 [8] (9) "Supplier" means a person who owns or operates a public water system.

1591 [9] (10) "Wholesale water supplier" means a person that provides most of that  
1592 person's water to a retail water supplier.

1593 Section 28. Section 19-4-103 is amended to read:

1594 **19-4-103. Drinking Water Board -- Members -- Organization -- Meetings -- Per**  
1595 **diem and expenses.**

1596 (1) The board [~~created under Section 19-1-106 comprises 11 members, one of whom~~  
1597 is] consists of the following nine members:

- 1598 (a) (i) the executive director [and the remainder of whom]; or
- 1599 (ii) an employee of the department designated by the executive director; and
- 1600 (b) the following eight members, who shall be nominated by the executive director and  
1601 appointed by the governor with the consent of the Senate[-];

1602 (i) one representative who is a Utah-licensed professional engineer with expertise in  
1603 civil or sanitary engineering;

1604 (ii) one representative who is:

1605 (A) an elected official from municipal government; or

1606 (B) a representative of the person described in Subsection (1)(b)(ii)(A) who is involved  
1607 in the management or operation of a public water system;

1608 (iii) one representative from an improvement district, a water conservancy district, or a

1609 metropolitan water district;  
 1610 (iv) one representative from an entity that manages or operates a public water system;  
 1611 (v) one representative from:  
 1612 (A) the state water research community; or  
 1613 (B) an institution of higher education that has comparable expertise in water research  
 1614 to the state water research community;  
 1615 (vi) one representative from the public who represents a nongovernmental  
 1616 organization;  
 1617 (vii) one representative from the public who is trained and experienced in public  
 1618 health; and  
 1619 (viii) one Utah-licensed practicing attorney who is knowledgeable about drinking water  
 1620 regulatory and legal issues.  
 1621 ~~[(2) No more than five appointed members shall be from the same political party.]~~  
 1622 ~~[(3)]~~ (2) [The appointed members] A member of the board shall:  
 1623 (a) be knowledgeable about drinking water and public water systems [and shall], as  
 1624 evidenced by a professional degree, a professional accreditation, or documented experience;  
 1625 (b) represent different geographical areas within the state insofar as practicable[-];  
 1626 (c) be a resident of Utah;  
 1627 (d) attend board meetings in accordance with the attendance rules made by the  
 1628 department under Subsection 19-1-201(1)(d)(i)(A); and  
 1629 (e) comply with all applicable statutes, rules, and policies, including the conflict of  
 1630 interest rules made by the department under Subsection 19-1-201(1)(d)(ii)(B).  
 1631 (3) No more than five appointed members of the board shall be from the same political  
 1632 party.  
 1633 ~~[(4) The 10 appointed members shall be appointed from the following areas:]~~  
 1634 ~~[(a) two elected officials of municipal government or their representatives involved in~~  
 1635 ~~management or operation of public water systems;]~~  
 1636 ~~[(b) two representatives of improvement districts, water conservancy districts, or~~  
 1637 ~~metropolitan water districts;]~~  
 1638 ~~[(c) one representative from an industry which manages or operates a public water~~  
 1639 ~~system;]~~

1640 ~~[(d) one registered professional engineer with expertise in civil or sanitary~~  
1641 ~~engineering;]~~

1642 ~~[(e) one representative from the state water research community or from an institution~~  
1643 ~~of higher education which has comparable expertise in water research;]~~

1644 ~~[(f) two representatives of the public who do not represent other interests named in this~~  
1645 ~~section and who do not receive, and have not received during the past two years, a significant~~  
1646 ~~portion of their income, directly or indirectly, from suppliers; and]~~

1647 ~~[(g) one representative from a local health department.]~~

1648 ~~[(5) (a) Members of the Utah Safe Drinking Water Committee created by Laws of Utah~~  
1649 ~~1981, Chapter 126, shall serve as members of the board throughout the terms for which they~~  
1650 ~~were appointed.]~~

1651 ~~[(b) Except as required by Subsection (5)(c), as]~~

1652 (4) (a) As terms of current board members expire, the governor shall appoint each new  
1653 member or reappointed member to a four-year term.

1654 ~~[(c)]~~ (b) Notwithstanding the requirements of Subsection ~~[(5)(b)]~~ (4)(a), the governor  
1655 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the  
1656 terms of board members are staggered so that approximately half of the board is appointed  
1657 every two years.

1658 ~~[(6)]~~ (5) When a vacancy occurs in the membership for any reason, the replacement  
1659 shall be appointed for the unexpired term.

1660 ~~[(7)]~~ (6) Each member holds office until the expiration of the member's term, and until  
1661 a successor is appointed, but not for more than 90 days after the expiration of the term.

1662 ~~[(8)]~~ (7) The board shall elect annually a chair and a vice chair from its members.

1663 ~~[(9)]~~ (8) (a) The board shall meet at least quarterly.

1664 (b) Special meetings may be called by the chair upon ~~[his]~~ the chair's own initiative,  
1665 upon the request of the ~~[executive secretary]~~ director, or upon the request of three members of  
1666 the board.

1667 (c) Reasonable notice shall be given to each member of the board ~~[prior to]~~ before any  
1668 meeting.

1669 ~~[(10) Six]~~ (9) Five members constitute a quorum at any meeting and the action of the  
1670 majority of the members present is the action of the board.

1671           ~~[(H)]~~ (10) A member may not receive compensation or benefits for the member's  
1672 service, but may receive per diem and travel expenses in accordance with:

1673           (a) Section 63A-3-106;

1674           (b) Section 63A-3-107; and

1675           (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
1676 63A-3-107.

1677           Section 29. Section **19-4-104** is amended to read:

1678           **19-4-104. Powers of board.**

1679           (1) (a) The board may~~[-(a)]~~ make rules in accordance with Title 63G, Chapter 3, Utah  
1680 Administrative Rulemaking Act:

1681           (i) establishing standards that prescribe the maximum contaminant levels in any public  
1682 water system and provide for monitoring, record-keeping, and reporting of water quality related  
1683 matters;

1684           (ii) governing design, construction, operation, and maintenance of public water  
1685 systems;

1686           (iii) granting variances and exemptions to the requirements established under this  
1687 chapter that are not less stringent than those allowed under federal law;

1688           (iv) protecting watersheds and water sources used for public water systems; and

1689           (v) governing capacity development in compliance with Section 1420 of the federal  
1690 Safe Drinking Water Act, 42 U.S.C.A. 300f et seq.;

1691           (b) The board may:

1692           (i) order the director to:

1693           ~~[(b)]~~ (A) issue orders necessary to enforce the provisions of this chapter~~[-];~~;

1694           (B) enforce the orders by appropriate administrative and judicial proceedings~~[-, and];~~ or

1695           (C) institute judicial proceedings to secure compliance with this chapter;

1696           ~~[(c)-(i)]~~ (ii) (A) hold a hearing that is not an adjudicative proceeding relating to the  
1697 administration of this chapter ~~[and compel the attendance of witnesses, the production of~~  
1698 ~~documents and other evidence, administer oaths and take testimony, and receive evidence as~~  
1699 ~~necessary];~~ or

1700           ~~[(ii)]~~ (B) appoint hearing officers to conduct a hearing that is not an adjudicative  
1701 proceeding ~~[and authorize them to exercise powers under Subsection (1)(c)(i)];~~ or

1702 ~~[(iii) receive a proposed dispositive action from an administrative law judge as~~  
1703 ~~provided by Section 19-1-301; and]~~

1704 ~~[(iv) (A) approve, approve with modifications, or disapprove a proposed dispositive~~  
1705 ~~action; or]~~

1706 ~~[(B) return the proposed dispositive action to the administrative law judge for further~~  
1707 ~~action as directed;]~~

1708 ~~[(d) require the submission to the executive secretary of plans and specifications for~~  
1709 ~~construction of, substantial addition to, or alteration of public water systems for review and~~  
1710 ~~approval by the board before that action begins and require any modifications or impose any~~  
1711 ~~conditions that may be necessary to carry out the purposes of this chapter;]~~

1712 ~~[(e) advise, consult, cooperate with, provide technical assistance to, and enter into~~  
1713 ~~agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,~~  
1714 ~~municipalities, local health departments, educational institutions, or others necessary to carry~~  
1715 ~~out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of~~  
1716 ~~local jurisdictions;]~~

1717 ~~[(f) (iii) request and accept financial assistance from other public agencies, private~~  
1718 ~~entities, and the federal government to carry out the purposes of this chapter[;].~~

1719 ~~[(g) develop and implement an emergency plan to protect the public when declining~~  
1720 ~~drinking water quality or quantity creates a serious health risk and issue emergency orders if a~~  
1721 ~~health risk is imminent;]~~

1722 ~~[(h) authorize employees or agents of the department, after reasonable notice and~~  
1723 ~~presentation of credentials, to enter any part of a public water system at reasonable times to~~  
1724 ~~inspect the facilities and water quality records required by board rules, conduct sanitary~~  
1725 ~~surveys, take samples, and investigate the standard of operation and service delivered by public~~  
1726 ~~water systems;]~~

1727 ~~[(i) meet the requirements of federal law related or pertaining to drinking water; and]~~

1728 ~~[(j) exercise all other incidental powers necessary to carry out the purpose of this~~  
1729 ~~chapter.]~~

1730 (c) The board shall:

1731 (i) require the submission to the director of plans and specifications for construction of,  
1732 substantial addition to, or alteration of public water systems for review and approval by the



1733 board before that action begins and require any modifications or impose any conditions that  
 1734 may be necessary to carry out the purposes of this chapter;

1735 (ii) advise, consult, cooperate with, provide technical assistance to, and enter into  
 1736 agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,  
 1737 municipalities, local health departments, educational institutions, and others necessary to carry  
 1738 out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of  
 1739 local jurisdictions;

1740 (iii) develop and implement an emergency plan to protect the public when declining  
 1741 drinking water quality or quantity creates a serious health risk and issue emergency orders if a  
 1742 health risk is imminent; and

1743 (iv) meet the requirements of federal law related or pertaining to drinking water.

1744 (2) (a) The board may adopt and enforce standards and establish fees for certification  
 1745 of operators of any public water system.

1746 (b) The board may not require certification of operators for a water system serving a  
 1747 population of 800 or less except:

1748 (i) to the extent required for compliance with Section 1419 of the federal Safe Drinking  
 1749 Water Act, 42 U.S.C.A. 300f et seq.; and

1750 (ii) for a system that is required to treat its drinking water.

1751 (c) The certification program shall be funded from certification and renewal fees.

1752 (3) Routine extensions or repairs of existing public water systems that comply with the  
 1753 rules and do not alter the system's ability to provide an adequate supply of water are exempt  
 1754 from the provisions of Subsection (1)~~(c)~~(i).

1755 (4) (a) The board may adopt and enforce standards and establish fees for certification  
 1756 of persons engaged in administering cross connection control programs or backflow prevention  
 1757 assembly training, repair, and maintenance testing.

1758 (b) The certification program shall be funded from certification and renewal fees.

1759 (5) A board member may not speak or act for the board unless the board member is  
 1760 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

1761 Section 30. Section **19-4-106** is amended to read:

1762 **19-4-106. Director -- Appointment -- Authority.**

1763 [~~An executive secretary to the board shall be appointed by the executive director, with~~

1764 ~~the approval of the board, and serve under the direction of the executive director. The~~  
 1765 ~~executive secretary may:]~~

1766 (1) The executive director shall appoint the director. The director shall serve under the  
 1767 administrative direction of the executive director.

1768 (2) The director shall:

1769 ~~[(1)]~~ (a) develop programs to promote and protect the quality of the public drinking  
 1770 water supplies of the state;

1771 ~~[(2)]~~ (b) advise, consult, and cooperate with other agencies of this and other states, the  
 1772 federal government, and with other groups, political subdivisions, and industries in furtherance  
 1773 of the purpose of this chapter;

1774 ~~[(3)]~~ (c) review plans, specifications, and other data pertinent to proposed or expanded  
 1775 water supply systems to ~~[insure]~~ ensure proper design and construction; and

1776 ~~[(4) as authorized by the board and]~~

1777 (d) subject to the provisions of this chapter, enforce rules made by the board through  
 1778 the issuance of orders which may be subsequently revoked, which rules may require:

1779 ~~[(a)]~~ (i) discontinuance of use of unsatisfactory sources of drinking water;

1780 ~~[(b)]~~ (ii) suppliers to notify the public concerning the need to boil water; ~~[and]~~ or

1781 ~~[(c)]~~ (iii) suppliers in accordance with existing rules, to take remedial actions necessary  
 1782 to protect or improve an existing water system~~[-]; and~~

1783 (e) as authorized by the board and subject to the provisions of this chapter, act as  
 1784 executive secretary of the board under the direction of the chairman of the board.

1785 (3) The director may authorize employees or agents of the department, after reasonable  
 1786 notice and presentation of credentials, to enter any part of a public water system at reasonable  
 1787 times to inspect the facilities and water quality records required by board rules, conduct  
 1788 sanitary surveys, take samples, and investigate the standard of operation and service delivered  
 1789 by public water systems.

1790 Section 31. Section **19-4-107** is amended to read:

1791 **19-4-107. Notice of violation of rule or order -- Action by attorney general.**

1792 (1) Upon discovery of any violation of a rule or order of the board, the board or ~~[its~~  
 1793 ~~executive secretary]~~ the director shall promptly notify the supplier of the violation, state the  
 1794 nature of the violation, and issue an order requiring correction of that violation or the filing of a

1795 request for variance or exemption by a specific date.

1796 (2) The attorney general shall, upon request of the [~~board~~] director, commence an  
1797 action for an injunction or other relief relative to the order.

1798 Section 32. Section **19-4-109** is amended to read:

1799 **19-4-109. Violations -- Penalties -- Reimbursement for expenses.**

1800 (1) Any person that violates any rule or order made or issued pursuant to this chapter is  
1801 subject to a civil penalty of not more than \$1,000 per day for each day of violation. The board  
1802 may assess and make a demand for payment of a penalty under this section by directing the  
1803 [~~executive secretary~~] director to issue a notice of agency action under Title 63G, Chapter 4,  
1804 Administrative Procedures Act.

1805 (2) (a) Any person that willfully violates any rule or order made or issued pursuant to  
1806 this chapter, or that willfully fails to take any corrective action required by such an order, is  
1807 guilty of a class B misdemeanor and subject to a fine of not more than \$5,000 per day for each  
1808 day of violation.

1809 (b) In addition, the person is subject, in a civil proceeding, to a penalty of not more  
1810 than \$5,000 per day for each day of violation.

1811 (3) (a) Except as provided in Subsection (3)(b), all penalties assessed and collected  
1812 under the authority of this section shall be deposited in the General Fund.

1813 (b) The department may reimburse itself and local governments from money collected  
1814 from civil penalties for extraordinary expenses incurred in environmental enforcement  
1815 activities.

1816 (c) The department shall regulate reimbursements by making rules that:

- 1817 (i) define qualifying environmental enforcement activities; and
- 1818 (ii) define qualifying extraordinary expenses.

1819 Section 33. Section **19-5-102 (Effective 07/01/12)** is amended to read:

1820 **19-5-102 (Effective 07/01/12). Definitions.**

1821 As used in this chapter:

1822 (1) "Agriculture discharge":

1823 (a) means the release of agriculture water from the property of a farm, ranch, or feed lot  
1824 that:

- 1825 (i) pollutes a surface body of water, including a stream, lake, pond, marshland,

1826 watercourse, waterway, river, ditch, and other water conveyance system of the state;

1827 (ii) pollutes the ground water of the state; or

1828 (iii) constitutes a significant nuisance on urban land; and

1829 (b) does not include:

1830 (i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land

1831 that is not part of a body of water; or

1832 (ii) a release into a normally dry water conveyance to an active body of water, unless

1833 the release reaches the water of a lake, pond, stream, marshland, river, or other active body of

1834 water.

1835 (2) "Agriculture water" means:

1836 (a) water used by a farmer, rancher, or feed lot for the production of food, fiber, or fuel;

1837 (b) return flows from irrigated agriculture; and

1838 (c) agricultural storm water runoff.

1839 (3) "Board" means the Water Quality Board created in Section 19-1-106.

1840 (4) "Commission" means the Conservation Commission created in Section 4-18-4.

1841 (5) "Contaminant" means any physical, chemical, biological, or radiological substance

1842 or matter in water.

1843 (6) "Director" means the director of the Division of Water Quality.

1844 [~~(6)~~] (7) "Discharge" means the addition of any pollutant to any waters of the state.

1845 [~~(7)~~] (8) "Discharge permit" means a permit issued to a person who:

1846 (a) discharges or whose activities would probably result in a discharge of pollutants

1847 into the waters of the state; or

1848 (b) generates or manages sewage sludge.

1849 [~~(8)~~] (9) "Disposal system" means a system for disposing of wastes, and includes

1850 sewerage systems and treatment works.

1851 (10) "Division" means the Division of Water Quality, created in Subsection

1852 19-1-105(1)(f).

1853 [~~(9)~~] (11) "Effluent limitations" means any restrictions, requirements, or prohibitions,

1854 including schedules of compliance established under this chapter which apply to discharges.

1855 [~~(10)~~] ~~"Executive secretary" means the executive secretary of the board.]~~

1856 [~~(11)~~] (12) "Point source":

1857 (a) means any discernible, confined, and discrete conveyance, including any pipe,  
1858 ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated  
1859 animal feeding operation, or vessel or other floating craft, from which pollutants are or may be  
1860 discharged; and

1861 (b) does not include return flows from irrigated agriculture.

1862 [~~(12)~~] (13) "Pollution" means any man-made or man-induced alteration of the  
1863 chemical, physical, biological, or radiological integrity of any waters of the state, unless the  
1864 alteration is necessary for the public health and safety.

1865 [~~(13)~~] (14) "Publicly owned treatment works" means any facility for the treatment of  
1866 pollutants owned by the state, its political subdivisions, or other public entity.

1867 [~~(14)~~] (15) "Schedule of compliance" means a schedule of remedial measures,  
1868 including an enforceable sequence of actions or operations leading to compliance with this  
1869 chapter.

1870 [~~(15)~~] (16) "Sewage sludge" means any solid, semisolid, or liquid residue removed  
1871 during the treatment of municipal wastewater or domestic sewage.

1872 [~~(16)~~] (17) "Sewerage system" means pipelines or conduits, pumping stations, and all  
1873 other constructions, devices, appurtenances, and facilities used for collecting or conducting  
1874 wastes to a point of ultimate disposal.

1875 [~~(17)~~] (18) "Total maximum daily load" means a calculation of the maximum amount  
1876 of a pollutant that a body of water can receive and still meet water quality standards.

1877 [~~(18)~~] (19) "Treatment works" means any plant, disposal field, lagoon, dam, pumping  
1878 station, incinerator, or other works used for the purpose of treating, stabilizing, or holding  
1879 wastes.

1880 [~~(19)~~] (20) "Underground injection" means the subsurface emplacement of fluids by  
1881 well injection.

1882 [~~(20)~~] (21) "Underground wastewater disposal system" means a system for disposing of  
1883 domestic wastewater discharges as defined by the board and the executive director.

1884 [~~(21)~~] (22) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator  
1885 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,  
1886 radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and  
1887 industrial, municipal, and agricultural waste discharged into water.

1888 [~~(22)~~] (23) "Waters of the state":

1889 (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs,  
1890 irrigation systems, drainage systems, and all other bodies or accumulations of water, surface  
1891 and underground, natural or artificial, public or private, which are contained within, flow  
1892 through, or border upon this state or any portion of the state; and

1893 (b) does not include bodies of water confined to and retained within the limits of  
1894 private property, and which do not develop into or constitute a nuisance, a public health hazard,  
1895 or a menace to fish or wildlife.

1896 Section 34. Section **19-5-103** is amended to read:

1897 **19-5-103. Water Quality Board -- Members of board -- Appointment -- Terms --**  
1898 **Organization -- Meetings -- Per diem and expenses.**

1899 (1) The board [~~comprises~~] consists of the following nine members:

1900 (a) (i) the executive director [~~and 11 members~~]; or

1901 (ii) an employee of the department designated by the executive director; and

1902 (b) the following eight members, who shall be nominated by the executive director and  
1903 appointed by the governor with the consent of the Senate[-];

1904 (i) one representative who:

1905 (A) is not connected with industry;

1906 (B) is an expert in water quality matters; and

1907 (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist  
1908 with relevant training and experience;

1909 (ii) two government representatives who do not represent the federal government;

1910 (iii) one representative from the mineral or manufacturing industry;

1911 (iv) one representative who represents agricultural and livestock interests;

1912 (v) one representative from the public who represents a nongovernmental organization;

1913 (vi) one representative from the public who is trained and experienced in public health;

1914 and

1915 (vii) one Utah-licensed practicing attorney who is knowledgeable about water quality  
1916 regulatory issues.

1917 [~~(2) No more than six of the appointed members may be from the same political party.]~~

1918 [~~(3) The appointed members, insofar as practicable, shall include the following:-]~~

- 1919 ~~[(a) one member representing the mineral industry;]~~
- 1920 ~~[(b) one member representing the food processing industry;]~~
- 1921 ~~[(c) one member representing another manufacturing industry;]~~
- 1922 ~~[(d) two members who are officials of a municipal government or the officials'~~
- 1923 ~~representative involved in the management or operation of a wastewater treatment facility;]~~
- 1924 ~~[(e) one member representing agricultural and livestock interests;]~~
- 1925 ~~[(f) one member representing fish, wildlife, and recreation interests;]~~
- 1926 ~~[(g) one member representing an improvement or special service district;]~~
- 1927 ~~[(h) two members at large, one of whom represents organized environmental interests;~~
- 1928 ~~selected with due consideration of the areas of the state affected by water pollution and not~~
- 1929 ~~representing other interests named in this Subsection (3); and]~~
- 1930 ~~[(i) one member representing a local health department.]~~
- 1931 (2) A member of the board shall:
- 1932 (a) be knowledgeable about water quality matters, as evidenced by a professional
- 1933 degree, a professional accreditation, or documented experience;
- 1934 (b) be a resident of Utah;
- 1935 (c) attend board meetings in accordance with the attendance rules made by the
- 1936 department under Subsection 19-1-201(1)(d)(i)(A); and
- 1937 (d) comply with all applicable statutes, rules, and policies, including the conflict of
- 1938 interest rules made by the department under Subsection 19-1-201(1)(d)(ii)(B).
- 1939 (3) No more than five of the appointed members may be from the same political party.
- 1940 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
- 1941 appointed for the unexpired term with the consent of the Senate.
- 1942 (5) (a) Except as required by Subsection (5)(b), a member shall be appointed for a term
- 1943 of four years and is eligible for reappointment.
- 1944 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the
- 1945 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
- 1946 board members are staggered so that approximately half of the board is appointed every two
- 1947 years.
- 1948 (6) A member shall hold office until the expiration of the member's term and until the
- 1949 member's successor is appointed, not to exceed 90 days after the formal expiration of the term.

1950 (7) The board shall:  
 1951 (a) organize and annually select one of its members as chair and one of its members as  
 1952 vice chair;  
 1953 (b) hold at least four regular meetings each calendar year; and  
 1954 (c) keep minutes of its proceedings which are open to the public for inspection.

1955 (8) The chair may call a special meeting upon the request of three or more members of  
 1956 the board.

1957 (9) Each member of the board and the [~~executive secretary~~] director shall be notified of  
 1958 the time and place of each meeting.

1959 (10) [~~Seven~~] Five members of the board constitute a quorum for the transaction of  
 1960 business, and the action of a majority of members present is the action of the board.

1961 (11) A member may not receive compensation or benefits for the member's service, but  
 1962 may receive per diem and travel expenses in accordance with:

- 1963 (a) Section 63A-3-106;
- 1964 (b) Section 63A-3-107; and
- 1965 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
 1966 63A-3-107.

1967 Section 35. Section **19-5-104 (Effective 07/01/12)** is amended to read:

1968 **19-5-104 (Effective 07/01/12). Powers and duties of board.**

1969 [~~(1) The board has the following powers and duties:~~]

1970 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
 1971 board may make rules that:

- 1972 (a) taking into account Subsection (6):
- 1973 (i) implement the awarding of construction loans to political subdivisions and  
 1974 municipal authorities under Section 11-8-2, including:
- 1975 (A) requirements pertaining to applications for loans;
- 1976 (B) requirements for determination of eligible projects;
- 1977 (C) requirements for determination of the costs upon which loans are based, which  
 1978 costs may include engineering, financial, legal, and administrative expenses necessary for the  
 1979 construction, reconstruction, and improvement of sewage treatment plants, including major  
 1980 interceptors, collection systems, and other facilities appurtenant to the plant;



1981            (D) a priority schedule for awarding loans, in which the board may consider, in  
1982 addition to water pollution control needs, any financial needs relevant, including per capita  
1983 cost, in making a determination of priority; and  
1984            (E) requirements for determination of the amount of the loan;  
1985            (ii) implement the awarding of loans for nonpoint source projects pursuant to Section  
1986 73-10c-4.5;  
1987            (iii) set effluent limitations and standards subject to Section 19-5-116;  
1988            (iv) implement or effectuate the powers and duties of the board; and  
1989            (v) protect the public health for the design, construction, operation, and maintenance of  
1990 underground wastewater disposal systems, liquid scavenger operations, and vault and earthen  
1991 pit privies;  
1992            (b) govern inspection, monitoring, recordkeeping, and reporting requirements for  
1993 underground injections and require permits for underground injections, to protect drinking  
1994 water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and  
1995 oil, recognizing that underground injection endangers drinking water sources if:  
1996            (i) injection may result in the presence of any contaminant in underground water that  
1997 supplies or can reasonably be expected to supply any public water system, as defined in Section  
1998 19-4-102; and  
1999            (ii) the presence of the contaminant may:  
2000            (A) result in the public water system not complying with any national primary drinking  
2001 water standards; or  
2002            (B) otherwise adversely affect the health of persons;  
2003            (c) govern sewage sludge management, including permitting, inspecting, monitoring,  
2004 recordkeeping, and reporting requirements; and  
2005            (d) notwithstanding the provisions of Section 19-4-112, govern design and construction  
2006 of irrigation systems that:  
2007            (i) convey sewage treatment facility effluent of human origin in pipelines under  
2008 pressure, unless contained in surface pipes wholly on private property and for agricultural  
2009 purposes; and  
2010            (ii) are constructed after May 4, 1998.  
2011            (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

2012 the board shall adopt and enforce rules and establish fees to cover the costs of testing for  
2013 certification of operators of treatment works and sewerage systems operated by political  
2014 subdivisions.

2015 (b) In establishing certification rules under Subsection (2)(a), the board shall:

2016 (i) base the requirements for certification on the size, treatment process type, and  
2017 complexity of the treatment works and sewerage systems operated by political subdivisions;

2018 (ii) allow operators until three years after the date of adoption of the rules to obtain  
2019 initial certification;

2020 (iii) allow a new operator one year from the date the operator is hired by a treatment  
2021 plant or sewerage system or three years after the date of adoption of the rules, whichever occurs  
2022 later, to obtain certification;

2023 (iv) issue certification upon application and without testing, at a grade level  
2024 comparable to the grade of current certification to operators who are currently certified under  
2025 the voluntary certification plan for wastewater works operators as recognized by the board; and

2026 (v) issue a certification upon application and without testing that is valid only at the  
2027 treatment works or sewerage system where that operator is currently employed if the operator:

2028 (A) is in charge of and responsible for the treatment works or sewerage system on  
2029 March 16, 1991;

2030 (B) has been employed at least 10 years in the operation of that treatment works or  
2031 sewerage system before March 16, 1991; and

2032 (C) demonstrates to the board the operator's capability to operate the treatment works  
2033 or sewerage system at which the operator is currently employed by providing employment  
2034 history and references as required by the board.

2035 (3) The board shall:

2036 (a) develop programs for the prevention, control, and abatement of new or existing  
2037 pollution of the waters of the state;

2038 ~~[(b) advise, consult, and cooperate with other agencies of the state, the federal~~  
2039 ~~government, other states, and interstate agencies, and with affected groups, political~~  
2040 ~~subdivisions, and industries to further the purposes of this chapter;]~~

2041 ~~[(c) encourage, participate in, or conduct studies, investigations, research, and~~  
2042 ~~demonstrations relating to water pollution and causes of water pollution as the board finds~~

2043 necessary to discharge its duties;]

2044 [~~(d) collect and disseminate information relating to water pollution and the prevention;~~

2045 ~~control, and abatement of water pollution;]~~

2046 [~~(e)~~ (b) adopt, modify, or repeal standards of quality of the waters of the state and

2047 classify those waters according to their reasonable uses in the interest of the public under

2048 conditions the board may prescribe for the prevention, control, and abatement of pollution;

2049 [~~(f) make rules in accordance with Title 63G, Chapter 3, Utah Administrative~~

2050 ~~Rulemaking Act, taking into account Subsection (3), to:]~~

2051 [~~(i) implement the awarding of construction loans to political subdivisions and~~

2052 ~~municipal authorities under Section 11-8-2, including:]~~

2053 [~~(A) requirements pertaining to applications for loans;]~~

2054 [~~(B) requirements for determination of eligible projects;]~~

2055 [~~(C) requirements for determination of the costs upon which loans are based, which~~

2056 ~~costs may include engineering, financial, legal, and administrative expenses necessary for the~~

2057 ~~construction, reconstruction, and improvement of sewage treatment plants, including major~~

2058 ~~interceptors, collection systems, and other facilities appurtenant to the plant;]~~

2059 [~~(D) a priority schedule for awarding loans, in which the board may consider in~~

2060 ~~addition to water pollution control needs any financial needs relevant, including per capita cost,~~

2061 ~~in making a determination of priority, and]~~

2062 [~~(E) requirements for determination of the amount of the loan;]~~

2063 [~~(ii) implement the awarding of loans for nonpoint source projects pursuant to Section~~

2064 ~~73-10c-4.5;]~~

2065 [~~(iii) set effluent limitations and standards subject to Section 19-5-116;]~~

2066 [~~(iv) implement or effectuate the powers and duties of the board; and]~~

2067 [~~(v) protect the public health for the design, construction, operation, and maintenance~~

2068 ~~of underground wastewater disposal systems, liquid scavenger operations, and vault and~~

2069 ~~earthen pit privies;]~~

2070 (c) give reasonable consideration in the exercise of its powers and duties to the

2071 economic impact of water pollution control on industry and agriculture;

2072 (d) meet the requirements of federal law related to water pollution;

2073 (e) establish and conduct a continuing planning process for control of water pollution,

2074 including the specification and implementation of maximum daily loads of pollutants;  
2075 (f) (i) approve, approve in part, approve with conditions, or deny, in writing, an  
2076 application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;  
2077 (ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater  
2078 Reuse Act;  
2079 (g) (i) review all total daily maximum load reports and recommendations for water  
2080 quality end points and implementation strategies developed by the division before submission  
2081 of the report, recommendation, or implementation strategy to the EPA;  
2082 (ii) disapprove, approve, or approve with conditions all staff total daily maximum load  
2083 recommendations; and  
2084 (iii) provide suggestions for further consideration to the Division of Water Quality in  
2085 the event a total daily maximum load strategy is rejected; and  
2086 (h) to ensure compliance with applicable statutes and regulations:  
2087 (i) review a settlement negotiated by the director in accordance with Subsection  
2088 19-5-106(2)(k) that requires a civil penalty of \$25,000 or more; and  
2089 (ii) approve or disapprove the settlement.  
2090 (4) The board may:  
2091 [~~g~~] (a) order the director to issue, modify, or revoke orders:  
2092 (i) prohibiting or abating discharges;  
2093 (ii) requiring the construction of new treatment works or any parts of them, or requiring  
2094 the modification, extension, or alteration of existing treatment works as specified by board rule  
2095 or any parts of them, or the adoption of other remedial measures to prevent, control, or abate  
2096 pollution;  
2097 (iii) setting standards of water quality, classifying waters or evidencing any other  
2098 determination by the board under this chapter; [~~and~~] or  
2099 (iv) requiring compliance with this chapter and with rules made under this chapter;  
2100 [~~(h) (i) review plans, specifications, or other data relative to disposal systems or any~~  
2101 ~~part of disposal systems;~~]  
2102 [~~(ii) issue construction or operating permits for the installation or modification of~~  
2103 ~~treatment works or any parts of the treatment works; and]~~  
2104 (b) advise, consult, and cooperate with other agencies of the state, the federal

2105 government, other states, or interstate agencies, or with affected groups, political subdivisions,  
2106 or industries to further the purposes of this chapter; or  
2107       ~~[(iii)] (c) delegate the authority to issue an operating permit to a local health~~  
2108 ~~department[;].~~  
2109       ~~[(i) after public notice and opportunity for a public hearing, issue, continue in effect,~~  
2110 ~~revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe~~  
2111 ~~to:]~~  
2112       ~~[(i) control the management of sewage sludge; or]~~  
2113       ~~[(ii) prevent or control the discharge of pollutants, including effluent limitations for the~~  
2114 ~~discharge of wastes into the waters of the state;]~~  
2115       ~~[(j) give reasonable consideration in the exercise of its powers and duties to the~~  
2116 ~~economic impact of water pollution control on industry and agriculture;]~~  
2117       ~~[(k) exercise all incidental powers necessary to carry out the purposes of this chapter,~~  
2118 ~~including delegation to the department of its duties as appropriate to improve administrative~~  
2119 ~~efficiency;]~~  
2120       ~~[(l) meet the requirements of federal law related to water pollution;]~~  
2121       ~~[(m) establish and conduct a continuing planning process for control of water pollution~~  
2122 ~~including the specification and implementation of maximum daily loads of pollutants;]~~  
2123       ~~[(n) make rules governing inspection, monitoring, recordkeeping, and reporting~~  
2124 ~~requirements for underground injections and require permits for them, to protect drinking water~~  
2125 ~~sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil,~~  
2126 ~~recognizing that underground injection endangers drinking water sources if:]~~  
2127       ~~[(i) injection may result in the presence of any contaminant in underground water that~~  
2128 ~~supplies or can reasonably be expected to supply any public water system, as defined in Section~~  
2129 ~~19-4-102; and]~~  
2130       ~~[(ii) the presence of the contaminant may:]~~  
2131       ~~[(A) result in the public water system not complying with any national primary~~  
2132 ~~drinking water standards; or]~~  
2133       ~~[(B) otherwise adversely affect the health of persons;]~~  
2134       ~~[(o) make rules governing sewage sludge management, including permitting,~~  
2135 ~~inspecting, monitoring, recordkeeping, and reporting requirements;]~~

2136           ~~[(p) adopt and enforce rules and establish fees to cover the costs of testing for~~  
2137 ~~certification of operators of treatment works and sewerage systems operated by political~~  
2138 ~~subdivisions;]~~

2139           ~~[(q) notwithstanding the provisions of Section 19-4-112, make rules governing design~~  
2140 ~~and construction of irrigation systems that:]~~

2141           ~~[(i) convey sewage treatment facility effluent of human origin in pipelines under~~  
2142 ~~pressure, unless contained in surface pipes wholly on private property and for agricultural~~  
2143 ~~purposes; and]~~

2144           ~~[(ii) are constructed after May 4, 1998;]~~

2145           ~~[(r) (i) approve, approve in part, approve with conditions, or deny, in writing, an~~  
2146 ~~application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;]~~

2147           ~~[(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater~~  
2148 ~~Reuse Act; and]~~

2149           ~~[(s) (i) review all total daily maximum load reports and recommendations for water~~  
2150 ~~quality end points and implementation strategies developed by the division before submission~~  
2151 ~~of the report, recommendation, or implementation strategy to the EPA;]~~

2152           ~~[(ii) disapprove, approve, or approve with conditions all staff total daily maximum load~~  
2153 ~~recommendations; and]~~

2154           ~~[(iii) provide suggestions for further consideration to the Division of Water Quality in~~  
2155 ~~the event a total daily maximum load strategy is rejected.]~~

2156           ~~[(2)] (5) In performing the duties listed in [Subsection] Subsections (1) through (4), the~~  
2157 ~~board shall give priority to pollution that results in a hazard to the public health.~~

2158           ~~[(3)] (6) The board shall take into consideration the availability of federal grants:~~  
2159           ~~(a) in determining eligible project costs; and~~  
2160           ~~(b) in establishing priorities pursuant to Subsection [(1)(f)(i)] (1)(a)(i).~~

2161           ~~[(4) In establishing certification rules under Subsection (1)(p), the board shall:]~~

2162           ~~[(a) base the requirements for certification on the size, treatment process type, and~~  
2163 ~~complexity of the treatment works and sewerage systems operated by political subdivisions;]~~

2164           ~~[(b) allow operators until three years after the date of adoption of the rules to obtain~~  
2165 ~~initial certification;]~~

2166           ~~[(c) allow a new operator one year from the date the operator is hired by a treatment~~

2167 ~~plant or sewerage system or three years after the date of adoption of the rules, whichever occurs~~  
 2168 ~~later, to obtain certification;]~~

2169 ~~[(d) issue certification upon application and without testing, at a grade level~~  
 2170 ~~comparable to the grade of current certification to operators who are currently certified under~~  
 2171 ~~the voluntary certification plan for wastewater works operators as recognized by the board;~~  
 2172 ~~and]~~

2173 ~~[(e) issue a certification upon application and without testing that is valid only at the~~  
 2174 ~~treatment works or sewerage system where that operator is currently employed if the operator:]~~

2175 ~~[(i) is in charge of and responsible for the treatment works or sewerage system on~~  
 2176 ~~March 16, 1991;]~~

2177 ~~[(ii) has been employed at least 10 years in the operation of that treatment works or~~  
 2178 ~~sewerage system prior to March 16, 1991; and]~~

2179 ~~[(iii) demonstrates to the board the operator's capability to operate the treatment works~~  
 2180 ~~or sewerage system at which the operator is currently employed by providing employment~~  
 2181 ~~history and references as required by the board.]~~

2182 (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the  
 2183 following that are subject to the authority granted to the director under Section 19-5-106:

2184 (a) a permit;

2185 (b) a license;

2186 (c) a registration;

2187 (d) a certification; or

2188 (e) another administrative authorization made by the director.

2189 (8) A board member may not speak or act for the board unless the board member is  
 2190 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

2191 Section 36. Section **19-5-105.5** is amended to read:

2192 **19-5-105.5. Agriculture water.**

2193 (1) (a) The board shall draft any rules relating to agriculture water in cooperation with  
 2194 the commission.

2195 (b) The commission shall advise the board before the board may adopt rules relating to  
 2196 agriculture water.

2197 (2) A program or rule adopted by the board for agriculture production or irrigation

2198 water shall:

2199 (a) be consistent with the federal Clean Water Act; and

2200 (b) if possible, be developed in a voluntary cooperative program with the agriculture  
2201 producer associations and the commission.

2202 (3) (a) The board's authority to regulate a discharge is subject to Subsection (3)(b)  
2203 relating to an agriculture discharge.

2204 (b) (i) A person responsible for an agriculture discharge shall mitigate the resulting  
2205 damage in a reasonable manner, as approved by the ~~[executive secretary]~~ director after  
2206 consulting with the commission chair.

2207 (ii) A penalty imposed on an agriculture discharge shall be proportionate to the  
2208 seriousness of the resulting harm, as determined by the ~~[executive secretary]~~ director in  
2209 consultation with the commission chair.

2210 (iii) An agriculture producer may not be held liable for an agriculture discharge  
2211 resulting from a large weather event if the agriculture producer has taken reasonable measures,  
2212 as the board defines by rule, to prevent an agriculture discharge.

2213 Section 37. Section **19-5-106** is amended to read:

2214 **19-5-106. Director -- Appointment -- Duties.**

2215 ~~[The executive secretary shall be appointed by the executive director with the approval~~  
2216 ~~of the board, shall serve under the administrative direction of the executive director, and has~~  
2217 ~~the following duties:]~~

2218 (1) The executive director shall appoint the director. The director shall serve under the  
2219 administrative direction of the executive director.

2220 (2) The director shall:

2221 ~~[(1) to]~~ (a) develop programs for the prevention, control, and abatement of new or  
2222 existing pollution of the waters of the state;

2223 ~~[(2) to]~~ (b) advise, consult, and cooperate with other agencies of the state, the federal  
2224 government, other states and interstate agencies, and with affected groups, political  
2225 subdivisions, and industries in furtherance of the purposes of this chapter;

2226 ~~[(3) to employ full-time employees as necessary to carry out the provisions of this~~  
2227 ~~chapter;]~~

2228 ~~[(4) as authorized by the board and subject to the provisions of this chapter, to~~



2229 authorize any employee or representative of the department to enter at reasonable times and  
2230 upon reasonable notice in or upon public or private property for the purposes of inspecting and  
2231 investigating conditions and plant records concerning possible water pollution;]

2232 [~~(5) to encourage, participate in, or conduct studies, investigations, research, and~~  
2233 ~~demonstrations relating to water pollution and causes of water pollution as necessary for the~~  
2234 ~~discharge of duties assigned under this chapter, including the establishment of inventories of~~  
2235 ~~pollution sources;]~~

2236 [~~(6) to collect and disseminate information relating to water pollution and the~~  
2237 ~~prevention, control, and abatement of water pollution;]~~

2238 [~~(7) to~~ (c) develop programs for the management of sewage sludge;

2239 [~~(8) as authorized by the board and]~~

2240 (d) subject to the provisions of this chapter, [~~to~~] enforce rules made by the board  
2241 through the issuance of orders [~~which may be subsequently amended or revoked by the board~~],  
2242 which orders may include:

2243 [~~(a)~~] (i) prohibiting or abating discharges of wastes into the waters of the state;

2244 [~~(b)~~] (ii) requiring the construction of new control facilities or any parts of them or the  
2245 modification, extension, or alteration of existing control facilities or any parts of them, or the  
2246 adoption of other remedial measures to prevent, control, or abate water pollution; [~~and~~] or

2247 [~~(c)~~] (iii) prohibiting any other violation of this chapter or rules made under this  
2248 chapter;

2249 [~~(9) to~~] (e) review plans, specifications, or other data relative to pollution control  
2250 systems or any part of the systems provided for in this chapter;

2251 (f) issue construction or operating permits for the installation or modification of  
2252 treatment works or any parts of the treatment works;

2253 (g) after public notice and opportunity for public hearing, issue, continue in effect,  
2254 renew, revoke, modify, or deny discharge permits under reasonable conditions the board may  
2255 prescribe to:

2256 (i) control the management of sewage sludge; or

2257 (ii) prevent or control the discharge of pollutants, including effluent limitations for the  
2258 discharge of wastes into the waters of the state;

2259 (h) meet the requirements of federal law related to water pollution;

2260 ~~[(10) as authorized by the board and subject to the provisions of this chapter, to~~  
2261 ~~exercise all incidental powers necessary to carry out the purposes of this chapter, including~~  
2262 ~~certification to any state or federal authorities for tax purposes only if the fact of construction,~~  
2263 ~~installation, or acquisition of any facility, land, or building, machinery, or equipment, or any~~  
2264 ~~part of them conforms with this chapter;]~~

2265 ~~[(11) to cooperate, where the board finds appropriate, with any person in studies and~~  
2266 ~~research regarding water pollution and its control, abatement, and prevention; and]~~

2267 ~~[(12) to] (i) under the direction of the executive director, represent the state [~~with the~~~~  
2268 ~~specific concurrence of the executive director] in all matters pertaining to water pollution,~~  
2269 ~~including interstate compacts and other similar agreements[-];~~

2270 ~~(j) collect and disseminate information relating to water pollution and the prevention,~~  
2271 ~~control, and abatement of water pollution; and~~

2272 ~~(k) subject to Subsection 19-5-104(3)(h), settle or compromise any civil action initiated~~  
2273 ~~by the division to compel compliance with this chapter or the rules made under this chapter.~~

2274 ~~(3) The director may:~~

2275 ~~(a) employ full-time employees as necessary to carry out the provisions of this chapter;~~

2276 ~~(b) subject to the provisions of this chapter, authorize any employee or representative~~  
2277 ~~of the department to enter, at reasonable times and upon reasonable notice, in or upon public or~~  
2278 ~~private property for the purposes of inspecting and investigating conditions and plant records~~  
2279 ~~concerning possible water pollution;~~

2280 ~~(c) encourage, participate in, or conduct studies, investigations, research, and~~  
2281 ~~demonstrations relating to water pollution and causes of water pollution as necessary for the~~  
2282 ~~discharge of duties assigned under this chapter, including the establishment of inventories of~~  
2283 ~~pollution sources;~~

2284 ~~(d) collect and disseminate information relating to water pollution and the prevention,~~  
2285 ~~control, and abatement of water pollution;~~

2286 ~~(e) subject to the provisions of this chapter, exercise all incidental powers necessary to~~  
2287 ~~carry out the purposes of this chapter, including certification to any state or federal authorities~~  
2288 ~~for tax purposes only if the construction, installation, or acquisition of any facility, land,~~  
2289 ~~building, machinery, equipment, or any part of them conforms with this chapter;~~

2290 ~~(f) cooperate with any person in studies and research regarding water pollution and its~~

2291 control, abatement, and prevention;

2292 (g) encourage, participate in, or conduct studies, investigations, research, and  
2293 demonstrations relating to water pollution and causes of water pollution; or

2294 (h) as authorized by the board and subject to the provisions of this chapter, act as  
2295 executive secretary of the board under the direction of the chairman of the board.

2296 Section 38. Section **19-5-107** is amended to read:

2297 **19-5-107. Discharge of pollutants unlawful -- Discharge permit required.**

2298 (1) (a) Except as provided in this chapter or rules made under it, it is unlawful for any  
2299 person to discharge a pollutant into waters of the state or to cause pollution which constitutes a  
2300 menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs  
2301 domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or  
2302 cause to be placed any wastes in a location where there is probable cause to believe it will  
2303 cause pollution.

2304 (b) For purposes of injunctive relief, any violation of this subsection is a public  
2305 nuisance.

2306 (2) (a) A person may not generate, store, treat, process, use, transport, dispose, or  
2307 otherwise manage sewage sludge, except in compliance with this chapter and rules made under  
2308 it.

2309 (b) For purposes of injunctive relief, any violation of this subsection is a public  
2310 nuisance.

2311 (3) It is unlawful for any person, without first securing a permit from the [~~executive~~  
2312 ~~secretary as authorized by the board~~] director, to:

2313 (a) make any discharge or manage sewage sludge not authorized under an existing  
2314 valid discharge permit; or

2315 (b) construct, install, modify, or operate any treatment works or part of any treatment  
2316 works or any extension or addition to any treatment works, or construct, install, or operate any  
2317 establishment or extension or modification of or addition to any treatment works, the operation  
2318 of which would probably result in a discharge.

2319 Section 39. Section **19-5-108** is amended to read:

2320 **19-5-108. Discharge permits -- Requirements and procedure for issuance.**

2321 (1) The board may [~~prescribe conditions~~] make rules, in accordance with Title 63G,

2322 Chapter 3, Utah Administrative Rulemaking Act, for and require the submission of plans,  
2323 specifications, and other information to the [~~executive secretary~~] director in connection with  
2324 the issuance of discharge permits.

2325 (2) Each discharge permit shall have a fixed term not exceeding five years. Upon  
2326 expiration of a discharge permit, a new permit may be issued by the [~~executive secretary~~]  
2327 director as authorized by the board after notice and an opportunity for public hearing and upon  
2328 condition that the applicant meets or will meet all applicable requirements of this chapter,  
2329 including the conditions of any permit granted by the board.

2330 (3) The board may require notice to the [~~executive secretary~~] director of the  
2331 introduction of pollutants into publicly-owned treatment works and identification to the  
2332 [~~executive secretary~~] director of the character and volume of any pollutant of any significant  
2333 source subject to pretreatment standards under Subsection 307(b) of the federal Clean Water  
2334 Act. The [~~executive secretary~~] director shall provide in the permit for compliance with  
2335 pretreatment standards.

2336 (4) The [~~board~~] director may impose as conditions in permits for the discharge of  
2337 pollutants from publicly-owned treatment works appropriate measures to establish and insure  
2338 compliance by industrial users with any system of user charges required under this chapter or  
2339 the rules adopted under it.

2340 (5) The [~~board~~] director may apply and enforce against industrial users of  
2341 publicly-owned treatment works, toxic effluent standards and pretreatment standards for the  
2342 introduction into the treatment works of pollutants which interfere with, pass through, or  
2343 otherwise are incompatible with the treatment works.

2344 Section 40. Section **19-5-111** is amended to read:

2345 **19-5-111. Notice of violations -- Hearings.**

2346 (1) Whenever the [~~board~~] director determines there are reasonable grounds to believe  
2347 that there has been a violation of this chapter or any order of the director or the board, [~~it~~] the  
2348 director may give written notice to the alleged violator specifying the provisions that have been  
2349 violated and the facts that constitute the violation.

2350 (2) The notice shall require that the matters complained of be corrected.

2351 (3) The notice may order the alleged violator to appear before an administrative law  
2352 judge as provided by Section 19-1-301 at a time and place specified in the notice and answer

2353 the charges.

2354 Section 41. Section **19-5-112** is amended to read:

2355 **19-5-112. Hearings conducted by an administrative law judge -- Decisions on**  
 2356 **denial or revocation of permit conducted by executive director.**

2357 (1) ~~[(a)]~~ Except as provided by Subsection (2), an administrative law judge shall  
 2358 conduct hearings authorized by Section 19-5-111 in accordance with Section 19-1-301.

2359 ~~[(b) All decisions shall be rendered by a majority of the board.]~~

2360 (2) (a) An administrative law judge shall conduct, on the executive director's behalf, a  
 2361 hearing regarding an appeal of a permit decision for which the state has assumed primacy under  
 2362 the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

2363 ~~[(b) Notwithstanding Subsection 19-1-301(6), the administrative law judge shall~~  
 2364 ~~submit to the executive director a proposed dispositive action.]~~

2365 ~~[(c) The executive director may:]~~

2366 ~~[(i) approve, approve with modifications, or disapprove a proposed dispositive action~~  
 2367 ~~submitted to the executive director under Subsection (2)(b); or]~~

2368 ~~[(ii) return the proposed dispositive action to the administrative law judge for further~~  
 2369 ~~action as directed.]~~

2370 ~~[(d)]~~ (b) The decision of the executive director is final and binding on all parties [~~as a~~  
 2371 ~~final determination of the board]~~ unless stayed or overturned on appeal.

2372 Section 42. Section **19-5-113** is amended to read:

2373 **19-5-113. Power of director to enter property for investigation -- Records and**  
 2374 **reports required of owners or operators.**

2375 (1) The ~~[board]~~ director or ~~[its]~~ the director's authorized representative has, after  
 2376 presentation of credentials, the authority to enter at reasonable times upon any private or public  
 2377 property for the purpose of:

2378 (a) sampling, inspecting, or investigating matters or conditions relating to pollution or  
 2379 the possible pollution of any waters of the state, effluents or effluent sources, monitoring  
 2380 equipment, or sewage sludge; and

2381 (b) reviewing and copying records required to be maintained under this chapter.

2382 (2) (a) The board may make rules, in accordance with Title 63G, Chapter 3, Utah  
 2383 Administrative Rulemaking Act, that require a person managing sewage sludge, or the owner

2384 or operator of a disposal system, including a system discharging into publicly owned treatment  
2385 works, to:

2386 (i) establish and maintain reasonable records and make reports relating to the operation  
2387 of the system or the management of the sewage sludge;

2388 (ii) install, use, and maintain monitoring equipment or methods;

2389 (iii) sample, and analyze effluents or sewage sludges; and

2390 (iv) provide other information reasonably required.

2391 (b) The records, reports, and information shall be available to the public except as  
2392 provided in Subsection 19-1-306(2) or Subsections 63G-2-305(1) and (2), Government  
2393 Records Access and Management Act, as appropriate, for other than effluent information.

2394 Section 43. Section **19-5-114** is amended to read:

2395 **19-5-114. Spills or discharges of oil or other substance -- Notice to director.**

2396 Any person who spills or discharges any oil or other substance which may cause the  
2397 pollution of the waters of the state shall immediately notify the [~~executive secretary~~] director of  
2398 the spill or discharge, any containment procedures undertaken, and a proposed procedure for  
2399 cleanup and disposal, in accordance with rules of the board.

2400 Section 44. Section **19-5-115** is amended to read:

2401 **19-5-115. Violations -- Penalties -- Civil actions by board or director --**

2402 **Ordinances and rules of political subdivisions.**

2403 (1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in  
2404 Section 76-2-103.

2405 (2) Any person who violates this chapter, or any permit, rule, or order adopted under it,  
2406 upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not  
2407 to exceed \$10,000 per day of violation.

2408 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment  
2409 under Section 76-3-204 and a fine not exceeding \$25,000 per day who with criminal  
2410 negligence:

2411 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
2412 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2413 (ii) violates Section 19-5-113;

2414 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned

2415 treatment works; or

2416 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2417 (b) A person is guilty of a third degree felony and is subject to imprisonment under  
2418 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

2419 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
2420 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2421 (ii) violates Section 19-5-113;

2422 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
2423 treatment works; or

2424 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2425 (4) A person is guilty of a third degree felony and subject to imprisonment under  
2426 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if  
2427 that person knowingly:

2428 (a) makes a false material statement, representation, or certification in any application,  
2429 record, report, plan, or other document filed or required to be maintained under this chapter, or  
2430 by any permit, rule, or order issued under it; or

2431 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or  
2432 method required to be maintained under this chapter.

2433 (5) (a) As used in this section:

2434 (i) "Organization" means a legal entity, other than a government, established or  
2435 organized for any purpose, and includes a corporation, company, association, firm, partnership,  
2436 joint stock company, foundation, institution, trust, society, union, or any other association of  
2437 persons.

2438 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of  
2439 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
2440 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

2441 (b) A person is guilty of a second degree felony and, upon conviction, is subject to  
2442 imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

2443 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

2444 (ii) knows at that time that he is placing another person in imminent danger of death or  
2445 serious bodily injury.

2446 (c) If a person is an organization, it shall, upon conviction of violating Subsection  
2447 (5)(b), be subject to a fine of not more than \$1,000,000.

2448 (d) (i) A defendant who is an individual is considered to have acted knowingly if:

2449 (A) the defendant's conduct placed another person in imminent danger of death or  
2450 serious bodily injury; and

2451 (B) the defendant was aware of or believed that there was an imminent danger of death  
2452 or serious bodily injury to another person.

2453 (ii) Knowledge possessed by a person other than the defendant may not be attributed to  
2454 the defendant.

2455 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual  
2456 knowledge, including evidence that the defendant took affirmative steps to be shielded from  
2457 receiving relevant information.

2458 (e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the  
2459 conduct charged was consented to by the person endangered and that the danger and conduct  
2460 charged were reasonably foreseeable hazards of:

2461 (A) an occupation, a business, or a profession; or

2462 (B) medical treatment or medical or scientific experimentation conducted by  
2463 professionally approved methods and the other person was aware of the risks involved prior to  
2464 giving consent.

2465 (ii) The defendant has the burden of proof to establish any affirmative defense under  
2466 this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.

2467 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset  
2468 which leads to simultaneous violations of more than one pollutant parameter shall be treated as  
2469 a single violation.

2470 (7) (a) The [~~board~~] director may begin a civil action for appropriate relief, including a  
2471 permanent or temporary injunction, for any violation or threatened violation for which it is  
2472 authorized to issue a compliance order under Section 19-5-111.

2473 (b) Actions shall be brought in the district court where the violation or threatened  
2474 violation occurs.

2475 (8) (a) The attorney general is the legal advisor for the board and [~~its executive~~  
2476 ~~secretary~~] the director and shall defend them in all actions or proceedings brought against them.



2477 (b) The county attorney or district attorney as appropriate under Sections 17-18-1,  
2478 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action,  
2479 civil or criminal, requested by the board, to abate a condition that exists in violation of, or to  
2480 prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the  
2481 board or the ~~[executive secretary]~~ director issued under this chapter.

2482 (c) The board or the director may ~~[itself]~~ initiate any action under this section and be  
2483 represented by the attorney general.

2484 (9) If any person fails to comply with a cease and desist order that is not subject to a  
2485 stay pending administrative or judicial review, the ~~[board]~~ director may~~[-, through its executive~~  
2486 ~~secretary,]~~ initiate an action for and be entitled to injunctive relief to prevent any further or  
2487 continued violation of the order.

2488 (10) Any political subdivision of the state may enact and enforce ordinances or rules  
2489 for the implementation of this chapter that are not inconsistent with this chapter.

2490 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected  
2491 under the authority of this section shall be deposited in the General Fund.

2492 (b) The department may reimburse itself and local governments from money collected  
2493 from civil penalties for extraordinary expenses incurred in environmental enforcement  
2494 activities.

2495 (c) The department shall regulate reimbursements by making rules that:

2496 (i) define qualifying environmental enforcement activities; and

2497 (ii) define qualifying extraordinary expenses.

2498 Section 45. Section **19-6-102** is amended to read:

2499 **19-6-102. Definitions.**

2500 As used in this part:

2501 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
2502 19-1-106.

2503 (2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at  
2504 which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or  
2505 disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the  
2506 facility or site.

2507 (3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"

2508 means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or  
2509 disposal.

2510 (b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"  
2511 does not include a facility that:

2512 (i) receives waste for recycling;

2513 (ii) receives waste to be used as fuel, in compliance with federal and state  
2514 requirements; or

2515 (iii) is solely under contract with a local government within the state to dispose of  
2516 nonhazardous solid waste generated within the boundaries of the local government.

2517 (4) "Construction waste or demolition waste":

2518 (a) means waste from building materials, packaging, and rubble resulting from  
2519 construction, demolition, remodeling, and repair of pavements, houses, commercial buildings,  
2520 and other structures, and from road building and land clearing; and

2521 (b) does not include: asbestos; contaminated soils or tanks resulting from remediation  
2522 or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar  
2523 hazardous or potentially hazardous materials.

2524 (5) "Demolition waste" has the same meaning as the definition of construction waste in  
2525 this section.

2526 (6) "Director" means the director of the Division of Solid and Hazardous Waste.

2527 ~~[(6)]~~ (7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking,  
2528 or placing of any solid or hazardous waste into or on any land or water so that the waste or any  
2529 constituent of the waste may enter the environment, be emitted into the air, or discharged into  
2530 any waters, including groundwaters.

2531 (8) "Division" means the Division of Solid and Hazardous Waste, created in  
2532 Subsection 19-1-105(1)(e).

2533 ~~[(7) "Executive secretary" means the executive secretary of the board.]~~

2534 ~~[(8)]~~ (9) "Generation" or "generated" means the act or process of producing  
2535 nonhazardous solid or hazardous waste.

2536 ~~[(9)]~~ (10) "Hazardous waste" means a solid waste or combination of solid wastes other  
2537 than household waste which, because of its quantity, concentration, or physical, chemical, or  
2538 infectious characteristics may cause or significantly contribute to an increase in mortality or an

2539 increase in serious irreversible or incapacitating reversible illness or may pose a substantial  
2540 present or potential hazard to human health or the environment when improperly treated,  
2541 stored, transported, disposed of, or otherwise managed.

2542 ~~[(10)]~~ (11) "Health facility" means hospitals, psychiatric hospitals, home health  
2543 agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care  
2544 facilities for people with an intellectual disability, residential health care facilities, maternity  
2545 homes or birthing centers, free standing ambulatory surgical centers, facilities owned or  
2546 operated by health maintenance organizations, and state renal disease treatment centers  
2547 including free standing hemodialysis units, the offices of private physicians and dentists  
2548 whether for individual or private practice, veterinary clinics, and mortuaries.

2549 ~~[(11)]~~ (12) "Household waste" means any waste material, including garbage, trash, and  
2550 sanitary wastes in septic tanks, derived from households, including single-family and  
2551 multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters,  
2552 campgrounds, picnic grounds, and day-use recreation areas.

2553 ~~[(12)]~~ (13) "Infectious waste" means a solid waste that contains or may reasonably be  
2554 expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by  
2555 a susceptible host could result in an infectious disease.

2556 ~~[(13)]~~ (14) "Manifest" means the form used for identifying the quantity, composition,  
2557 origin, routing, and destination of hazardous waste during its transportation from the point of  
2558 generation to the point of disposal, treatment, or storage.

2559 ~~[(14)]~~ (15) "Mixed waste" means any material that is a hazardous waste as defined in  
2560 this chapter and is also radioactive as defined in Section 19-3-102.

2561 ~~[(15)]~~ (16) "Modification plan" means a plan under Section 19-6-108 to modify a  
2562 facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or  
2563 disposing of hazardous waste.

2564 ~~[(16)]~~ (17) "Operation plan" or "nonhazardous solid or hazardous waste operation  
2565 plan" means a plan or approval under Section 19-6-108, including:

2566 (a) a plan to own, construct, or operate a facility or site for the purpose of disposing of  
2567 nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

2568 (b) a closure plan;

2569 (c) a modification plan; or

2570 (d) an approval that the [~~executive secretary~~] director is authorized to issue.

2571 [~~(17)~~] (18) "Permittee" means a person who is obligated under an operation plan.

2572 [~~(18)~~] (19) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from  
2573 a waste treatment plant, water supply treatment plant, or air pollution control facility, or other  
2574 discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting  
2575 from industrial, commercial, mining, or agricultural operations and from community activities  
2576 but does not include solid or dissolved materials in domestic sewage or in irrigation return  
2577 flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality  
2578 Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

2579 (b) "Solid waste" does not include any of the following wastes unless the waste causes  
2580 a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

2581 (i) certain large volume wastes, such as inert construction debris used as fill material;

2582 (ii) drilling muds, produced waters, and other wastes associated with the exploration,  
2583 development, or production of oil, gas, or geothermal energy;

2584 (iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste  
2585 generated primarily from the combustion of coal or other fossil fuels;

2586 (iv) solid wastes from the extraction, beneficiation, and processing of ores and  
2587 minerals; or

2588 (v) cement kiln dust.

2589 [~~(19)~~] (20) "Storage" means the actual or intended containment of solid or hazardous  
2590 waste either on a temporary basis or for a period of years in such a manner as not to constitute  
2591 disposal of the waste.

2592 [~~(20)~~] (21) "Transportation" means the off-site movement of solid or hazardous waste  
2593 to any intermediate point or to any point of storage, treatment, or disposal.

2594 [~~(21)~~] (22) "Treatment" means a method, technique, or process designed to change the  
2595 physical, chemical, or biological character or composition of any solid or hazardous waste so as  
2596 to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for  
2597 recovery, amenable to storage, or reduced in volume.

2598 [~~(22)~~] (23) "Underground storage tank" means a tank which is regulated under Subtitle  
2599 I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

2600 Section 46. Section **19-6-102.1** is amended to read:

2601           **19-6-102.1. Treatment and disposal -- Exclusions.**

2602           As used in Subsections 19-6-104[(1)(j)(ii)(B)] (1)(d)(ii)(B), 19-6-108(3)(b) and  
2603 (3)(c)(ii)(B), and 19-6-119(1)(a), the term "treatment and disposal" specifically excludes the  
2604 recycling, use, reuse, or reprocessing of fly ash waste, bottom ash waste, slag waste, or flue gas  
2605 emission control waste generated primarily from the combustion of coal or other fossil fuels;  
2606 waste from the extraction, beneficiation, and processing of ores and minerals; or cement kiln  
2607 dust, including recycle, reuse, use, or reprocessing for road sanding, sand blasting, road  
2608 construction, railway ballast, construction fill, aggregate, and other construction-related  
2609 purposes.

2610           Section 47. Section **19-6-102.6** is amended to read:

2611           **19-6-102.6. Legislative participation in landfill siting disputes.**

2612           (1) (a) Upon the Legislature's receipt of a written request by a county governing body  
2613 or a member of the Legislature whose district is involved in a landfill siting dispute, the  
2614 president of the Senate and the speaker of the House shall appoint a committee as described  
2615 under Subsection (2) and volunteers under Subsection (3) to actively seek an acceptable  
2616 location for a municipal landfill if there is a dispute between two or more counties regarding  
2617 the proposed site of a municipal landfill.

2618           (b) The president and the speaker shall consult with the legislators appointed under this  
2619 subsection regarding their appointment of members of the committee under Subsection (2), and  
2620 volunteers under Subsection (3).

2621           (2) The committee shall consist of the following members, appointed jointly by the  
2622 president and the speaker:

2623           (a) two members from the Senate:

2624           (i) one member from the county where the proposed landfill site is located; and

2625           (ii) one member from the other county involved in the dispute, but if more than one  
2626 other county is involved, still only one senator from one of those counties;

2627           (b) two members from the House:

2628           (i) one member from the county where the proposed landfill site is located; and

2629           (ii) one member from the other county involved in the dispute, but if more than one  
2630 other county is involved, still only one representative from one of those counties;

2631           (c) one individual whose current principal residence is within a community located

2632 within 20 miles of any exterior boundary of the proposed landfill site, but if no community is  
2633 located within 20 miles of the community, then an individual whose current residence is in the  
2634 community nearest the proposed landfill site;

2635 (d) two resident citizens from the county where the proposed landfill site is located;  
2636 and

2637 (e) three resident citizens from the other county involved in the dispute, but if more  
2638 than one other county is involved, still only three citizen representatives from those counties.

2639 (3) Two volunteers shall be appointed under Subsection (1). The volunteers shall be  
2640 individuals who agree to assist, as requested, the committee members who represent the  
2641 interests of the county where the proposed landfill site is located.

2642 (4) (a) Funding and staffing for the committee shall be provided jointly and equally by  
2643 the Senate and the House.

2644 (b) The Department of Environmental Quality shall, at the request of the committee  
2645 and as funds are available within the department's existing budget, provide support in arranging  
2646 for committee hearings to receive public input and secretarial staff to make a record of those  
2647 hearings.

2648 (5) The committee shall:

2649 (a) appoint a chair from among its members; and

2650 (b) meet as necessary, but not less often than once per month, until its work is  
2651 completed.

2652 (6) The committee shall report in writing the results of its work and any  
2653 recommendations it may have for legislative action to the interim committees of the Legislature  
2654 as directed by the Legislative Management Committee.

2655 (7) (a) All action by the division, the [~~executive secretary~~] director, or the division  
2656 board of the Department of Environmental Quality regarding any proposed municipal landfill  
2657 site, regarding which a request has been submitted under Subsection (1), is tolled for one year  
2658 from the date the request is submitted, or until the committee completes its work under this  
2659 section, whichever occurs first. This Subsection (7) also tolls the time limits imposed by  
2660 Subsection 19-6-108(13).

2661 (b) This Subsection (7) applies to any proposed landfill site regarding which the  
2662 department has not granted final approval on or before March 21, 1995.

2663 (c) As used in this Subsection (7), "final approval" means final agency action taken  
 2664 after conclusion of proceedings under Sections 63G-4-207 through 63G-4-405.

2665 (8) This section does not apply to a municipal solid waste facility that is, on or before  
 2666 March 23, 1994:

2667 (a) operating under an existing permit or the renewal of an existing permit issued by  
 2668 the local health department or other authority granted by the Department of Environmental  
 2669 Quality; or

2670 (b) operating under the approval of the local health department, regardless of whether a  
 2671 formal permit has been issued.

2672 Section 48. Section **19-6-103** is amended to read:

2673 **19-6-103. Solid and Hazardous Waste Control Board -- Members -- Terms --**  
 2674 **Organization -- Meetings -- Per diem and expenses.**

2675 (1) The [~~Solid and Hazardous Waste Control Board created by Section 19-1-106~~  
 2676 ~~comprises the~~] board consists of the following nine members:

2677 (a) (i) the executive director [and 12]; or

2678 (ii) an employee of the department designated by the executive director; and

2679 (b) the following eight members, who shall be nominated by the executive director and  
 2680 appointed by the governor with the consent of the Senate[-]:

2681 (i) one representative who:

2682 (A) is not connected with industry;

2683 (B) is an expert in waste management matters; and

2684 (C) is a Utah-licensed professional engineer;

2685 (ii) two government representatives who do not represent the federal government;

2686 (iii) one representative from the manufacturing, mining, or fuel industry;

2687 (iv) one representative from either:

2688 (A) the private solid or hazardous waste disposal industry; or

2689 (B) the private hazardous waste recovery industry;

2690 (v) one representative from the public who represents a nongovernmental organization;

2691 (vi) one representative from the public who is trained and experienced in public health;

2692 and

2693 (vii) one Utah-licensed practicing attorney who is knowledgeable about waste

2694 management regulatory issues.

2695 (2) ~~[The appointed members]~~ A member of the board shall:

2696 (a) be knowledgeable about solid and hazardous waste matters [and consist of:] as  
2697 evidenced by a professional degree, a professional accreditation, or documented experience:

2698 ~~[(a) one representative of municipal government;]~~

2699 ~~[(b) one representative of county government;]~~

2700 ~~[(c) one representative of the manufacturing or fuel industry;]~~

2701 ~~[(d) one representative of the mining industry;]~~

2702 ~~[(e) one representative of the private solid waste disposal or solid waste recovery~~  
2703 ~~industry;]~~

2704 ~~[(f) one registered professional engineer;]~~

2705 ~~[(g) one representative of a local health department;]~~

2706 ~~[(h) one representative of the hazardous waste disposal industry; and]~~

2707 ~~[(i) four representatives of the public, at least one of whom is a representative of~~  
2708 ~~organized environmental interests.]~~

2709 (b) be a resident of Utah;

2710 (c) attend board meetings in accordance with the attendance rules made by the  
2711 department under Subsection 19-1-201(1)(d)(i)(A); and

2712 (d) comply with all applicable statutes, rules, and policies, including the conflict of  
2713 interest rules made by the department in accordance with Subsection 19-1-201(1)(d)(ii)(B).

2714 (3) ~~[Not]~~ No more than ~~[six]~~ five of the appointed members may be from the same  
2715 political party.

2716 (4) (a) ~~[Except as required by Subsection (4)(b), members]~~ Members shall be  
2717 appointed for terms of four years each.

2718 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the  
2719 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
2720 board members are staggered so that approximately half of the board is appointed every two  
2721 years.

2722 (5) Each member is eligible for reappointment.

2723 (6) Board members shall continue in office until the expiration of their terms and until  
2724 their successors are appointed, but not more than 90 days after the expiration of their terms.



2725 (7) When a vacancy occurs in the membership for any reason, the replacement shall be  
 2726 appointed for the unexpired term by the governor, after considering recommendations of the  
 2727 board and with the consent of the Senate.

2728 (8) The board shall elect a chair and vice chair on or before April 1 of each year from  
 2729 its membership.

2730 (9) A member may not receive compensation or benefits for the member's service, but  
 2731 may receive per diem and travel expenses in accordance with:

2732 (a) Section 63A-3-106;

2733 (b) Section 63A-3-107; and

2734 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
 2735 63A-3-107.

2736 (10) (a) The board shall hold a meeting at least once every three months including one  
 2737 meeting during each annual general session of the Legislature.

2738 (b) Meetings shall be held on the call of the chair, the ~~[executive secretary]~~ director, or  
 2739 any three of the members.

2740 (11) ~~[Seven]~~ Five members constitute a quorum at any meeting, and the action of the  
 2741 majority of members present is the action of the board.

2742 Section 49. Section **19-6-104** is amended to read:

2743 **19-6-104. Powers of board -- Creation of statewide solid waste management plan.**

2744 (1) The board shall:

2745 (a) survey solid and hazardous waste generation and management practices within this  
 2746 state and, after public hearing and after providing opportunities for comment by local  
 2747 governmental entities, industry, and other interested persons, prepare and revise, as necessary, a  
 2748 waste management plan for the state;

2749 ~~[(b) carry out inspections pursuant to Section 19-6-109;]~~

2750 ~~[(c) (i) hold a hearing that is not an adjudicative proceeding and compel the attendance  
 2751 of witnesses, the production of documents, and other evidence, administer oaths and take  
 2752 testimony, and receive evidence it finds proper, or appoint hearing officers to conduct a hearing  
 2753 that is not an adjudicative proceeding who shall be delegated these powers;]~~

2754 ~~[(ii) receive a proposed dispositive action from an administrative law judge as provided  
 2755 by Section 19-1-301; and]~~

2756           ~~[(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~  
2757 ~~action; or]~~

2758           ~~[(B) return the proposed dispositive action to the administrative law judge for further~~  
2759 ~~action as directed;]~~

2760           (b) order the director to:

2761           ~~[(d)]~~ (i) issue orders necessary to effectuate the provisions of this part and  
2762 [implementing] rules [and] made under this part;

2763           (ii) enforce [them] the orders by administrative and judicial proceedings[-and cause  
2764 the initiation of]; or

2765           (iii) initiate judicial proceedings to secure compliance with this part;

2766           ~~[(e) settle or compromise any administrative or civil action initiated to compel~~  
2767 ~~compliance with this part and any rules adopted under this part;]~~

2768           ~~[(f) require submittal of specifications or other information relating to hazardous waste~~  
2769 ~~plans for review, and approve, disapprove, revoke, or review the plans;]~~

2770           ~~[(g) advise, consult, cooperate with, and provide technical assistance to other agencies~~  
2771 ~~of the state and federal government, other states, interstate agencies, and affected groups,~~  
2772 ~~political subdivisions, industries, and other persons in carrying out the purposes of this part;]~~

2773           ~~[(h)]~~ (c) promote the planning and application of resource recovery systems to prevent  
2774 the unnecessary waste and depletion of natural resources;

2775           ~~[(i)]~~ (d) meet the requirements of federal law related to solid and hazardous wastes to  
2776 insure that the solid and hazardous wastes program provided for in this part is qualified to  
2777 assume primacy from the federal government in control over solid and hazardous waste;

2778           ~~[(j)]~~ (e) (i) require any facility, including those listed in Subsection (1)[(j)](e)(ii), that is  
2779 intended for disposing of nonhazardous solid waste or wastes listed in Subsection  
2780 (1)[(j)](e)(ii)(B) to submit plans, specifications, and other information required by the board to  
2781 the board prior to construction, modification, installation, or establishment of a facility to allow  
2782 the board to determine whether the proposed construction, modification, installation, or  
2783 establishment of the facility will be in accordance with rules made under this part;

2784           (ii) facilities referred to in Subsection (1)[(j)](e)(i) include:

2785           (A) any incinerator that is intended for disposing of nonhazardous solid waste; and  
2786           (B) except for facilities that receive the following wastes solely for the purpose of

2787 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,  
 2788 and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas  
 2789 emission control waste generated primarily from the combustion of coal or other fossil fuels;  
 2790 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln  
 2791 dust wastes; and

2792 ~~[(k) exercise all other incidental powers necessary to carry out the purposes of this~~  
 2793 ~~part.]~~

2794 (f) to ensure compliance with applicable statutes and regulations:

2795 (i) review a settlement negotiated by the director in accordance with Subsection  
 2796 19-6-107(3)(a) that requires a civil penalty of \$25,000 or more; and

2797 (ii) approve or disapprove the settlement.

2798 (2) The board may:

2799 (a) (i) hold a hearing that is not an adjudicative proceeding; or

2800 (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding;

2801 or

2802 (b) advise, consult, cooperate with, or provide technical assistance to other agencies of  
 2803 the state or federal government, other states, interstate agencies, or affected groups, political  
 2804 subdivisions, industries, or other persons in carrying out the purposes of this part.

2805 ~~[(2)]~~ (3) (a) The board shall establish a comprehensive statewide solid waste  
 2806 management plan by January 1, 1994.

2807 (b) The plan shall:

2808 (i) incorporate the solid waste management plans submitted by the counties;

2809 (ii) provide an estimate of solid waste capacity needed in the state for the next 20  
 2810 years;

2811 (iii) assess the state's ability to minimize waste and recycle;

2812 (iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste  
 2813 needs and existing capacity;

2814 (v) evaluate facility siting, design, and operation;

2815 (vi) review funding alternatives for solid waste management; and

2816 (vii) address other solid waste management concerns that the board finds appropriate  
 2817 for the preservation of the public health and the environment.

2818 (c) The board shall consider the economic viability of solid waste management  
2819 strategies prior to incorporating them into the plan and shall consider the needs of population  
2820 centers.

2821 (d) The board shall review and modify the comprehensive statewide solid waste  
2822 management plan no less frequently than every five years.

2823 [~~(3)~~] (4) (a) The board shall determine the type of solid waste generated in the state and  
2824 tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid  
2825 waste management plan.

2826 (b) The board shall review and modify the inventory no less frequently than once every  
2827 five years.

2828 [~~(4)~~] (5) Subject to the limitations contained in Subsection 19-6-102[~~(18)~~](19)(b), the  
2829 board shall establish siting criteria for nonhazardous solid waste disposal facilities, including  
2830 incinerators.

2831 (6) The board may not issue, amend, renew, modify, revoke, or terminate any of the  
2832 following that are subject to the authority granted to the director under Section 19-6-107:

2833 (a) a permit;

2834 (b) a license;

2835 (c) a registration;

2836 (d) a certification; or

2837 (e) another administrative authorization made by the director.

2838 (7) A board member may not speak or act for the board unless the board member is  
2839 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

2840 Section 50. Section **19-6-105** is amended to read:

2841 **19-6-105. Rules of board.**

2842 (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah  
2843 Administrative Rulemaking Act:

2844 (a) establishing minimum standards for protection of human health and the  
2845 environment, for the storage, collection, transport, recovery, treatment, and disposal of solid  
2846 waste, including requirements for the approval by the director of plans for the construction,  
2847 extension, operation, and closure of solid waste disposal sites;

2848 (b) identifying wastes which are determined to be hazardous, including wastes

2849 designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of  
2850 1976, 42 U.S.C., Sec. 6921, et seq.;

2851 (c) governing generators and transporters of hazardous wastes and owners and  
2852 operators of hazardous waste treatment, storage, and disposal facilities, including requirements  
2853 for keeping records, monitoring, submitting reports, and using a manifest, without treating  
2854 high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling  
2855 muds, and oil production brines in a manner more stringent than they are treated under federal  
2856 standards;

2857 (d) requiring an owner or operator of a treatment, storage, or disposal facility that is  
2858 subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982,  
2859 to take appropriate corrective action or other response measures for releases of hazardous waste  
2860 or hazardous waste constituents from the facility, including releases beyond the boundaries of  
2861 the facility;

2862 (e) specifying the terms and conditions under which the ~~[board]~~ director shall approve,  
2863 disapprove, revoke, or review hazardous wastes operation plans;

2864 (f) governing public hearings and participation under this part;

2865 (g) establishing standards governing underground storage tanks, in accordance with  
2866 Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

2867 (h) relating to the collection, transportation, processing, treatment, storage, and  
2868 disposal of infectious waste in health facilities in accordance with the requirements of Section  
2869 19-6-106;

2870 (i) defining closure plans as major or minor;

2871 (j) defining modification plans as major or minor; and

2872 (k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or  
2873 organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch,  
2874 canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or  
2875 well.

2876 (2) If any of the following are determined to be hazardous waste and are therefore  
2877 subjected to the provisions of this part, the board shall, in the case of landfills or surface  
2878 impoundments that receive the solid wastes, take into account the special characteristics of the  
2879 wastes, the practical difficulties associated with applying requirements for other wastes to the

2880 wastes, and site specific characteristics, including the climate, geology, hydrology, and soil  
2881 chemistry at the site, if the modified requirements assure protection of human health and the  
2882 environment and are no more stringent than federal standards applicable to wastes:

2883 (a) solid waste from the extraction, beneficiation, or processing of ores and minerals,  
2884 including phosphate rock and overburden from the mining of uranium;

2885 (b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste  
2886 generated primarily from the combustion of coal or other fossil fuels; and

2887 (c) cement kiln dust waste.

2888 (3) The board shall establish criteria for siting commercial hazardous waste treatment,  
2889 storage, and disposal facilities, including commercial hazardous waste incinerators. Those  
2890 criteria shall apply to any facility or incinerator for which plan approval is required under  
2891 Section 19-6-108.

2892 Section 51. Section **19-6-107** is amended to read:

2893 **19-6-107. Director -- Appointment -- Powers.**

2894 ~~[The executive secretary shall be appointed by the executive director with the approval~~  
2895 ~~of the board and shall serve under the administrative direction of the executive director. The~~  
2896 ~~executive secretary may:]~~

2897 (1) The executive director shall appoint the director. The director shall serve under the  
2898 administrative direction of the executive director.

2899 (2) The director shall:

2900 (a) carry out inspections pursuant to Section 19-6-109;

2901 (b) require submittal of specifications or other information relating to hazardous waste  
2902 plans for review, and approve, disapprove, revoke, or review the plans;

2903 ~~[(1)]~~ (c) develop programs for solid waste and hazardous waste management and  
2904 control within the state;

2905 ~~[(2)]~~ (d) advise, consult, and cooperate with other agencies of the state, the federal  
2906 government, other states and interstate agencies, and with affected groups, political  
2907 subdivisions, and industries in furtherance of the purposes of this part;

2908 (e) subject to the provisions of this part, enforce rules made or revised by the board  
2909 through the issuance of orders;

2910 (f) review plans, specifications or other data relative to solid waste and hazardous

2911 waste control systems or any part of the systems as provided in this part;  
2912 (g) under the direction of the executive director, represent the state in all matters  
2913 pertaining to interstate solid waste and hazardous waste management and control including,  
2914 under the direction of the board, entering into interstate compacts and other similar agreements;  
2915 and  
2916 (h) as authorized by the board and subject to the provisions of this part, act as  
2917 executive secretary of the board under the direction of the chairman of the board.  
2918 (3) The director may:  
2919 (a) subject to Subsection 19-6-104(1)(f), settle or compromise any administrative or  
2920 civil action initiated to compel compliance with this part and any rules adopted under this part;  
2921 ~~[(3)]~~ (b) employ full-time employees necessary to carry out this part;  
2922 ~~[(4)]~~ (c) as authorized by the board pursuant to the provisions of this part, authorize  
2923 any employee or representative of the department to conduct inspections as permitted in this  
2924 part;  
2925 ~~[(5)]~~ (d) encourage, participate in, or conduct studies, investigations, research, and  
2926 demonstrations relating to solid waste and hazardous waste management and control necessary  
2927 for the discharge of duties assigned under this part;  
2928 ~~[(6)]~~ (e) collect and disseminate information relating to solid waste and hazardous  
2929 waste management control; and  
2930 ~~[(7) as authorized by the board pursuant to the provisions of this part, enforce rules~~  
2931 ~~made or revised by the board through the issuance of orders which may be subsequently~~  
2932 ~~amended or revoked by the board;]~~  
2933 ~~[(8) review plans, specifications or other data relative to solid waste and hazardous~~  
2934 ~~waste control systems or any part of the systems as provided in this part;]~~  
2935 ~~[(9)]~~ (f) cooperate with any person in studies and research regarding solid waste and  
2936 hazardous waste management and control[;];  
2937 ~~[(10) represent the state with the specific concurrence of the executive director in all~~  
2938 ~~matters pertaining to interstate solid waste and hazardous waste management and control~~  
2939 ~~including, under the direction of the board, entering into interstate compacts and other similar~~  
2940 ~~agreements; and]~~  
2941 ~~[(11) as authorized by the board and subject to the provisions of this chapter, exercise~~

2942 ~~all incidental powers necessary to carry out the purposes of this chapter.]~~

2943 Section 52. Section **19-6-108** is amended to read:

2944 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**  
2945 **facility or site -- Administrative and legislative approval required -- Exemptions from**  
2946 **legislative and gubernatorial approval -- Time periods for review -- Information required**  
2947 **-- Other conditions -- Revocation of approval -- Periodic review.**

2948 (1) For purposes of this section, the following items shall be treated as submission of a  
2949 new operation plan:

2950 (a) the submission of a revised operation plan specifying a different geographic site  
2951 than a previously submitted plan;

2952 (b) an application for modification of a commercial hazardous waste incinerator if the  
2953 construction or the modification would increase the hazardous waste incinerator capacity above  
2954 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in  
2955 the operation plan application as of January 1, 1990, if no operation plan approval has been  
2956 issued as of January 1, 1990;

2957 (c) an application for modification of a commercial nonhazardous solid waste  
2958 incinerator if the construction of the modification would cost 50% or more of the cost of  
2959 construction of the original incinerator or the modification would result in an increase in the  
2960 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity  
2961 or throughput that was approved in the operation plan as of January 1, 1990, or the initial  
2962 approved operation plan if the initial approval is subsequent to January 1, 1990;

2963 (d) an application for modification of a commercial nonhazardous solid or hazardous  
2964 waste treatment, storage, or disposal facility, other than an incinerator, if the modification  
2965 would be outside the boundaries of the property owned or controlled by the applicant, as shown  
2966 in the application or approved operation plan as of January 1, 1990, or the initial approved  
2967 operation plan if the initial approval is subsequent to January 1, 1990; or

2968 (e) a submission of an operation plan to construct a facility, if previous approvals of the  
2969 operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

2970 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput  
2971 tonnage specified for the trial burn in the operation plan or the operation plan application if no  
2972 operation plan approval has been issued as of January 1, 1990, and on annual operations of



2973 7,000 hours.

2974 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the  
2975 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of  
2976 hazardous waste without first submitting and receiving the approval of the [~~executive~~  
2977 ~~secretary~~] director for an operation plan for that facility or site.

2978 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an  
2979 operation plan may submit to the [~~executive secretary~~] director information, a report, a plan, or  
2980 other request for approval for a proposed activity under an operation plan:

2981 (I) after obtaining the consent of any other permittee who is a current owner of the  
2982 facility or site; and

2983 (II) without obtaining the consent of any other permittee who is not a current owner of  
2984 the facility or site.

2985 (B) The [~~executive secretary~~] director may not:

2986 (I) withhold an approval of an operation plan requested by a permittee who is a current  
2987 owner of the facility or site on the grounds that another permittee who is not a current owner of  
2988 the facility or site has not consented to the request; or

2989 (II) give an approval of an operation plan requested by a permittee who is not a current  
2990 owner before receiving consent of the current owner of the facility or site.

2991 (b) (i) Except for facilities that receive the following wastes solely for the purpose of  
2992 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any  
2993 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any  
2994 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving  
2995 the approval of the [~~executive secretary~~] director for an operation plan for that facility site.

2996 (ii) Wastes referred to in Subsection (3)(b)(i) are:

2997 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste  
2998 generated primarily from the combustion of coal or other fossil fuels;

2999 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

3000 (C) cement kiln dust wastes.

3001 (c) (i) No person may construct a facility listed under Subsection (3)(c)(ii) until the  
3002 person receives:

3003 (A) local government approval and the approval described in Subsection (3)(a);

3004 (B) approval from the Legislature; and  
3005 (C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B),  
3006 approval from the governor.

3007 (ii) A facility referred to in Subsection (3)(c)(i) is:  
3008 (A) a commercial nonhazardous solid waste disposal facility;  
3009 (B) except for facilities that receive the following wastes solely for the purpose of  
3010 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,  
3011 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas  
3012 emission control waste generated primarily from the combustion of coal or other fossil fuels;  
3013 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln  
3014 dust wastes; or  
3015 (C) a commercial hazardous waste treatment, storage, or disposal facility.

3016 (iii) The required approvals described in Subsection (3)(c)(i) for a facility described in  
3017 Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:  
3018 (A) the governor's approval is received on or after May 10, 2011, and the facility is not  
3019 operational within five years after the day on which the governor's approval is received; or  
3020 (B) the governor's approval is received before May 10, 2011, and the facility is not  
3021 operational on or before May 10, 2016.

3022 (iv) The required approvals described in Subsection (3)(c)(i) for a facility described in  
3023 Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to  
3024 another person for five years after the day on which the governor's approval is received.

3025 (d) No person need obtain gubernatorial or legislative approval for the construction of  
3026 a hazardous waste facility for which an operating plan has been approved by or submitted for  
3027 approval to the executive secretary of the board under this section before April 24, 1989, and  
3028 which has been determined, on or before December 31, 1990, by the executive secretary of the  
3029 board to be complete, in accordance with state and federal requirements for operating plans for  
3030 hazardous waste facilities even if a different geographic site is subsequently submitted.

3031 (e) No person need obtain gubernatorial and legislative approval for the construction of  
3032 a commercial nonhazardous solid waste disposal facility for which an operation plan has been  
3033 approved by or submitted for approval to the executive secretary of the board under this section  
3034 on or before January 1, 1990, and which, on or before December 31, 1990, the executive

3035 secretary of the board determines to be complete, in accordance with state and federal  
3036 requirements applicable to operation plans for nonhazardous solid waste facilities.

3037 (f) Any person owning or operating a facility or site on or before November 19, 1980,  
3038 who has given timely notification as required by Section 3010 of the Resource Conservation  
3039 and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed  
3040 hazardous waste plan under this section for that facility or site, may continue to operate that  
3041 facility or site without violating this section until the plan is approved or disapproved under  
3042 this section.

3043 (g) (i) The [~~executive secretary~~] director shall suspend acceptance of further  
3044 applications for a commercial nonhazardous solid or hazardous waste facility upon a finding  
3045 that the [~~executive secretary~~] director cannot adequately oversee existing and additional  
3046 facilities for permit compliance, monitoring, and enforcement.

3047 (ii) The [~~executive secretary~~] director shall report any suspension to the Natural  
3048 Resources, Agriculture, and Environment Interim Committee.

3049 (4) The [~~executive secretary~~] director shall review each proposed nonhazardous solid  
3050 or hazardous waste operation plan to determine whether that plan complies with the provisions  
3051 of this part and the applicable rules of the board.

3052 (5) (a) If the facility is a class I or class II facility, the [~~executive secretary~~] director  
3053 shall approve or disapprove that plan within 270 days from the date it is submitted.

3054 (b) Within 60 days after receipt of the plans, specifications, or other information  
3055 required by this section for a class I or II facility, the [~~executive secretary~~] director shall  
3056 determine whether the plan is complete and contains all information necessary to process the  
3057 plan for approval.

3058 (c) (i) If the plan for a class I or II facility is determined to be complete, the [~~executive~~  
3059 ~~secretary~~] director shall issue a notice of completeness.

3060 (ii) If the plan is determined by the [~~executive secretary~~] director to be incomplete, the  
3061 [~~executive secretary~~] director shall issue a notice of deficiency, listing the additional  
3062 information to be provided by the owner or operator to complete the plan.

3063 (d) The [~~executive secretary~~] director shall review information submitted in response to  
3064 a notice of deficiency within 30 days after receipt.

3065 (e) The following time periods may not be included in the 270 day plan review period

3066 for a class I or II facility:

3067 (i) time awaiting response from the owner or operator to requests for information  
3068 issued by the [~~executive secretary~~] director;

3069 (ii) time required for public participation and hearings for issuance of plan approvals;  
3070 and

3071 (iii) time for review of the permit by other federal or state government agencies.

3072 (6) (a) If the facility is a class III or class IV facility, the [~~executive secretary~~] director  
3073 shall approve or disapprove that plan within 365 days from the date it is submitted.

3074 (b) The following time periods may not be included in the 365 day review period:

3075 (i) time awaiting response from the owner or operator to requests for information  
3076 issued by the [~~executive secretary~~] director;

3077 (ii) time required for public participation and hearings for issuance of plan approvals;  
3078 and

3079 (iii) time for review of the permit by other federal or state government agencies.

3080 (7) If, within 365 days after receipt of a modification plan or closure plan for any  
3081 facility, the [~~executive secretary~~] director determines that the proposed plan, or any part of it,  
3082 will not comply with applicable rules, the [~~executive secretary~~] director shall issue an order  
3083 prohibiting any action under the proposed plan for modification or closure in whole or in part.

3084 (8) Any person who owns or operates a facility or site required to have an approved  
3085 hazardous waste operation plan under this section and who has pending a permit application  
3086 before the United States Environmental Protection Agency shall be treated as having an  
3087 approved plan until final administrative disposition of the permit application is made under this  
3088 section, unless the [~~board~~] director determines that final administrative disposition of the  
3089 application has not been made because of the failure of the owner or operator to furnish any  
3090 information requested, or the facility's interim status has terminated under Section 3005 (e) of  
3091 the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

3092 (9) No proposed nonhazardous solid or hazardous waste operation plan may be  
3093 approved unless it contains the information that the board requires, including:

3094 (a) estimates of the composition, quantities, and concentrations of any hazardous waste  
3095 identified under this part and the proposed treatment, storage, or disposal of it;

3096 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or

3097 disposal of hazardous waste will not be done in a manner that may cause or significantly  
3098 contribute to an increase in mortality, an increase in serious irreversible or incapacitating  
3099 reversible illness, or pose a substantial present or potential hazard to human health or the  
3100 environment;

3101 (c) consistent with the degree and duration of risks associated with the disposal of  
3102 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,  
3103 evidence of financial responsibility in whatever form and amount that the [~~executive secretary~~]  
3104 director determines is necessary to insure continuity of operation and that upon abandonment,  
3105 cessation, or interruption of the operation of the facility or site, all reasonable measures  
3106 consistent with the available knowledge will be taken to insure that the waste subsequent to  
3107 being treated, stored, or disposed of at the site or facility will not present a hazard to the public  
3108 or the environment;

3109 (d) evidence that the personnel employed at the facility or site have education and  
3110 training for the safe and adequate handling of nonhazardous solid or hazardous waste;

3111 (e) plans, specifications, and other information that the [~~executive secretary~~] director  
3112 considers relevant to determine whether the proposed nonhazardous solid or hazardous waste  
3113 operation plan will comply with this part and the rules of the board; and

3114 (f) compliance schedules, where applicable, including schedules for corrective action  
3115 or other response measures for releases from any solid waste management unit at the facility,  
3116 regardless of the time the waste was placed in the unit.

3117 (10) The [~~executive secretary~~] director may not approve a commercial nonhazardous  
3118 solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it  
3119 contains the information required by the board, including:

3120 (a) evidence that the proposed commercial facility has a proven market of  
3121 nonhazardous solid or hazardous waste, including:

3122 (i) information on the source, quantity, and price charged for treating, storing, and  
3123 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

3124 (ii) a market analysis of the need for a commercial facility given existing and potential  
3125 generation of nonhazardous solid or hazardous waste in the state and regionally; and

3126 (iii) a review of other existing and proposed commercial nonhazardous solid or  
3127 hazardous waste facilities regionally and nationally that would compete for the treatment,

3128 storage, or disposal of the nonhazardous solid or hazardous waste;

3129 (b) a description of the public benefits of the proposed facility, including:

3130 (i) the need in the state for the additional capacity for the management of nonhazardous  
3131 solid or hazardous waste;

3132 (ii) the energy and resources recoverable by the proposed facility;

3133 (iii) the reduction of nonhazardous solid or hazardous waste management methods,  
3134 which are less suitable for the environment, that would be made possible by the proposed  
3135 facility; and

3136 (iv) whether any other available site or method for the management of hazardous waste  
3137 would be less detrimental to the public health or safety or to the quality of the environment;  
3138 and

3139 (c) compliance history of an owner or operator of a proposed commercial  
3140 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be  
3141 applied by the ~~[executive secretary]~~ director in a nonhazardous solid or hazardous waste  
3142 operation plan decision, including any plan conditions.

3143 (11) The ~~[executive secretary]~~ director may not approve a commercial nonhazardous  
3144 solid or hazardous waste facility operation plan unless based on the application, and in addition  
3145 to the determination required in Subsections (9) and (10), the ~~[executive secretary]~~ director  
3146 determines that:

3147 (a) the probable beneficial environmental effect of the facility to the state outweighs  
3148 the probable adverse environmental effect; and

3149 (b) there is a need for the facility to serve industry within the state.

3150 (12) Approval of a nonhazardous solid or hazardous waste operation plan may be  
3151 revoked, in whole or in part, if the person to whom approval of the plan has been given fails to  
3152 comply with that plan.

3153 (13) The ~~[executive secretary]~~ director shall review all approved nonhazardous solid  
3154 and hazardous waste operation plans at least once every five years.

3155 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste  
3156 facilities in existence or to applications filed or pending in the department prior to April 24,  
3157 1989, that are determined by the executive secretary of the board on or before December 31,  
3158 1990, to be complete, in accordance with state and federal requirements applicable to operation

3159 plans for hazardous waste facilities.

3160 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous  
3161 solid waste facility in existence or to an application filed or pending in the department prior to  
3162 January 1, 1990, that is determined by the [~~executive secretary~~] director, on or before  
3163 December 31, 1990, to be complete in accordance with state and federal requirements  
3164 applicable to operation plans for nonhazardous solid waste facilities.

3165 (16) Nonhazardous solid waste generated outside of this state that is defined as  
3166 hazardous waste in the state where it is generated and which is received for disposal in this  
3167 state may not be disposed of at a nonhazardous waste disposal facility owned and operated by  
3168 local government or a facility under contract with a local government solely for disposal of  
3169 nonhazardous solid waste generated within the boundaries of the local government, unless  
3170 disposal is approved by the [~~executive secretary~~] director.

3171 (17) This section may not be construed to exempt any facility from applicable  
3172 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through  
3173 2114.

3174 Section 53. Section **19-6-108.3** is amended to read:

3175 **19-6-108.3. Director to issue written assurances, make determinations, and**  
3176 **partition operation plans -- Board to make rules.**

3177 (1) Based upon risk to human health or the environment from potential exposure to  
3178 hazardous waste, the [~~executive secretary~~] director may:

3179 (a) even if corrective action is incomplete, issue an enforceable written assurance to a  
3180 person acquiring an interest in real property covered by an operation plan that the person to  
3181 whom the assurance is issued:

3182 (i) is not a permittee under the operation plan; and

3183 (ii) will not be subject to an enforcement action under this part for contamination that  
3184 exists or for violations under this part that occurred before the person acquired the interest in  
3185 the real property covered by the operation plan;

3186 (b) determine that corrective action to the real property covered by the operation plan  
3187 is:

3188 (i) complete;

3189 (ii) incomplete;

- 3190 (iii) unnecessary with an environmental covenant; or
- 3191 (iv) unnecessary without an environmental covenant; and
- 3192 (c) partition from an operation plan a portion of real property subject to the operation
- 3193 plan after determining that corrective action for that portion of real property is:
- 3194 (i) complete;
- 3195 (ii) unnecessary with an environmental covenant; or
- 3196 (iii) unnecessary without an environmental covenant.

3197 (2) If the [~~executive secretary~~] director determines that an environmental covenant is

3198 necessary under Subsection (1)(b) or (c), the [~~executive secretary~~] director shall require that the

3199 real property be subject to an environmental covenant according to Title 57, Chapter 25,

3200 Uniform Environmental Covenants Act.

3201 (3) An assurance issued under Subsection (1) protects the person to whom the

3202 assurance is issued from any cost recovery and contribution action under state law.

3203 (4) By following the procedures and requirements of Title 63G, Chapter 3, Utah

3204 Administrative Rulemaking Act, the board may adopt rules to administer this section.

3205 Section 54. Section **19-6-109** is amended to read:

3206 **19-6-109. Inspections authorized.**

3207 Any duly authorized officer, employee, or representative of the [~~board~~] director may, at

3208 any reasonable time and upon presentation of appropriate credentials, enter upon and inspect

3209 any property, premise, or place on or at which solid or hazardous wastes are generated,

3210 transported, stored, treated, or disposed of, and have access to and the right to copy any records

3211 relating to the wastes, for the purpose of ascertaining compliance with this part and the rules of

3212 the board. Those persons referred to in this section may also inspect any waste and obtain

3213 waste samples, including samples from any vehicle in which wastes are being transported or

3214 samples of any containers or labels. Any person obtaining samples shall give to the owner,

3215 operator, or agent a receipt describing the sample obtained and, if requested, a portion of each

3216 sample of waste equal in volume or weight to the portion retained. If any analysis is made of

3217 those samples, a copy of the results of that analysis shall be furnished promptly to the owner,

3218 operator, or agent in charge.

3219 Section 55. Section **19-6-112** is amended to read:

3220 **19-6-112. Notice of violations -- Order for correction -- Civil action to enforce.**



3221 (1) Whenever the [board] director determines that any person is in violation of any  
3222 applicable approved hazardous wastes operation plan or solid waste plan, the requirements of  
3223 this part, or any of the board's rules, [it] the director may cause written notice of that violation  
3224 to be served upon the alleged violator. The notice shall specify the provisions of the plan, this  
3225 part or rule alleged to have been violated, and the facts alleged to constitute the violation.

3226 (2) The [board] director may:

3227 (a) issue an order requiring that necessary corrective action be taken within a  
3228 reasonable time; or

3229 (b) request the attorney general or the county attorney in the county in which the  
3230 violation is taking place to bring a civil action for injunctive relief and enforcement of this part.

3231 (3) Pending promulgation of rules for corrective action under Section 19-6-105, the  
3232 [board] director may issue corrective action orders on a case-by-case basis, as necessary to  
3233 carry out the purposes of this part.

3234 Section 56. Section **19-6-117** is amended to read:

3235 **19-6-117. Action against insurer or guarantor.**

3236 (1) The state may assert a cause of action directly against an insurer or guarantor of an  
3237 owner or operator if:

3238 (a) a cause of action exists against an owner or operator of a treatment, storage, or  
3239 disposal facility, based upon conduct for which the [board] director requires evidence of  
3240 financial responsibility under Section 19-6-108, and that owner or operator is in bankruptcy,  
3241 reorganization, or arrangement pursuant to the federal Bankruptcy Code; or

3242 (b) jurisdiction over an owner or operator, who is likely to be solvent at the time of  
3243 judgment, cannot be obtained in state or federal court.

3244 (2) In that action, the insurer or guarantor may assert all rights and defenses available  
3245 to the owner or operator, in addition to rights and defenses that would be available to the  
3246 insurer or guarantor in an action brought against him by the owner or operator.

3247 Section 57. Section **19-6-119** is amended to read:

3248 **19-6-119. Nonhazardous solid waste disposal fees.**

3249 (1) (a) Except as provided in Subsection (5), the owner or operator of a commercial  
3250 nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste  
3251 received for treatment or disposal at the facility if the facility or incinerator is required to have

3252 operation plan approval under Section 19-6-108 and primarily receives waste generated by  
3253 off-site sources not owned, controlled, or operated by the facility or site owner or operator:

- 3254 (i) 13 cents per ton on all municipal waste and municipal incinerator ash;
- 3255 (ii) 50 cents per ton on the following wastes if the facility disposes of one or more of  
3256 the following wastes in a cell exclusively designated for the waste being disposed:

- 3257 (A) construction waste or demolition waste;
- 3258 (B) yard waste, including vegetative matter resulting from landscaping, land  
3259 maintenance, and land clearing operations;
- 3260 (C) dead animals;
- 3261 (D) waste tires and materials derived from waste tires disposed of in accordance with  
3262 Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and
- 3263 (E) petroleum contaminated soils that are approved by the [~~executive secretary~~]

3264 director; and

- 3265 (iii) \$2.50 per ton on:
  - 3266 (A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and
  - 3267 (B) (I) fly ash waste;
  - 3268 (II) bottom ash waste;
  - 3269 (III) slag waste;
  - 3270 (IV) flue gas emission control waste generated primarily from the combustion of coal  
3271 or other fossil fuels;
  - 3272 (V) waste from the extraction, beneficiation, and processing of ores and minerals; and
  - 3273 (VI) cement kiln dust wastes.

3274 (b) A commercial nonhazardous solid waste disposal facility or incinerator subject to  
3275 the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii)  
3276 for those wastes described in Subsections (1)(a)(i) and (ii).

3277 (c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall  
3278 pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.

3279 (2) (a) Except as provided in Subsections (2)(b) and (5), a waste facility that is owned  
3280 by a political subdivision shall pay the following annual facility fee to the department by  
3281 January 15 of each year:

- 3282 (i) \$800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal

3283 waste each year;

3284 (ii) \$1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of  
3285 municipal waste each year;

3286 (iii) \$3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of  
3287 municipal waste each year;

3288 (iv) \$12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of  
3289 municipal waste each year;

3290 (v) \$14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of  
3291 municipal waste each year;

3292 (vi) \$33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of  
3293 municipal waste each year; and

3294 (vii) \$66,000 if the facility receives 500,000 or more tons of municipal waste each  
3295 year.

3296 (b) Except as provided in Subsection (5), a waste facility that is owned by a political  
3297 subdivision shall pay \$2.50 per ton for:

3298 (i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii)  
3299 received for disposal if the waste is:

3300 (A) generated outside the boundaries of the political subdivision; and

3301 (B) received from a single generator and exceeds 500 tons in a calendar year; and

3302 (ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:

3303 (A) generated outside the boundaries of the political subdivision; and

3304 (B) received from a single generator and exceeds 500 tons in a calendar year.

3305 (c) Waste received at a facility owned by a political subdivision under Subsection  
3306 (2)(b) may not be counted as part of the total tonnage received by the facility under Subsection

3307 (2)(a).

3308 (3) (a) As used in this Subsection (3):

3309 (i) "Recycling center" means a facility that extracts valuable materials from a waste  
3310 stream or transforms or remanufactures the material into a usable form that has demonstrated  
3311 or potential market value.

3312 (ii) "Transfer station" means a permanent, fixed, supplemental collection and  
3313 transportation facility that is used to deposit collected solid waste from off-site into a transfer

3314 vehicle for transport to a solid waste handling or disposal facility.

3315 (b) Except as provided in Subsection (5), the owner or operator of a transfer station or  
3316 recycling center shall pay to the department the following fees on waste sent for disposal to a  
3317 nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this  
3318 section:

3319 (i) \$1.25 per ton on:

3320 (A) all nonhazardous solid waste; and

3321 (B) waste described in Subsection (1)(a)(iii)(B);

3322 (ii) 10 cents per ton on all construction and demolition waste; and

3323 (iii) 5 cents per ton on all municipal waste or municipal incinerator ash.

3324 (c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee  
3325 required under Subsection (3)(b)(i).

3326 (4) If a facility required to pay fees under this section receives nonhazardous solid  
3327 waste for treatment or disposal, and the fee required under this section is paid for that treatment  
3328 or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees  
3329 under this section.

3330 (5) The owner or operator of a waste disposal facility that receives waste described in  
3331 Subsection (1)(a)(iii)(B) is not required to pay any fee on those wastes if received solely for the  
3332 purpose of recycling, reuse, or reprocessing.

3333 (6) Except as provided in Subsection (2)(a), a facility required to pay fees under this  
3334 section shall:

3335 (a) calculate the fees by multiplying the total tonnage of waste received during the  
3336 calendar month, computed to the first decimal place, by the required fee rate;

3337 (b) pay the fees imposed by this section to the department by the 15th day of the month  
3338 following the month in which the fees accrued; and

3339 (c) with the fees required under Subsection (6)(b), submit to the department, on a form  
3340 prescribed by the department, information that verifies the amount of waste received and the  
3341 fees that the owner or operator is required to pay.

3342 (7) The department shall:

3343 (a) deposit all fees received under this section into the Environmental Quality  
3344 Restricted Account created in Section 19-1-108; and

3345 (b) in preparing its budget for the governor and the Legislature, separately indicate the  
3346 amount of the department's budget necessary to administer the solid and hazardous waste  
3347 program established by this part.

3348 (8) The department may contract or agree with a county to assist in performing  
3349 nonhazardous solid waste management activities, including agreements for:

3350 (a) the development of a solid waste management plan required under Section  
3351 17-15-23; and

3352 (b) pass-through of available funding.

3353 (9) This section does not exempt any facility from applicable regulation under the  
3354 Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

3355 Section 58. Section **19-6-120** is amended to read:

3356 **19-6-120. New hazardous waste operation plans -- Designation of hazardous**  
3357 **waste facilities -- Fees for filing and plan review.**

3358 (1) For purposes of this section, the following items shall be treated as submission of a  
3359 new hazardous waste operation plan:

3360 (a) the submission of a revised hazardous waste operation plan specifying a different  
3361 geographic site than a previously submitted plan;

3362 (b) an application for modification of a commercial hazardous waste incinerator if the  
3363 construction or the modification would increase the commercial hazardous waste incinerator  
3364 capacity above the capacity specified in the operation plan as of January 1, 1990, or the  
3365 capacity specified in the operation plan application as of January 1, 1990, if no operation plan  
3366 approval has been issued as of January 1, 1990; or

3367 (c) an application for modification of a commercial hazardous waste treatment, storage,  
3368 or disposal facility, other than an incinerator, if the modification would be outside the  
3369 boundaries of the property owned or controlled by the applicant, as shown in the application or  
3370 approved operation plan as of January 1, 1990, or the initial approved operation plan if initial  
3371 approval is subsequent to January 1, 1990.

3372 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput  
3373 tonnage specified for the trial burn in the operation plan or the operation plan application if no  
3374 operation plan approval has been issued as of January 1, 1990, and on annual operations of  
3375 7,000 hours.

3376 (3) (a) Hazardous waste facilities that are subject to payment of fees under this section  
3377 or Section 19-1-201 for plan reviews under Section 19-6-108 shall be designated by the  
3378 department as either class I, class II, class III, or class IV facilities.

3379 (b) The department shall designate commercial hazardous waste facilities containing  
3380 either landfills, surface impoundments, land treatment units, thermal treatment units,  
3381 incinerators, or underground injection wells, which primarily receive wastes generated by  
3382 off-site sources not owned, controlled, or operated by the facility owner or operator, as class I  
3383 facilities.

3384 (4) The maximum fee for filing and review of each class I facility operation plan is  
3385 \$200,000, and is due and payable as follows:

3386 (a) The owner or operator of a class I facility shall, at the time of filing for plan review,  
3387 pay to the department the nonrefundable sum of \$50,000.

3388 (b) Upon issuance by the [~~executive secretary~~] director of a notice of completeness  
3389 under Section 19-6-108, the owner or operator of the facility shall pay to the department an  
3390 additional nonrefundable sum of \$50,000.

3391 (c) The department shall bill the owner or operator of the facility for any additional  
3392 actual costs of plan review, up to an additional \$100,000.

3393 (5) (a) The department shall designate hazardous waste incinerators that primarily  
3394 receive wastes generated by sources owned, controlled, or operated by the facility owner or  
3395 operator as class II facilities.

3396 (b) The maximum fee for filing and review of each class II facility operation plan is  
3397 \$150,000, and shall be due and payable as follows:

3398 (i) The owner or operator of a class II facility shall, at the time of filing for plan review  
3399 under Section 19-6-108, pay to the department the nonrefundable sum of \$50,000.

3400 (ii) The department shall bill the owner or operator of the facility for any additional  
3401 actual costs of plan review, up to an additional \$100,000.

3402 (6) (a) The department shall designate hazardous waste facilities containing either  
3403 landfills, surface impoundments, land treatment units, thermal treatment units, or underground  
3404 injection wells, that primarily receive wastes generated by sources owned, controlled, or  
3405 operated by the facility owner or operator, as class III facilities.

3406 (b) The maximum fee for filing and review of each class III facility operation plan is

3407 \$100,000 and is due and payable as follows:

3408 (i) The owner or operator shall, at the time of filing for plan review, pay to the  
3409 department the nonrefundable sum of \$1,000.

3410 (ii) The department shall bill the owner or operator of each class III facility for actual  
3411 costs of operation plan review, up to an additional \$99,000.

3412 (7) (a) All other hazardous waste facilities are designated as class IV facilities.

3413 (b) The maximum fee for filing and review of each class IV facility operation plan is  
3414 \$50,000 and is due and payable as follows:

3415 (i) The owner or operator shall, at the time of filing for plan review, pay to the  
3416 department the nonrefundable sum of \$1,000.

3417 (ii) The department shall bill the owner or operator of each class IV facility for actual  
3418 costs of operation plan review, up to an additional \$49,000.

3419 (8) (a) The maximum fee for filing and review of each major modification plan and  
3420 major closure plan for a class I, class II, or class III facility is \$50,000 and is due and payable as  
3421 follows:

3422 (i) The owner or operator shall, at the time of filing for that review, pay to the  
3423 department the nonrefundable sum of \$1,000.

3424 (ii) The department shall bill the owner or operator of the hazardous waste facility for  
3425 actual costs of the review, up to an additional \$49,000.

3426 (b) The maximum fee for filing and review of each minor modification and minor  
3427 closure plan for a class I, class II, or class III facility, and of any modification or closure plan  
3428 for a class IV facility, is \$20,000, and is due and payable as follows:

3429 (i) The owner or operator shall, at the time of filing for that review, pay to the  
3430 department the nonrefundable sum of \$1,000.

3431 (ii) The department shall bill the owner or operator of the hazardous waste facility for  
3432 actual costs of review up to an additional \$19,000.

3433 (c) The owner or operator of a thermal treatment unit shall submit a trial or test burn  
3434 schedule 90 days prior to any planned trial or test burn. At the time the schedule is submitted,  
3435 the owner or operator shall pay to the department the nonrefundable fee of \$25,000. The  
3436 department shall apply the fee to the costs of the review and processing of each trial or test  
3437 burn plan, trial or test burn, and trial or test burn data report. The department shall bill the

3438 owner or operator of the facility for any additional actual costs of review and preparation.

3439 (9) (a) The owner or operator of a class III facility may obtain a plan review within the  
3440 time periods for a class II facility operation plan by paying, at the time of filing for plan review,  
3441 the maximum fee for a class II facility operation plan.

3442 (b) The owner or operator of a class IV facility may obtain a plan review within the  
3443 time periods for a class II facility operation plan by paying, at the time of filing for plan review,  
3444 the maximum fee for a class III facility operation plan.

3445 (c) An owner or operator of a class I, class II, or class III facility who submits a major  
3446 modification plan or a major closure plan may obtain a plan review within the time periods for  
3447 a class II facility operation plan by paying, at the time of filing for plan review, the maximum  
3448 fee for a class II facility operation plan.

3449 (d) An owner or operator of a class I, class II, or class III facility who submits a minor  
3450 modification plan or a minor closure plan, and an owner or operator of a class IV facility who  
3451 submits a modification plan or a closure plan, may obtain a plan review within the time periods  
3452 for a class II facility operation plan by paying, at the time of filing for plan review, the  
3453 maximum fee for a class III facility operation plan.

3454 (10) All fees received by the department under this section shall be deposited in the  
3455 General Fund as dedicated credits for hazardous waste plan reviews in accordance with  
3456 Subsection (12) and Section 19-6-108.

3457 (11) (a) (i) The [~~executive secretary~~] director shall establish an accounting procedure  
3458 that separately accounts for fees paid by each owner or operator who submits a hazardous  
3459 waste operation plan for approval under Section 19-6-108 and pays fees for hazardous waste  
3460 plan reviews under this section or Section 19-1-201.

3461 (ii) The [~~executive secretary~~] director shall credit all fees paid by the owner or operator  
3462 to that owner or operator.

3463 (iii) The [~~executive secretary~~] director shall account for costs actually incurred in  
3464 reviewing each operation plan and may only use the fees of each owner or operator for review  
3465 of that owner or operator's plan.

3466 (b) If the costs actually incurred by the department in reviewing a hazardous waste  
3467 operation plan of any facility are less than the nonrefundable fee paid by the owner or operator  
3468 under this section, the department may, upon approval or disapproval of the plan by the board



3469 or upon withdrawal of the plan by the owner or operator, use any remaining funds that have  
3470 been credited to that owner or operator for the purposes of administering provisions of the  
3471 hazardous waste programs and activities authorized by this part.

3472 (12) (a) With regard to any review of a hazardous waste operation plan, modification  
3473 plan, or closure plan that is pending on April 25, 1988, the [~~executive secretary~~] director may  
3474 assess fees for that plan review.

3475 (b) The total amount of fees paid by an owner or operator of a hazardous waste facility  
3476 whose plan review is affected by this subsection may not exceed the maximum fees allowable  
3477 under this section for the appropriate class of facility.

3478 (13) (a) The department shall maintain accurate records of its actual costs for each plan  
3479 review under this section.

3480 (b) Those records shall be available for public inspection.

3481 Section 59. Section **19-6-402** is amended to read:

3482 **19-6-402. Definitions.**

3483 As used in this part:

3484 (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a  
3485 release from an underground storage tank or petroleum storage tank, or to limit or reduce,  
3486 mitigate, or eliminate the damage caused by that release.

3487 (2) "Board" means the Solid and Hazardous Waste Control Board created in Section  
3488 19-1-106.

3489 (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any  
3490 person.

3491 (4) "Certificate of compliance" means a certificate issued to a facility by the [~~executive~~  
3492 ~~secretary~~] director:

3493 (a) demonstrating that an owner or operator of a facility containing one or more  
3494 petroleum storage tanks has met the requirements of this part; and

3495 (b) listing all tanks at the facility, specifying which tanks may receive petroleum and  
3496 which tanks have not met the requirements for compliance.

3497 (5) "Certificate of registration" means a certificate issued to a facility by the [~~executive~~  
3498 ~~secretary~~] director demonstrating that an owner or operator of a facility containing one or more  
3499 underground storage tanks has:

- 3500 (a) registered the tanks; and
- 3501 (b) paid the annual underground storage tank fee.
- 3502 (6) (a) "Certified underground storage tank consultant" means any person who:
- 3503 (i) meets the education and experience standards established by the board under
- 3504 Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions,
- 3505 or advice relating to underground storage tank management, release abatement, investigation,
- 3506 corrective action, or evaluation for a fee, or in connection with the services for which a fee is
- 3507 charged; and
- 3508 (ii) has submitted an application to the board and received a written statement of
- 3509 certification from the board.
- 3510 (b) "Certified underground storage tank consultant" does not include:
- 3511 (i) an employee of the owner or operator of the underground storage tank, or an
- 3512 employee of a business operation that has a business relationship with the owner or operator of
- 3513 the underground storage tank, and that markets petroleum products or manages underground
- 3514 storage tanks; or
- 3515 (ii) persons licensed to practice law in this state who offer only legal advice on
- 3516 underground storage tank management, release abatement, investigation, corrective action, or
- 3517 evaluation.
- 3518 (7) "Closed" means an underground storage tank no longer in use that has been:
- 3519 (a) emptied and cleaned to remove all liquids and accumulated sludges; and
- 3520 (b) either removed from the ground or filled with an inert solid material.
- 3521 (8) "Corrective action plan" means a plan for correcting a release from a petroleum
- 3522 storage tank that includes provisions for all or any of the following:
- 3523 (a) cleanup or removal of the release;
- 3524 (b) containment or isolation of the release;
- 3525 (c) treatment of the release;
- 3526 (d) correction of the cause of the release;
- 3527 (e) monitoring and maintenance of the site of the release;
- 3528 (f) provision of alternative water supplies to persons whose drinking water has become
- 3529 contaminated by the release; or
- 3530 (g) temporary or permanent relocation, whichever is determined by the ~~executive~~

3531 ~~secretary~~ director to be more cost-effective, of persons whose dwellings have been determined  
3532 by the ~~[executive secretary]~~ director to be no longer habitable due to the release.

3533 (9) "Costs" means any money expended for:

3534 (a) investigation;

3535 (b) abatement action;

3536 (c) corrective action;

3537 (d) judgments, awards, and settlements for bodily injury or property damage to third  
3538 parties;

3539 (e) legal and claims adjusting costs incurred by the state in connection with judgments,  
3540 awards, or settlements for bodily injury or property damage to third parties; or

3541 (f) costs incurred by the state risk manager in determining the actuarial soundness of  
3542 the fund.

3543 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been  
3544 met.

3545 (11) "Director" means the director of the Division of Environmental Response and  
3546 Remediation.

3547 (12) "Division" means the Division of Environmental Response and Remediation,  
3548 created in Subsection 19-1-105(1)(c).

3549 ~~[(11)]~~ (13) "Dwelling" means a building that is usually occupied by a person lodging  
3550 there at night.

3551 ~~[(12)]~~ (14) "Enforcement proceedings" means a civil action or the procedures to  
3552 enforce orders established by Section 19-6-425.

3553 ~~[(13)] "Executive secretary" means the executive secretary of the board.]~~

3554 ~~[(14)]~~ (15) "Facility" means all underground storage tanks located on a single parcel of  
3555 property or on any property adjacent or contiguous to that parcel.

3556 ~~[(15)]~~ (16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section  
3557 19-6-409.

3558 ~~[(16)]~~ (17) "Loan fund" means the Petroleum Storage Tank Loan Fund created in  
3559 Section 19-6-405.3.

3560 ~~[(17)]~~ (18) "Operator" means any person in control of or who is responsible on a daily  
3561 basis for the maintenance of an underground storage tank that is in use for the storage, use, or

3562 dispensing of a regulated substance.

3563 [~~(18)~~] (19) "Owner" means:

3564 (a) in the case of an underground storage tank in use on or after November 8, 1984, any  
3565 person who owns an underground storage tank used for the storage, use, or dispensing of a  
3566 regulated substance; and

3567 (b) in the case of any underground storage tank in use before November 8, 1984, but  
3568 not in use on or after November 8, 1984, any person who owned the tank immediately before  
3569 the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

3570 [~~(19)~~] (20) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at  
3571 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

3572 [~~(20)~~] (21) "Petroleum storage tank" means a tank that:

3573 (a) (i) is underground;

3574 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42  
3575 U.S.C. Section 6991c, et seq.; and

3576 (iii) contains petroleum; or

3577 (b) is a tank that the owner or operator voluntarily submits for participation in the  
3578 Petroleum Storage Tank Trust Fund under Section 19-6-415.

3579 [~~(21)~~] (22) "Petroleum Storage Tank Restricted Account" means the account created in  
3580 Section 19-6-405.5.

3581 [~~(22)~~] (23) "Program" means the Environmental Assurance Program under Section  
3582 19-6-410.5.

3583 [~~(23)~~] (24) "Property damage" means physical injury to or destruction of tangible  
3584 property including loss of use of that property.

3585 [~~(24)~~] (25) "Regulated substance" means petroleum and petroleum-based substances  
3586 comprised of a complex blend of hydrocarbons derived from crude oil through processes of  
3587 separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate  
3588 fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

3589 [~~(25)~~] (26) "Release" means any spilling, leaking, emitting, discharging, escaping,  
3590 leaching, or disposing from an underground storage tank or petroleum storage tank. The entire  
3591 release is considered a single release.

3592 [~~(26)~~] (27) (a) "Responsible party" means any person who:

- 3593 (i) is the owner or operator of a facility;
- 3594 (ii) owns or has legal or equitable title in a facility or an underground storage tank;
- 3595 (iii) owned or had legal or equitable title in the facility at the time any petroleum was  
3596 received or contained at the facility;
- 3597 (iv) operated or otherwise controlled activities at the facility at the time any petroleum  
3598 was received or contained at the facility; or
- 3599 (v) is an underground storage tank installation company.
- 3600 (b) "Responsible party" as defined in Subsections [~~26~~] (27)(a)(i), (ii), and (iii) does  
3601 not include:
- 3602 (i) any person who is not an operator and, without participating in the management of a  
3603 facility and otherwise not engaged in petroleum production, refining, and marketing, holds  
3604 indicia of ownership:
- 3605 (A) primarily to protect his security interest in the facility; or
- 3606 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an  
3607 employee benefit plan; or
- 3608 (ii) governmental ownership or control of property by involuntary transfers as provided  
3609 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).
- 3610 (c) The exemption created by Subsection [~~26~~](27)(b)(i)(B) does not apply to actions  
3611 taken by the state or its officials or agencies under this part.
- 3612 (d) The terms and activities "indicia of ownership," "primarily to protect a security  
3613 interest," "participation in management," and "security interest" under this part are in  
3614 accordance with 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).
- 3615 (e) The terms "participate in management" and "indicia of ownership" as defined in 40  
3616 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the  
3617 fiduciaries listed in Subsection [~~26~~](27)(b)(i)(B).
- 3618 [~~27~~] (28) "Soil test" means a test, established or approved by board rule, to detect the  
3619 presence of petroleum in soil.
- 3620 [~~28~~] (29) "State cleanup appropriation" means the money appropriated by the  
3621 Legislature to the department to fund the investigation, abatement, and corrective action  
3622 regarding releases not covered by the fund.
- 3623 [~~29~~] (30) "Underground storage tank" means any tank regulated under Subtitle I,

3624 Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

3625 (a) a petroleum storage tank;

3626 (b) underground pipes and lines connected to a storage tank; and

3627 (c) any underground ancillary equipment and containment system.

3628 [~~(30)~~] (31) "Underground storage tank installation company" means any person, firm,  
3629 partnership, corporation, governmental entity, association, or other organization who installs  
3630 underground storage tanks.

3631 [~~(31)~~] (32) "Underground storage tank installation company permit" means a permit  
3632 issued to an underground storage tank installation company by the [~~executive secretary~~]  
3633 director.

3634 [~~(32)~~] (33) "Underground storage tank technician" means a person employed by and  
3635 acting under the direct supervision of a certified underground storage tank consultant to assist  
3636 in carrying out the functions described in Subsection (6)(a).

3637 Section 60. Section **19-6-403** is amended to read:

3638 **19-6-403. Powers and duties of board.**

3639 The board shall regulate an underground storage tank or petroleum storage tank by:

3640 (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
3641 making rules that:

3642 (a) provide for the:

3643 (i) certification of an installer, inspector, tester, or remover;

3644 (ii) registration of a tank;

3645 (iii) administration of the petroleum storage tank program;

3646 (iv) format of and required information in a record kept by a tank owner or operator  
3647 who is participating in the fund;

3648 (v) voluntary participation in the fund for:

3649 (A) an above ground petroleum storage tank; and

3650 (B) a tank:

3651 (I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

3652 (II) specified in Section 19-6-415; and

3653 (vi) certification of an underground storage tank consultant including:

3654 (A) a minimum education or experience requirement; and

3655 (B) a recognition of the educational requirement of a professional engineer licensed  
3656 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing  
3657 Act, as meeting the education requirement for certification;

3658 (b) adopt the requirements for an underground storage tank contained in:

3659 (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may  
3660 be amended in the future; and

3661 (ii) an applicable federal requirement authorized by the federal law referenced in  
3662 Subsection (1)(b)(i); and

3663 (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42  
3664 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of  
3665 primacy in the regulation of an underground storage tank; and

3666 (2) [~~applying~~] apply the provisions of this part.

3667 Section 61. Section **19-6-404** is amended to read:

3668 **19-6-404. Powers and duties of director.**

3669 (1) The [~~executive secretary~~] director shall:

3670 (a) administer the petroleum storage tank program established in this part[-]; and

3671 (b) as authorized by the board and subject to the provisions of this part, act as  
3672 executive secretary of the board under the direction of the chairman of the board.

3673 (2) As necessary to meet the requirements or carry out the purposes of this part, the  
3674 [~~executive secretary~~] director may:

3675 (a) advise, consult, and cooperate with other persons;

3676 (b) employ persons;

3677 (c) authorize a certified employee or a certified representative of the department to  
3678 conduct facility inspections and reviews of records required to be kept by this part and by rules  
3679 made under this part;

3680 (d) encourage, participate in, or conduct studies, investigation, research, and  
3681 demonstrations;

3682 (e) collect and disseminate information;

3683 (f) enforce rules made by the board and any requirement in this part by issuing notices  
3684 and orders;

3685 (g) review plans, specifications, or other data;

3686 (h) under the direction of the executive director, represent the state in all matters  
3687 pertaining to interstate underground storage tank management and control, including~~[-with the~~  
3688 ~~concurrence of the executive director;]~~ entering into interstate compacts and other similar  
3689 agreements;

3690 (i) enter into contracts or agreements with political subdivisions for the performance of  
3691 any of the department's responsibilities under this part if:

3692 (i) the contract or agreement is not prohibited by state or federal law and will not result  
3693 in a loss of federal funding; and

3694 (ii) the ~~[executive secretary]~~ director determines that:

3695 (A) the political subdivision is willing and able to satisfactorily discharge its  
3696 responsibilities under the contract or agreement; and

3697 (B) the contract or agreement will be practical and effective;

3698 (j) take any necessary enforcement action authorized under this part;

3699 (k) require an owner or operator of an underground storage tank to:

3700 (i) furnish information or records relating to the tank, its equipment, and contents;

3701 (ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils,  
3702 air, or water; or

3703 (iii) provide access to the tank at reasonable times;

3704 (l) take any abatement, investigative, or corrective action as authorized in this part;

3705 ~~[and]~~ or

3706 (m) enter into agreements or issue orders to apportion percentages of liability of  
3707 responsible parties under Section 19-6-424.5.

3708 ~~[(3) Except as otherwise provided in Subsection 19-6-414(3), appeals of decisions~~  
3709 ~~made by the executive secretary under this part shall be made to the board.]~~

3710 Section 62. Section **19-6-405.3** is amended to read:

3711 **19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan**  
3712 **eligibility -- Loan restrictions -- Rulemaking.**

3713 (1) There is created a revolving loan fund known as the Petroleum Storage Tank Loan  
3714 Fund.

3715 (2) The sources of money for the loan fund are:

3716 (a) appropriations to the loan fund;



- 3717 (b) principal and interest received from the repayment of loans made by the [~~executive~~  
3718 ~~secretary~~] director under Subsection (3); and
- 3719 (c) all investment income derived from money in the fund.
- 3720 (3) The [~~executive secretary~~] director may loan, in accordance with this section, money  
3721 available in the loan fund to a person to be used for:
- 3722 (a) upgrading a petroleum storage tank;
- 3723 (b) replacing an underground storage tank; or
- 3724 (c) permanently closing an underground storage tank.
- 3725 (4) A person may apply to the [~~executive secretary~~] director for a loan under  
3726 Subsection (3) if all tanks owned or operated by that person are in substantial compliance with  
3727 all state and federal requirements or will be brought into substantial compliance using money  
3728 from the loan fund.
- 3729 (5) The [~~executive secretary~~] director shall consider loan applications under Subsection  
3730 (4) to meet the following objectives:
- 3731 (a) support availability of gasoline in rural parts of the state;
- 3732 (b) support small businesses; and
- 3733 (c) reduce the threat of a petroleum release endangering the environment.
- 3734 (6) Loans made under this section may not:
- 3735 (a) be for more than \$150,000 for all tanks at any one facility;
- 3736 (b) be for more than \$50,000 per tank;
- 3737 (c) be for more than 80% of the total cost of:
- 3738 (i) upgrading a tank;
- 3739 (ii) replacing the underground storage tank; or
- 3740 (iii) permanently closing the underground storage tank;
- 3741 (d) have a fixed annual interest rate of 3%;
- 3742 (e) have a term no longer than 10 years;
- 3743 (f) be made on the condition the loan applicant obtains adequate security for the loan as  
3744 established by board rule under Subsection (7); and
- 3745 (g) comply with rules made by the board under Subsection (7).
- 3746 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
3747 board shall make rules establishing:

- 3748 (a) form, content, and procedure for a loan application;
- 3749 (b) criteria and procedures for prioritizing a loan application;
- 3750 (c) requirements and procedures for securing a loan;
- 3751 (d) procedures for making a loan;
- 3752 (e) procedures for administering and ensuring repayment of a loan, including late
- 3753 payment penalties; and
- 3754 (f) procedures for recovering on a defaulted loan.

3755 (8) A decision by the ~~executive secretary~~ director to loan money from the loan fund  
3756 and otherwise administer the loan fund is not subject to Title 63G, Chapter 4, Administrative  
3757 Procedures Act.

3758 (9) The Legislature shall appropriate money from the loan fund to the department for  
3759 the administration of the loan.

3760 (10) The ~~executive secretary~~ director may enter into an agreement with a public entity  
3761 or private organization to perform a task associated with administration of the loan fund.

3762 Section 63. Section **19-6-405.7** is amended to read:

3763 **19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.**

3764 (1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank  
3765 Cleanup Fund," which is referred to in this section as the cleanup fund.

3766 (2) The cleanup fund sources of revenue are:

- 3767 (a) any voluntary contributions received by the department for the cleanup of facilities;
- 3768 (b) legislative appropriations made to the cleanup fund; and
- 3769 (c) costs recovered under this part.

3770 (3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

3771 (4) The ~~executive secretary~~ director may use the cleanup fund money for  
3772 administration, investigation, abatement action, and preparing and implementing a corrective  
3773 action plan regarding releases not covered by the Petroleum Storage Tank Trust Fund created  
3774 in Section 19-6-409.

3775 Section 64. Section **19-6-407** is amended to read:

3776 **19-6-407. Underground storage tank registration -- Change of ownership or**  
3777 **operation -- Civil penalty.**

3778 (1) (a) Each owner or operator of an underground storage tank shall register the tank

3779 with the [~~executive secretary~~] director if the tank:

3780 (i) is in use; or

3781 (ii) was closed after January 1, 1974.

3782 (b) If a new person assumes ownership or operational responsibilities for an  
3783 underground storage tank, that person shall inform the executive secretary of the change within  
3784 30 days after the change occurs.

3785 (c) Each installer of an underground storage tank shall notify the [~~executive secretary~~]  
3786 director of the completed installation within 60 days following the installation of an  
3787 underground storage tank.

3788 (2) The [~~executive secretary~~] director may issue a notice of agency action assessing a  
3789 civil penalty in the amount of \$1,000 if an owner, operator, or installer, of a petroleum or  
3790 underground storage tank fails to register the tank or provide notice as required in Subsection  
3791 (1).

3792 (3) The penalties collected under authority of this section shall be deposited in the  
3793 Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

3794 Section 65. Section **19-6-408** is amended to read:

3795 **19-6-408. Underground storage tank registration fee -- Processing fee for tanks**  
3796 **not in the program.**

3797 (1) The department may assess an annual underground storage tank registration fee  
3798 against owners or operators of underground storage tanks that have not been closed. These fees  
3799 shall be:

3800 (a) billed per facility;

3801 (b) due on July 1 annually;

3802 (c) deposited with the department as dedicated credits;

3803 (d) used by the department for the administration of the underground storage tank  
3804 program outlined in this part; and

3805 (e) established under Section 63J-1-504.

3806 (2) (a) In addition to the fee under Subsection (1), an owner or operator who elects to  
3807 demonstrate financial assurance through a mechanism other than the Environmental Assurance  
3808 Program shall pay a processing fee of:

3809 (i) for fiscal year 1997-98, \$1,000 for each financial assurance mechanism document

3810 submitted to the division for review; and

3811 (ii) on and after July 1, 1998, a processing fee established under Section 63J-1-504.

3812 (b) If a combination of financial assurance mechanisms is used to demonstrate  
3813 financial assurance, the fee under Subsection (2)(a) shall be paid for each document submitted.

3814 (c) As used in this Subsection (2), "financial assurance mechanism document" may be  
3815 a single document that covers more than one facility through a single financial assurance  
3816 mechanism.

3817 (3) Any funds provided for administration of the underground storage tank program  
3818 under this section that are not expended at the end of the fiscal year lapse into the Petroleum  
3819 Storage Tank Restricted Account created in Section 19-6-405.5.

3820 (4) The ~~[executive secretary]~~ director shall provide all owners or operators who pay the  
3821 annual underground storage tank registration fee a certificate of registration.

3822 (5) (a) The ~~[executive secretary]~~ director may issue a notice of agency action assessing  
3823 a civil penalty of \$1,000 per facility if an owner or operator of an underground storage tank  
3824 facility fails to pay the required fee within 60 days after the July 1 due date.

3825 (b) The registration fee and late payment penalty accrue interest at 12% per annum.

3826 (c) If the registration fee, late payment penalty, and interest accrued under this  
3827 Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of  
3828 compliance issued prior to the July 1 due date lapses. The ~~[executive secretary]~~ director may  
3829 not reissue the certificate of compliance until full payment under this Subsection (5) is made to  
3830 the department.

3831 (d) The ~~[executive secretary]~~ director may waive any penalty assessed under this  
3832 Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

3833 Section 66. Section **19-6-409** is amended to read:

3834 **19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.**

3835 (1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage  
3836 Tank Trust Fund."

3837 (b) The sole sources of revenues for the fund are:

3838 (i) petroleum storage tank fees paid under Section 19-6-411;

3839 (ii) underground storage tank installation company permit fees paid under Section  
3840 19-6-411;

- 3841 (iii) the environmental assurance fee and penalties paid under Section 19-6-410.5; and  
3842 (iv) interest accrued on revenues listed in this Subsection (1)(b).  
3843 (c) Interest earned on fund money is deposited into the fund.  
3844 (2) The [~~executive secretary~~] director may expend money from the fund to pay costs:  
3845 (a) covered by the fund under Section 19-6-419;  
3846 (b) of administering the:  
3847 (i) fund; and  
3848 (ii) environmental assurance program and fee under Section 19-6-410.5;  
3849 (c) incurred by the state for a legal service or claim adjusting service provided in  
3850 connection with a claim, judgment, award, or settlement for bodily injury or property damage  
3851 to a third party;  
3852 (d) incurred by the state risk manager in determining the actuarial soundness of the  
3853 fund;  
3854 (e) incurred by a third party claiming injury or damages from a release reported on or  
3855 after May 11, 2010, for hiring a certified underground storage tank consultant:  
3856 (i) to review an investigation or corrective action by a responsible party; and  
3857 (ii) in accordance with Subsection (4); and  
3858 (f) allowed under this part that are not listed under this Subsection (2).  
3859 (3) Costs for the administration of the fund and the environmental assurance fee shall  
3860 be appropriated by the Legislature.  
3861 (4) The [~~executive secretary~~] director shall:  
3862 (a) in paying costs under Subsection (2)(e):  
3863 (i) determine a reasonable limit on costs paid based on the:  
3864 (A) extent of the release;  
3865 (B) impact of the release; and  
3866 (C) services provided by the certified underground storage tank consultant;  
3867 (ii) pay, per release, costs for one certified underground storage tank consultant agreed  
3868 to by all third parties claiming damages or injury;  
3869 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and  
3870 (iv) not pay legal costs of third parties;  
3871 (b) review and give careful consideration to reports and recommendations provided by

3872 a certified underground storage tank consultant hired by a third party; and

3873 (c) make reports and recommendations provided under Subsection (4)(b) available on  
3874 the Division of Environmental Response and Remediation's website.

3875 Section 67. Section **19-6-411** is amended to read:

3876 **19-6-411. Petroleum storage tank fee for program participants.**

3877 (1) In addition to the underground storage tank registration fee paid in Section  
3878 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the  
3879 environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum  
3880 storage tank fee to the department for each facility as follows:

3881 (a) on and after July 1, 1990, through June 30, 1993, an annual fee of:

3882 (i) \$250 for each tank:

3883 (A) located at a facility engaged in petroleum production, refining, or marketing; or

3884 (B) with an annual monthly throughput of more than 10,000 gallons; and

3885 (ii) \$125 for each tank:

3886 (A) not located at a facility engaged in petroleum production, refining, or marketing;

3887 and

3888 (B) with an annual monthly throughput of 10,000 gallons or less;

3889 (b) on and after July 1, 1993, through June 30, 1994, an annual fee of:

3890 (i) \$150 for each tank:

3891 (A) located at a facility engaged in petroleum production, refining, or marketing; or

3892 (B) with an average monthly throughput of more than 10,000 gallons; and

3893 (ii) \$75 for each tank:

3894 (A) not located at a facility engaged in petroleum production, refining, or marketing;

3895 and

3896 (B) with an average monthly throughput of 10,000 gallons or less; and

3897 (c) on and after July 1, 1994, an annual fee of:

3898 (i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000  
3899 gallons or less;

3900 (ii) \$150 for each tank in a facility with an annual facility throughput rate of more than  
3901 400,000 gallons; and

3902 (iii) \$150 for each tank in a facility regarding which:

3903 (A) the facility's throughput rate is not reported to the department within 30 days after  
3904 the date this throughput information is requested by the department; or

3905 (B) the owner or operator elects to pay the fee under this subsection, rather than report  
3906 under Subsection (1)(c)(i) or (ii); and

3907 (d) on and after July 1, 1998, for any new tank:

3908 (i) which is installed to replace an existing tank at an existing facility, any annual  
3909 petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to  
3910 the new tank; and

3911 (ii) installed at a new facility or at an existing facility, which is not a replacement for  
3912 another existing tank, the fees are as provided in Subsection (1)(c) of this section.

3913 (2) (a) As a condition of receiving a permit and being eligible for benefits under  
3914 Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank  
3915 installation company shall pay to the department the following fees to be deposited in the fund:

3916 (i) an annual fee of:

3917 (A) \$2,000 per underground storage tank installation company if the installation  
3918 company has installed 15 or fewer underground storage tanks within the 12 months preceding  
3919 the fee due date; or

3920 (B) \$4,000 per underground storage tank installation company if the installation  
3921 company has installed 16 or more underground storage tanks within the 12 months preceding  
3922 the fee due date; and

3923 (ii) \$200 for each underground storage tank installed in the state, to be paid prior to  
3924 completion of installation.

3925 (b) The board shall make rules specifying which portions of an underground storage  
3926 tank installation shall be subject to the permitting fees when less than a full underground  
3927 storage tank system is installed.

3928 (3) (a) Fees under Subsection (1) are due on or before July 1 annually.

3929 (b) If the department does not receive the fee on or before July 1, the department shall  
3930 impose a late penalty of \$60 per facility.

3931 (c) (i) The fee and the late penalty accrue interest at 12% per annum.

3932 (ii) If the fee, the late penalty, and all accrued interest are not received by the  
3933 department within 60 days after July 1, the eligibility of the owner or operator to receive

3934 payments for claims against the fund lapses on the 61st day after July 1.

3935 (iii) In order for the owner or operator to reinstate eligibility to receive payments for  
3936 claims against the fund, the owner or operator shall meet the requirements of Subsection  
3937 19-6-428(3).

3938 (4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the  
3939 department does not receive the fees on or before July 1, the department shall impose a late  
3940 penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per  
3941 annum.

3942 (ii) If the fee, late penalty, and all accrued interest due are not received by the  
3943 department within 60 days after July 1, the underground storage tank installation company's  
3944 permit and eligibility to receive payments for claims against the fund lapse on the 61st day after  
3945 July 1.

3946 (b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If  
3947 the department does not receive the fees prior to completion of installation, the department  
3948 shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at  
3949 12% per annum.

3950 (ii) If the fee, late penalty, and all accrued interest are not received by the department  
3951 within 60 days after the underground storage tank installation is completed, eligibility to  
3952 receive payments for claims against the fund for that tank lapse on the 61st day after the tank  
3953 installation is completed.

3954 (c) The [~~executive secretary~~] director may not reissue the underground storage tank  
3955 installation company permit until the fee, late penalty, and all accrued interest are received by  
3956 the department.

3957 (5) If the state risk manager determines the fees established in Subsections (1) and (2)  
3958 and the environmental assurance fee established in Section 19-6-410.5 are insufficient to  
3959 maintain the fund on an actuarially sound basis, he shall petition the Legislature to increase the  
3960 petroleum storage tank and underground storage tank installation company permit fees, and the  
3961 environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

3962 (6) The [~~executive secretary~~] director may waive all or part of the fees required to be  
3963 paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has  
3964 been dispensed from the tank on or after July 1, 1991.



3965 (7) (a) Each petroleum storage tank or underground storage tank, for which payment of  
3966 fees has been made and other requirements have been met to qualify for a certificate of  
3967 compliance under this part, shall be issued a form of identification, as determined by the board  
3968 under Subsection (7)(b).

3969 (b) The board shall make rules providing for the identification, through a tag or other  
3970 readily identifiable method, of petroleum storage tanks or underground storage tanks under  
3971 Subsection (7)(a) that qualify for a certificate of compliance under this part.

3972 Section 68. Section **19-6-412** is amended to read:

3973 **19-6-412. Petroleum storage tank -- Certificate of compliance.**

3974 (1) (a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may  
3975 obtain a certificate of compliance for the facility.

3976 (b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall  
3977 have a certificate of compliance for the facility.

3978 (2) The ~~[executive secretary]~~ director shall issue a certificate of compliance if:

3979 (a) the owner or operator has a certificate of registration;

3980 (b) the owner or operator demonstrates it is participating in the Environmental  
3981 Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with  
3982 financial assurance requirements as defined by rule;

3983 (c) all state and federal statutes, rules, and regulations have been substantially complied  
3984 with; and

3985 (d) all tank test requirements of Section 19-6-413 have been met.

3986 (3) If the ownership of or responsibility for the petroleum storage tank changes, the  
3987 certificate of compliance is still valid unless it has been revoked or has lapsed.

3988 (4) The ~~[executive secretary]~~ director may issue a certificate of compliance for a period  
3989 of less than one year to maintain an administrative schedule of certification.

3990 (5) The ~~[executive secretary]~~ director shall reissue a certificate of compliance if the  
3991 owner or operator of an underground storage tank has complied with the requirements of  
3992 Subsection (2).

3993 (6) If the owner or operator electing to participate in the program has a number of tanks  
3994 in an area where the ~~[executive secretary]~~ director finds it would be difficult to accurately  
3995 determine which of the tanks may be the source of a release, the owner may only elect to place

3996 all of the tanks in the area in the program, but not just some of the tanks in the area.

3997 Section 69. Section **19-6-413** is amended to read:

3998 **19-6-413. Tank tightness test -- Actions required after testing.**

3999 (1) The owner or operator of any petroleum storage tank registered before July 1, 1991,  
4000 shall submit to the [~~executive secretary~~] director the results of a tank tightness test conducted:

4001 (a) on or after September 1, 1989, and before January 1, 1990, if the test meets  
4002 requirements set by rule regarding tank tightness tests that were applicable during that period;  
4003 or

4004 (b) on or after January 1, 1990, and before July 1, 1991.

4005 (2) The owner or operator of any petroleum storage tank registered on or after July 1,  
4006 1991, shall submit to the [~~executive secretary~~] director the results of a tank tightness test  
4007 conducted within the six months before the tank was registered or within 60 days after the date  
4008 the tank was registered.

4009 (3) If the tank test performed under Subsection (1) or (2) shows no release of  
4010 petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the  
4011 [~~executive secretary~~] director at the same time the owner or operator submits the test results,  
4012 stating that under customary business inventory practices standards, the owner or operator is  
4013 not aware of any release of petroleum from the tank.

4014 (4) (a) If the tank test shows a release of petroleum from the petroleum storage tank,  
4015 the owner or operator of the tank shall:

4016 (i) correct the problem; and

4017 (ii) submit evidence of the correction to the [~~executive secretary~~] director.

4018 (b) When the [~~executive secretary~~] director receives evidence from an owner or  
4019 operator of a petroleum storage tank that the problem with the tank has been corrected, the  
4020 [~~executive secretary~~] director shall:

4021 (i) approve or disapprove the correction; and

4022 (ii) notify the owner or operator that the correction has been approved or disapproved.

4023 (5) The [~~executive secretary~~] director shall review the results of the tank tightness test  
4024 to determine compliance with this part and any rules adopted under the authority of Section  
4025 19-6-403.

4026 (6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D,

4027 to perform release detection on the tank, the owner or operator shall submit the results of the  
4028 tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

4029 Section 70. Section **19-6-414** is amended to read:

4030 **19-6-414. Grounds for revocation of certificate of compliance and ineligibility for**  
4031 **payment of costs from fund.**

4032 (1) If the [~~executive secretary~~] director determines that any of the requirements of  
4033 Subsection 19-6-412(2) and Section 19-6-413 have not been met, the [~~executive secretary~~]  
4034 director shall notify the owner or operator by certified mail that:

4035 (a) his certificate of compliance may be revoked;

4036 (b) if he is participating in the program, he is violating the eligibility requirements for  
4037 the fund; and

4038 (c) he shall demonstrate his compliance with this part within 60 days after receipt of  
4039 the notification or his certificate of compliance will be revoked and if participating in the  
4040 program he will be ineligible to receive payment for claims against the fund.

4041 (2) If the [~~executive secretary~~] director determines the owner's or operator's compliance  
4042 problems have not been resolved within 60 days after receipt of the notification in Subsection  
4043 (1), the [~~executive secretary~~] director shall send written notice to the owner or operator that the  
4044 owner's or operator's certificate of compliance is revoked and he is no longer eligible for  
4045 payment of costs from the fund.

4046 (3) Revocation of certificates of compliance may be appealed to the executive director.

4047 Section 71. Section **19-6-416** is amended to read:

4048 **19-6-416. Restrictions on delivery of petroleum -- Civil penalty.**

4049 (1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or  
4050 accept petroleum for placement in a petroleum storage tank that is not identified in compliance  
4051 with Subsection 19-6-411(7).

4052 (2) Any person who delivers or accepts delivery of petroleum to a petroleum storage  
4053 tank or places petroleum, including waste petroleum substances, in an underground storage  
4054 tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each  
4055 occurrence.

4056 (3) The [~~executive secretary~~] director shall issue a notice of agency action assessing a  
4057 civil penalty of not more than \$500 against any person who delivers or accepts delivery of

4058 petroleum to a petroleum storage tank or places petroleum, including waste petroleum  
4059 substances, in violation of Subsection (1) in a petroleum storage tank or underground storage  
4060 tank.

4061 (4) A civil penalty may not be assessed under this section against any person who in  
4062 good faith delivers or places petroleum in a petroleum storage tank or underground storage tank  
4063 that is identified in compliance with Subsection 19-6-411(7) and rules made under that  
4064 subsection, whether or not the tank is in actual compliance with the other requirements of  
4065 Section 19-6-411.

4066 Section 72. Section **19-6-416.5** is amended to read:

4067 **19-6-416.5. Restrictions on underground storage tank installation companies --**  
4068 **Civil penalty.**

4069 (1) After July 1, 1994, no individual or underground installation company may install  
4070 an underground storage tank without having a valid underground storage tank installation  
4071 company permit.

4072 (2) Any individual or underground storage tank installation company who installs an  
4073 underground storage tank in violation of Subsection (1) is subject to a civil penalty of \$500 per  
4074 underground storage tank.

4075 (3) The [~~executive secretary~~] director shall issue a notice of agency action assessing a  
4076 civil penalty of \$500 against any underground storage tank installation company or person who  
4077 installs an underground storage tank in violation of Subsection (1).

4078 Section 73. Section **19-6-417** is amended to read:

4079 **19-6-417. Use of fund revenues to investigate certain releases from petroleum**  
4080 **storage tank.**

4081 If the [~~executive secretary~~] director is notified of or otherwise becomes aware of a  
4082 release or suspected release of petroleum, he may expend revenues from the fund to investigate  
4083 the release or suspected release if he has reasonable cause to believe the release is from a tank  
4084 that is covered by the fund.

4085 Section 74. Section **19-6-418** is amended to read:

4086 **19-6-418. Recovery of costs by director.**

4087 (1) The [~~executive secretary~~] director may recover:

4088 (a) from a responsible party the proportionate share of costs the party is responsible for

4089 as determined under Section 19-6-424.5;

4090 (b) any amount required to be paid by the owner under this part which the owner has  
4091 not paid; and

4092 (c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).

4093 (2) The ~~[executive secretary]~~ director may pursue an action or recover costs from any  
4094 other person if that person caused or substantially contributed to the release.

4095 (3) All costs recovered under this section shall be deposited in the Petroleum Storage  
4096 Tank Cleanup Fund created in Section 19-6-405.7.

4097 Section 75. Section **19-6-419** is amended to read:

4098 **19-6-419. Costs covered by the fund -- Costs paid by owner or operator --**

4099 **Payments to third parties -- Apportionment of costs.**

4100 (1) If all requirements of this part have been met and a release occurs from a tank that  
4101 is covered by the fund, the costs per release are covered as provided under this section.

4102 (2) For releases reported before May 11, 2010, the responsible party shall pay:

4103 (a) the first \$10,000 of costs; and

4104 (b) (i) all costs over \$1,000,000, if the release was from a tank:

4105 (A) located at a facility engaged in petroleum production, refining, or marketing; or

4106 (B) with an average monthly facility throughput of more than 10,000 gallons; and

4107 (ii) all costs over \$500,000, if the release was from a tank:

4108 (A) not located at a facility engaged in petroleum production, refining, or marketing;

4109 and

4110 (B) with an average monthly facility throughput of 10,000 gallons or less.

4111 (3) For releases reported before May 11, 2010, if money is available in the fund and the

4112 responsible party has paid costs of \$10,000, the ~~[executive secretary]~~ director shall pay costs

4113 from the fund in an amount not to exceed:

4114 (a) \$990,000 if the release was from a tank:

4115 (i) located at a facility engaged in petroleum production, refining, or marketing; or

4116 (ii) with an average monthly facility throughput of more than 10,000 gallons; and

4117 (b) \$490,000 if the release was from a tank:

4118 (i) not located at a facility engaged in petroleum production, refining, or marketing;

4119 and

- 4120 (ii) with an average monthly facility throughput of 10,000 gallons or less.
- 4121 (4) For a release reported on or after May 11, 2010, the responsible party shall pay:
- 4122 (a) the first \$10,000 of costs; and
- 4123 (b) (i) all costs over \$2,000,000, if the release was from a tank:
- 4124 (A) located at a facility engaged in petroleum production, refining, or marketing; or
- 4125 (B) with an average monthly facility throughput of more than 10,000 gallons; and
- 4126 (ii) all costs over \$1,000,000, if the release was from a tank:
- 4127 (A) not located at a facility engaged in petroleum production, refining, or marketing;
- 4128 and
- 4129 (B) with an average monthly facility throughput of 10,000 gallons or less.
- 4130 (5) For a release reported on or after May 11, 2010, if money is available in the fund
- 4131 and the responsible party has paid costs of \$10,000, the [~~executive secretary~~] director shall pay
- 4132 costs from the fund in an amount not to exceed:
- 4133 (a) \$1,990,000 if the release was from a tank:
- 4134 (i) located at a facility engaged in petroleum production, refining, or marketing; or
- 4135 (ii) with an average monthly facility throughput of more than 10,000 gallons; and
- 4136 (b) \$990,000 if the release was from a tank:
- 4137 (i) not located at a facility engaged in petroleum production, refining, or marketing;
- 4138 and
- 4139 (ii) with an average monthly facility throughput of 10,000 gallons or less.
- 4140 (6) The [~~executive secretary~~] director may pay fund money to a responsible party up to
- 4141 the following amounts in a fiscal year:
- 4142 (a) \$1,990,000 to a responsible party owning or operating less than 100 petroleum
- 4143 storage tanks; or
- 4144 (b) \$3,990,000 to a responsible party owning or operating 100 or more petroleum
- 4145 storage tanks.
- 4146 (7) (a) In authorizing payments for costs from the fund, the [~~executive secretary~~]
- 4147 director shall apportion money:
- 4148 (i) first, to the following type of expenses incurred by the state:
- 4149 (A) legal;
- 4150 (B) adjusting; and

- 4151 (C) actuarial;
- 4152 (ii) second, to costs incurred for:
- 4153 (A) investigation;
- 4154 (B) abatement action; and
- 4155 (C) corrective action; and
- 4156 (iii) third, to payment of:
- 4157 (A) judgments;
- 4158 (B) awards; and
- 4159 (C) settlements to third parties for bodily injury or property damage.
- 4160 (b) The board shall make rules governing the apportionment of costs among third party
- 4161 claimants.

4162 Section 76. Section **19-6-420** is amended to read:

4163 **19-6-420. Releases -- Abatement actions -- Corrective actions.**

4164 (1) If the [~~executive secretary~~] director determines that a release from a petroleum

4165 storage tank has occurred, he shall:

- 4166 (a) identify and name as many of the responsible parties as reasonably possible; and
- 4167 (b) determine which responsible parties, if any, are covered by the fund regarding the
- 4168 release in question.

4169 (2) Regardless of whether the tank generating the release is covered by the fund, the

4170 [~~executive secretary~~] director may:

- 4171 (a) order the owner or operator to take abatement, investigative, or corrective action,
- 4172 including the submission of a corrective action plan; and
- 4173 (b) if the owner or operator fails to take any of the abatement, investigative, or
- 4174 corrective action ordered by the [~~executive secretary~~] director, the [~~executive secretary~~] director
- 4175 may take any one or more of the following actions:
- 4176 (i) subject to the conditions in this part, use money from the fund, if the tank involved
- 4177 is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup
- 4178 Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective
- 4179 action;
- 4180 (ii) commence an enforcement proceeding;
- 4181 (iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or

4182 (iv) recover costs from responsible parties equal to their proportionate share of liability  
4183 as determined by Section 19-6-424.5.

4184 (3) (a) Subject to the limitations established in Section 19-6-419, the [~~executive~~  
4185 ~~secretary~~] director shall provide money from the fund for abatement action for a release  
4186 generated by a tank covered by the fund if:

4187 (i) the owner or operator takes the abatement action ordered by the [~~executive~~  
4188 ~~secretary~~] director; and

4189 (ii) the [~~executive secretary~~] director approves the abatement action.

4190 (b) If a release presents the possibility of imminent and substantial danger to the public  
4191 health or the environment, the owner or operator may take immediate abatement action and  
4192 petition the [~~executive secretary~~] director for reimbursement from the fund for the costs of the  
4193 abatement action. If the owner or operator can demonstrate to the satisfaction of the [~~executive~~  
4194 ~~secretary~~] director that the abatement action was reasonable and timely in light of  
4195 circumstances, the [~~executive secretary~~] director shall reimburse the petitioner for costs  
4196 associated with immediate abatement action, subject to the limitations established in Section  
4197 19-6-419.

4198 (c) The owner or operator shall notify the [~~executive secretary~~] director within 24 hours  
4199 of the abatement action taken.

4200 (4) (a) If the [~~executive secretary~~] director determines corrective action is necessary,  
4201 the [~~executive secretary~~] director shall order the owner or operator to submit a corrective action  
4202 plan to address the release.

4203 (b) If the owner or operator submits a corrective action plan, the [~~executive secretary~~]  
4204 director shall review the corrective action plan and approve or disapprove the plan.

4205 (c) In reviewing the corrective action plan, the [~~executive secretary~~] director shall  
4206 consider the following:

4207 (i) the threat to public health;

4208 (ii) the threat to the environment; and

4209 (iii) the cost-effectiveness of alternative corrective actions.

4210 (5) If the [~~executive secretary~~] director approves the corrective action plan or develops  
4211 his own corrective action plan, he shall:

4212 (a) approve the estimated cost of implementing the corrective action plan;



- 4213 (b) order the owner or operator to implement the corrective action plan;
- 4214 (c) (i) if the release is covered by the fund, determine the amount of fund money to be  
4215 allocated to an owner or operator to implement a corrective action plan; and
- 4216 (ii) subject to the limitations established in Section 19-6-419, provide money from the  
4217 fund to the owner or operator to implement the corrective action plan.
- 4218 (6) (a) The [~~executive secretary~~] director may not distribute any money from the fund  
4219 for corrective action until the owner or operator obtains the [~~executive secretary's~~] director's  
4220 approval of the corrective action plan.
- 4221 (b) An owner or operator who begins corrective action without first obtaining approval  
4222 from the [~~executive secretary~~] director and who is covered by the fund may be reimbursed for  
4223 the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:
- 4224 (i) the owner or operator submits the corrective action plan to the [~~executive secretary~~]  
4225 director within seven days after beginning corrective action; and
- 4226 (ii) the [~~executive secretary~~] director approves the corrective action plan.
- 4227 (7) If the [~~executive secretary~~] director disapproves the plan, he shall solicit a new  
4228 corrective action plan from the owner or operator.
- 4229 (8) If the [~~executive secretary~~] director disapproves the second corrective action plan,  
4230 or if the owner or operator fails to submit a second plan within a reasonable time, the  
4231 [~~executive secretary~~] director may:
- 4232 (a) develop his own corrective action plan; and
- 4233 (b) act as authorized under Subsections (2) and (5).
- 4234 (9) (a) When notified that the corrective action plan has been implemented, the  
4235 [~~executive secretary~~] director shall inspect the location of the release to determine whether or  
4236 not the corrective action has been properly performed and completed.
- 4237 (b) If the [~~executive secretary~~] director determines the corrective action has not been  
4238 properly performed or completed, he may issue an order requiring the owner or operator to  
4239 complete the corrective action within the time specified in the order.
- 4240 Section 77. Section **19-6-421** is amended to read:
- 4241 **19-6-421. Third party payment restrictions and requirements.**
- 4242 (1) If there are sufficient revenues in the fund, and subject to the provisions of Sections  
4243 19-6-419, 19-6-422, and 19-6-423, the [~~executive secretary~~] director shall authorize payment

4244 from the fund to third parties regarding a release covered by the fund as provided in Subsection  
4245 (2) if:

4246 (a) (i) he is notified that a final judgment or award has been entered against the  
4247 responsible party covered by the fund that determines liability for bodily injury or property  
4248 damage to third parties caused by a release from the tank; or

4249 (ii) approved by the state risk manager, the responsible party has agreed to pay an  
4250 amount in settlement of a claim arising from the release; and

4251 (b) the responsible party has failed to satisfy the judgment or award, or pay the amount  
4252 agreed to.

4253 (2) The ~~[executive secretary]~~ director shall authorize payment to the third parties of the  
4254 amount of the judgment, award, or amount agreed to subject to the limitations established in  
4255 Section 19-6-419.

4256 Section 78. Section **19-6-423** is amended to read:

4257 **19-6-423. Claim or suit against responsible parties -- Prerequisites for payment**  
4258 **from fund to responsible parties or third parties -- Limitations of liability for third party**  
4259 **claims.**

4260 (1) (a) The ~~[executive secretary]~~ director may authorize payments from the fund to a  
4261 responsible party if the responsible party receives actual or constructive notice:

4262 (i) of a release likely to give rise to a claim; or

4263 (ii) that in connection with a release a:

4264 (A) suit has been filed; or

4265 (B) claim has been made against the responsible party for:

4266 (I) bodily injury; or

4267 (II) property damage.

4268 (b) A responsible party described in Subsection (1)(a) shall:

4269 (i) inform the state risk manager immediately of a release, suit, or claim described in  
4270 Subsection (1)(a);

4271 (ii) allow the state risk manager and the state risk manager's legal counsel to participate  
4272 with the responsible party and the responsible party's legal counsel in:

4273 (A) the defense of a suit;

4274 (B) determination of legal strategy;

- 4275 (C) other decisions affecting the defense of a suit; and  
4276 (D) settlement negotiations; and  
4277 (iii) conduct the defense of a suit or claim in good faith.
- 4278 (2) The [~~executive secretary~~] director may authorize payment of fund money for a  
4279 judgment or award to third parties if the state risk manager:
- 4280 (a) is allowed to participate in the defense of the suit as required under Subsection  
4281 (1)(b); and  
4282 (b) approves the settlement.
- 4283 (3) The [~~executive secretary~~] director may make a payment from the fund to a third  
4284 party pursuant to Section 19-6-421 or fund a corrective action plan pursuant to Section  
4285 19-6-420 if the payment or funding does not impose a liability or make a payment for:
- 4286 (a) an obligation of a responsible party for:
- 4287 (i) workers' compensation benefits;  
4288 (ii) disability benefits;  
4289 (iii) unemployment compensation; or  
4290 (iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);
- 4291 (b) a bodily injury award to:
- 4292 (i) a responsible party's employee arising from and in the course of the employee's  
4293 employment; or  
4294 (ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of the  
4295 employee described in Subsection (3)(b)(i);
- 4296 (c) bodily injury or property damage arising from the ownership, maintenance, use, or  
4297 entrustment to others of an aircraft, motor vehicle, or watercraft;
- 4298 (d) property damage to a property owned by, occupied by, rented to, loaned to, bailed  
4299 to, or otherwise in the care, custody, or control of a responsible party except to the extent  
4300 necessary to complete a corrective action plan;
- 4301 (e) bodily injury or property damage for which a responsible party is obligated to pay  
4302 damages by reason of the assumption of liability in a contract or agreement unless the  
4303 responsible party entered into the contract or agreement to meet the financial responsibility  
4304 requirements of:
- 4305 (i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c et

4306 seq., or regulations issued under this act; or  
4307 (ii) this part, or rules made under this part;  
4308 (f) bodily injury or property damage for which a responsible party is liable to a third  
4309 party solely on account of personal injury to the third party's spouse;  
4310 (g) bodily injury, property damage, or the cost of corrective action caused by releases  
4311 reported before May 11, 2010 that are covered by the fund if the total amount previously paid  
4312 by the [~~executive secretary~~] director to compensate third parties and fund corrective action  
4313 plans for the releases equals:  
4314 (i) \$990,000 for a single release; and  
4315 (ii) for all releases by a responsible party in a fiscal year:  
4316 (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;  
4317 and  
4318 (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks;  
4319 and  
4320 (h) bodily injury, property damage, or the cost of corrective action caused by releases  
4321 reported on or after May 11, 2010, covered by the fund if the total amount previously paid by  
4322 the [~~executive secretary~~] director to compensate third parties and fund corrective action plans  
4323 for the releases equals:  
4324 (i) \$1,990,000 for a single release; and  
4325 (ii) for all releases by a responsible party in a fiscal year:  
4326 (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;  
4327 and  
4328 (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks.  
4329 Section 79. Section **19-6-424** is amended to read:  
4330 **19-6-424. Claims not covered by fund.**  
4331 (1) The [~~executive secretary~~] director may not authorize payments from the fund  
4332 unless:  
4333 (a) the claim was based on a release occurring during a period for which that tank was  
4334 covered by the fund;  
4335 (b) the claim was made:  
4336 (i) during a period for which that tank was covered by the fund; or

- 4337 (ii) (A) within one year after that fund-covered tank is closed; or  
4338 (B) within six months after the end of the period during which the tank was covered by  
4339 the fund; and  
4340 (c) there are sufficient revenues in the fund.
- 4341 (2) The ~~[executive secretary]~~ director may not authorize payments from the fund for an  
4342 underground storage tank installation company unless:
- 4343 (a) the claim was based on a release occurring during the period prior to the issuance of  
4344 a certificate of compliance;
- 4345 (b) the claim was made within 12 months after the date the tank is issued a certificate  
4346 of compliance for that tank; and
- 4347 (c) there are sufficient revenues in the fund.
- 4348 (3) The ~~[executive secretary]~~ director may require the claimant to provide additional  
4349 information as necessary to demonstrate coverage by the fund at the time of submittal of the  
4350 claim.
- 4351 (4) If the Legislature repeals or refuses to reauthorize the program for petroleum  
4352 storage tanks established in this part, the ~~[executive secretary]~~ director may authorize payments  
4353 from the fund as provided in this part for claims made until the end of the time period  
4354 established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

4355 Section 80. Section **19-6-424.5** is amended to read:

4356 **19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies --**  
4357 **Amounts recovered.**

- 4358 (1) After providing notice and opportunity for comment to responsible parties  
4359 identified and named under Section 19-6-420, the ~~[executive secretary]~~ director may:
- 4360 (a) issue written orders determining responsible parties;
- 4361 (b) issue written orders apportioning liability among responsible parties; and
- 4362 (c) take action, including legal action or issuing written orders, to recover costs from  
4363 responsible parties, including costs of any investigation, abatement, and corrective action  
4364 performed under this part.
- 4365 (2) (a) In any apportionment of liability, whether made by the ~~[executive secretary]~~  
4366 director or made in any administrative proceeding or judicial action, the following standards  
4367 apply:

4368 (i) liability shall be apportioned among responsible parties in proportion to their  
4369 respective contributions to the release; and

4370 (ii) the apportionment of liability shall be based on equitable factors, including the  
4371 quantity, mobility, persistence, and toxicity of regulated substances contributed by a  
4372 responsible party, and the comparative behavior of a responsible party in contributing to the  
4373 release, relative to other responsible parties.

4374 (b) (i) The burden of proving proportionate contribution shall be borne by each  
4375 responsible party.

4376 (ii) If a responsible party does not prove his proportionate contribution, the court, the  
4377 board, or the [~~executive secretary~~] director shall apportion liability to the party based on  
4378 available evidence and the standards of Subsection (2)(a).

4379 (c) The court, the board, or the [~~executive secretary~~] director may not impose joint and  
4380 several liability.

4381 (d) Each responsible party is strictly liable for his share of costs.

4382 (3) The failure of the [~~executive secretary~~] director to name all responsible parties is  
4383 not a defense to an action under this section.

4384 (4) The [~~executive secretary~~] director may enter into an agreement with any responsible  
4385 party regarding that party's proportionate share of liability or any action to be taken by that  
4386 party.

4387 (5) The [~~executive secretary~~] director and a responsible party may not enter into an  
4388 agreement under this part unless all responsible parties named and identified under Subsection  
4389 19-6-420(1)(a):

4390 (a) have been notified in writing by either the [~~executive secretary~~] director or the  
4391 responsible party of the proposed agreement; and

4392 (b) have been given an opportunity to comment on the proposed agreement prior to the  
4393 parties' entering into the agreement.

4394 (6) (a) Any party who incurs costs under this part in excess of his liability may seek  
4395 contribution from any other party who is or may be liable under this part for the excess costs in  
4396 the district court.

4397 (b) In resolving claims made under Subsection (6)(a), the court shall allocate costs  
4398 using the standards in Subsection (2).

4399 (7) (a) A party who has resolved his liability under this part is not liable for claims for  
4400 contribution regarding matters addressed in the agreement or order.

4401 (b) (i) An agreement or order determining liability under this part does not discharge  
4402 any of the liability of responsible parties who are not parties to the agreement or order, unless  
4403 the terms of the agreement or order expressly provide otherwise.

4404 (ii) An agreement or order determining liability made under this subsection reduces the  
4405 potential liability of other responsible parties by the amount of the agreement or order.

4406 (8) (a) If the [~~executive secretary~~] director obtains less than complete relief from a  
4407 party who has resolved his liability under this section, the [~~executive secretary~~] director may  
4408 bring an action against any party who has not resolved his liability as determined in an order.

4409 (b) In apportioning liability, the standards of Subsection (2) apply.

4410 (c) A party who resolved his liability for some or all of the costs under this part may  
4411 seek contribution from any person who is not a party to the agreement or order.

4412 (9) (a) An agreement or order determining liability under this part may provide that the  
4413 [~~executive secretary~~] director will pay for costs of actions that the parties have agreed to  
4414 perform, but which the [~~executive secretary~~] director has agreed to finance, under the terms of  
4415 the agreement or order.

4416 (b) If the [~~executive secretary~~] director makes payments from the fund or state cleanup  
4417 appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this  
4418 section or any other applicable authority.

4419 (c) Any amounts recovered under this section shall be deposited in the Petroleum  
4420 Storage Tank Cleanup Fund created under Section 19-6-405.7.

4421 Section 81. Section **19-6-425** is amended to read:

4422 **19-6-425. Violation of part -- Civil penalty -- Suit in district court.**

4423 (1) Except as provided in Section 19-6-407, any person who violates any requirement  
4424 of this part or any order issued or rule made under the authority of this part is subject to a civil  
4425 penalty of not more than \$10,000 per day for each day of violation.

4426 (2) The [~~executive secretary~~] director may enforce any requirement, rule, agreement, or  
4427 order issued under this part by bringing a suit in the district court in the county where the  
4428 underground storage tank or petroleum storage tank is located.

4429 (3) The department shall deposit the penalties collected under this part in the

4430 Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

4431 Section 82. Section **19-6-428** is amended to read:

4432 **19-6-428. Eligibility for participation in the fund.**

4433 (1) Subject to the requirements of Section 19-6-410.5, all owners and operators of  
4434 existing petroleum storage tanks that were covered by the fund on May 5, 1997, may elect to  
4435 continue to participate in the program by meeting the requirements of this part, including  
4436 paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and  
4437 19-6-411.

4438 (2) Any new petroleum storage tanks that were installed after May 5, 1997, or tanks  
4439 eligible under Section 19-6-415, may elect to participate in the program by complying with the  
4440 requirements of this part.

4441 (3) (a) All owners and operators of petroleum storage tanks who elect to not participate  
4442 in the program, including by the use of an alternative financial assurance mechanism, shall, in  
4443 order to subsequently participate in the program:

4444 (i) perform a tank tightness test;

4445 (ii) except as provided in Subsection (3)(b), perform a site check, including soil and,  
4446 when applicable, groundwater samples, to demonstrate that no release of petroleum exists or  
4447 that there has been adequate remediation of releases as required by board rules;

4448 (iii) provide the required tests and samples to the [~~executive secretary~~] director; and

4449 (iv) comply with the requirements of this part.

4450 (b) A site check under Subsection (3)(a)(ii) is not required if the [~~executive secretary~~]  
4451 director determines, with reasonable cause, that soil and groundwater samples are unnecessary  
4452 to establish that no petroleum has been released.

4453 (4) The [~~executive secretary~~] director shall review the tests and samples provided under  
4454 Subsection (3)(a)(iii) to determine:

4455 (a) whether or not any release of the petroleum has occurred; or

4456 (b) if the remediation is adequate.

4457 Section 83. Section **19-6-601** is amended to read:

4458 **19-6-601. Definitions.**

4459 As used in this part[, "board"]:

4460 (1) "Board" means the Solid and Hazardous Waste Control Board appointed under



4461 Title 19, Chapter 6, Hazardous Substances.

4462 (2) "Director" means the director of the Division of Solid and Hazardous Waste.

4463 Section 84. Section **19-6-606** is amended to read:

4464 **19-6-606. Enforcement.**

4465 (1) The [~~board~~] director may authorize inspections under Section [~~19-6-104~~] 19-6-107  
4466 of any place, building, or premise where lead acid batteries are sold to determine compliance  
4467 with this part. The [~~board~~] director may authorize inspections under this subsection only as  
4468 funding is available within the department's current budget.

4469 (2) Local health departments established under Title 26A, Local Health Authorities,  
4470 may enforce the provisions of this part.

4471 Section 85. Section **19-6-703** is amended to read:

4472 **19-6-703. Definitions.**

4473 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
4474 19-1-106.

4475 (2) "Commission" means the State Tax Commission.

4476 (3) "Department" means the Department of Environmental Quality created in Title 19,  
4477 Chapter 1, General Provisions.

4478 (4) "Director" means the director of the Division of Solid and Hazardous Waste.

4479 [~~(4)~~] (5) "Division" means the Division of Solid and Hazardous Waste [~~as~~], created in  
4480 [~~Section~~] Subsection 19-1-105(1)(e).

4481 [~~(5)~~] (6) "DIY" means do it yourself.

4482 [~~(6)~~] (7) "DIYer" means a person who generates used oil through household activities,  
4483 including maintenance of personal vehicles.

4484 [~~(7)~~] (8) "DIYer used oil" means used oil a person generates through household  
4485 activities, including maintenance of personal vehicles.

4486 [~~(8)~~] (9) "DIYer used oil collection center" means any site or facility that accepts or  
4487 aggregates and stores used oil collected only from DIYers.

4488 [~~(9)~~] "~~Executive secretary~~" means the ~~executive secretary of the board.~~]

4489 (10) "Hazardous waste" means any substance defined as hazardous waste under Title  
4490 19, Chapter 6, Hazardous Substances.

4491 (11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce

4492 friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.

4493 (12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil  
4494 in Utah.

4495 (13) "Manifest" means the form used for identifying the quantity and composition and  
4496 the origin, routing, and destination of used oil during its transportation from the point of  
4497 collection to the point of storage, processing, use, or disposal.

4498 (14) "Off-specification used oil" means used oil that exceeds levels of constituents and  
4499 properties as specified by board rule and consistent with 40 CFR 279, Standards for the  
4500 Management of Used Oil.

4501 (15) "On-specification used oil" means used oil that does not exceed levels of  
4502 constituents and properties as specified by board rule and consistent with 40 CFR 279,  
4503 Standards for the Management of Used Oil.

4504 (16) (a) "Processing" means chemical or physical operations under Subsection (16)(b)  
4505 designed to produce from used oil, or to make used oil more amenable for production of:

4506 (i) gasoline, diesel, and other petroleum derived fuels;

4507 (ii) lubricants; or

4508 (iii) other products derived from used oil.

4509 (b) "Processing" includes:

4510 (i) blending used oil with virgin petroleum products;

4511 (ii) blending used oils to meet fuel specifications;

4512 (iii) filtration;

4513 (iv) simple distillation;

4514 (v) chemical or physical separation; and

4515 (vi) rerefining.

4516 (17) "Recycled oil" means oil reused for any purpose following its original use,  
4517 including:

4518 (a) the purpose for which the oil was originally used; and

4519 (b) used oil processed or burned for energy recovery.

4520 (18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum  
4521 distillation of filtered and dehydrated used oil. The composition varies with column operation  
4522 and feedstock.

4523 (19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been  
4524 used and as a result of that use is contaminated by physical or chemical impurities.

4525 (20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates,  
4526 or stores used oil collected only from other used oil generation sites owned or operated by the  
4527 owner or operator of the aggregation point, from which used oil is transported to the  
4528 aggregation point in shipments of no more than 55 gallons.

4529 (b) A used oil aggregation point may also accept oil from DIYers.

4530 (21) "Used oil burner" means a person who burns used oil for energy recovery.

4531 (22) "Used oil collection center" means any site or facility registered with the state to  
4532 manage used oil and that accepts or aggregates and stores used oil collected from used oil  
4533 generators, other than DIYers, who are regulated under this part and bring used oil to the  
4534 collection center in shipments of no more than 55 gallons and under the provisions of this part.  
4535 Used oil collection centers may accept DIYer used oil also.

4536 (23) "Used oil fuel marketer" means any person who:

4537 (a) directs a shipment of off-specification used oil from its facility to a used oil burner;  
4538 or

4539 (b) first claims the used oil to be burned for energy recovery meets the used oil fuel  
4540 specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil  
4541 is to be burned in accordance with rules for on-site burning in space heaters in accordance with  
4542 40 CFR 279.

4543 (24) "Used oil generator" means any person, by site, whose act or process produces  
4544 used oil or whose act first causes used oil to become subject to regulation.

4545 (25) "Used oil handler" means a person generating used oil, collecting used oil,  
4546 transporting used oil, operating a transfer facility or aggregation point, processing or rerefining  
4547 used oil, or marketing used oil.

4548 (26) "Used oil processor or rerefiner" means a facility that processes used oil.

4549 (27) "Used oil transfer facility" means any transportation-related facility, including  
4550 loading docks, parking areas, storage areas, and other areas where shipments of used oil are  
4551 held for more than 24 hours during the normal course of transportation and not longer than 35  
4552 days.

4553 (28) (a) "Used oil transporter" means the following persons unless they are exempted

4554 under Subsection (28)(b):

4555 (i) any person who transports used oil;

4556 (ii) any person who collects used oil from more than one generator and transports the  
4557 collected oil;

4558 (iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who  
4559 transports collected DIYer used oil from used oil generators, collection centers, aggregation  
4560 points, or other facilities required to be permitted or registered under this part and where  
4561 household DIYer used oil is collected; and

4562 (iv) owners and operators of used oil transfer facilities.

4563 (b) "Used oil transporter" does not include:

4564 (i) persons who transport oil on site;

4565 (ii) generators who transport shipments of used oil totalling 55 gallons or less from the  
4566 generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

4567 (iii) generators who transport shipments of used oil totalling 55 gallons or less from the  
4568 generator to a used oil aggregation point owned or operated by the same generator as allowed  
4569 under 40 CFR 279.24, Off-site Shipments;

4570 (iv) persons who transport used oil generated by DIYers from the initial generator to a  
4571 used oil generator, used oil collection center, used oil aggregation point, used oil processor or  
4572 rerefiner, or used oil burner subject to permitting or registration under this part; or

4573 (v) railroads that transport used oil and are regulated under 49 U.S.C. Subtitle V, Rail  
4574 Programs, and 49 U.S.C. 5101 et seq., federal Hazardous Materials Transportation Uniform  
4575 Safety Act.

4576 Section 86. Section **19-6-704** is amended to read:

4577 **19-6-704. Powers and duties of the board.**

4578 (1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative  
4579 Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279,  
4580 Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil  
4581 under 40 CFR 279. For these purposes the board shall:

4582 [~~(a) (i) receive a proposed dispositive action from an administrative law judge as~~  
4583 ~~provided by Section 19-1-301; and]~~

4584 [~~(ii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~

4585 action; or]

4586 [~~(B)~~ return the proposed dispositive action to the administrative law judge for further  
4587 action as directed;]

4588 [~~(b)~~] (a) establish by rule conditions and procedures for registration and revocation of  
4589 registration as a used oil collection center, used oil aggregation point, or DIYer used oil  
4590 collection center;

4591 [~~(c)~~] (b) provide by rule that used oil aggregation points that do not accept DIYer used  
4592 oil are required to comply with used oil collection standards under this part, but are not  
4593 required to be permitted or registered;

4594 [~~(d)~~] (c) establish by rule conditions and fees required to obtain permits and operate as  
4595 used oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil  
4596 fuel marketers;

4597 [~~(e)~~] (d) establish by rule the amount of liability insurance or other financial  
4598 responsibility the applicant shall have to qualify for a permit under Subsection (1)[~~(d)~~](c);

4599 [~~(f)~~] (e) establish by rule the form and amount of reclamation surety required for  
4600 reclamation of any site or facility required to be permitted under this part;

4601 [~~(g)~~ after public notice and opportunity for a public hearing, hear and act on permit  
4602 issues appealed under Subsection 19-6-712(2);]

4603 [~~(h)~~] (f) establish by rule standards for tracking, analysis, and recordkeeping regarding  
4604 used oil subject to regulation under this part, including:

4605 (i) manifests for handling and transferring used oil;

4606 (ii) analyses necessary to determine if used oil is on-specification or off-specification;

4607 (iii) records documenting date, quantities, and character of used oil transported,  
4608 processed, transferred, or sold;

4609 (iv) records documenting persons between whom transactions under this subsection  
4610 occurred; and

4611 (v) exemption of DIYer used oil collection centers from this subsection except as  
4612 necessary to verify volumes of used oil picked up by a permitted transporter and the  
4613 transporter's name and federal EPA identification number;

4614 [~~(i)~~] (g) authorize inspections and audits of facilities, centers, and operations subject to  
4615 regulation under this part;

- 4616            ~~[(j)]~~ (h) establish by rule standards for:
- 4617            (i) used oil generators;
- 4618            (ii) used oil collection centers;
- 4619            (iii) DIYer used oil collection centers;
- 4620            (iv) aggregation points;
- 4621            (v) curbside used oil collection programs;
- 4622            (vi) used oil transporters;
- 4623            (vii) used oil transfer facilities;
- 4624            (viii) used oil burners;
- 4625            (ix) used oil processors and rerefiners; and
- 4626            (x) used oil marketers;
- 4627            ~~[(k)]~~ (i) establish by rule standards for determining on-specification and
- 4628 off-specification used oil and specified mixtures of used oil, subject to Section 19-6-707
- 4629 regarding rebuttable presumptions;
- 4630            ~~[(l)]~~ (j) establish by rule standards for closure, remediation, and response to releases
- 4631 involving used oil; and
- 4632            ~~[(m)]~~ (k) establish a public education program to promote used oil recycling and use of
- 4633 used oil collection centers.
- 4634            (2) The board may:
- 4635            (a) ~~[(n)]~~ hold a hearing that is not an adjudicative proceeding relating to any aspect of
- 4636 or matter in the administration of this part ~~[and compel the attendance of witnesses and the~~
- 4637 ~~production of documents and other evidence, administer oaths and take testimony, and receive~~
- 4638 ~~evidence as necessary];~~
- 4639            ~~[(o)]~~ receive a proposed dispositive action from an administrative law judge as provided
- 4640 ~~by Section 19-1-301; and]~~
- 4641            ~~[(p)]~~ (A) approve, approve with modifications, or disapprove a proposed dispositive
- 4642 ~~action; or]~~
- 4643            ~~[(q)]~~ (B) return the proposed dispositive action to the administrative law judge for further
- 4644 ~~action as directed;]~~
- 4645            (b) require retention and submission of records required under this part; ~~[and]~~ or
- 4646            (c) require audits of records and recordkeeping procedures required under this part and

4647 rules made under this part, except that audits of records regarding the fee imposed and  
4648 collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the  
4649 commission under Section 19-6-716.

4650 Section 87. Section **19-6-705** is amended to read:

4651 **19-6-705. Powers and duties of the director**

4652 (1) The [~~executive secretary~~] director shall:

4653 (a) administer and enforce the rules and orders of the board;

4654 (b) issue and revoke registration numbers for DIYer used oil collection centers and  
4655 used oil collection centers;

4656 (c) after public notice and opportunity for a public hearing:

4657 (i) issue or modify a permit under this part;

4658 (ii) deny a permit when the [~~executive secretary~~] director finds the application is not  
4659 complete; and

4660 (iii) revoke a permit issued under this section upon a finding the permit holder has  
4661 failed to ensure compliance with this part;

4662 (d) (i) coordinate with federal, state, and local government, and other agencies,  
4663 including entering into memoranda of understanding, to ensure effective regulation of used oil  
4664 under this part, minimize duplication of regulation, and encourage responsible recycling of  
4665 used oil; and

4666 (ii) as the department finds appropriate to the implementation of this part, enter into  
4667 contracts with local health departments to carry out specified functions under this part and be  
4668 reimbursed by the department in accordance with the contract;

4669 (e) require forms, analyses, documents, maps, and other records as the [~~executive  
4670 secretary~~] director finds necessary to permit and inspect an operation regulated under this part;

4671 (f) establish a toll-free telephone line to provide information to the public regarding  
4672 management of used oil and locations of used oil collection centers; and

4673 (g) accept, receive, and administer grants or other funds or gifts from public and  
4674 private agencies, including the federal government, for the purpose of carrying out any of the  
4675 functions of this part.

4676 (2) The [~~executive secretary~~] director may:

4677 (a) authorize any employee of the division to enter any facility regulated under this part

4678 at reasonable times and upon presentation of credentials for the purpose of inspection, audit, or  
4679 sampling of the used oil site or facility, records, operations, or product;

4680 (b) direct a person whose activities are regulated under this part to take samples for a  
4681 stated purpose and cause them to be analyzed at that person's expense; and

4682 (c) ~~[as authorized by the board under this part,]~~ enforce board rules by issuing orders  
4683 ~~[which the board may subsequently amend or revoke].~~

4684 Section 88. Section **19-6-706** is amended to read:

4685 **19-6-706. Disposal of used oil -- Prohibitions.**

4686 (1) (a) Except as authorized by the board or exempted in this section, a person may not  
4687 place, discard, or otherwise dispose of used oil:

4688 (i) in any solid waste treatment, storage, or disposal facility operated by a political  
4689 subdivision or a private entity, except as authorized for the disposal of used oil that is  
4690 hazardous waste under state law;

4691 (ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses,  
4692 or any body of water; or

4693 (iii) on the ground.

4694 (b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i)  
4695 is not guilty of a violation of this section.

4696 (2) (a) A person may dispose of an item or substance that contains de minimis amounts  
4697 of oil in disposal facilities under Subsection (1)(a)(i) if:

4698 (i) to the extent reasonably possible all oil has been removed from the item or  
4699 substance; and

4700 (ii) no free flowing oil remains in the item or substance.

4701 (b) (i) A nonterne plated used oil filter complies with this section if it is not mixed with  
4702 hazardous waste and the oil filter has been gravity hot-drained by one of the following  
4703 methods:

4704 (A) puncturing the filter antidrain back valve or the filter dome end and gravity  
4705 hot-draining;

4706 (B) gravity hot-draining and crushing;

4707 (C) dismantling and gravity hot-draining; or

4708 (D) any other equivalent gravity hot-draining method that will remove used oil from



4709 the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

4710 (ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less  
4711 than 12 hours near operating temperature but above 60 degrees Fahrenheit.

4712 (3) A person may not mix or commingle used oil with the following substances, except  
4713 as incidental to the normal course of processing, mechanical, or industrial operations:

4714 (a) solid waste that is to be disposed of in any solid waste treatment, storage, or  
4715 disposal facility, except as authorized by the board under this chapter; or

4716 (b) any hazardous waste so the resulting mixture may not be recycled or used for other  
4717 beneficial purpose as authorized under this part.

4718 (4) (a) This section does not apply to releases to land or water of de minimis quantities  
4719 of used oil, except:

4720 (i) the release of de minimis quantities of used oil is subject to any regulation or  
4721 prohibition under the authority of the department; and

4722 (ii) the release of de minimis quantities of used oil is subject to any rule made by the  
4723 board under this part prohibiting the release of de minimis quantities of used oil to the land or  
4724 water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise  
4725 managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

4726 (b) As used in this Subsection (4), "de minimis quantities of used oil:"

4727 (i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other  
4728 similar equipment during normal operations; and

4729 (ii) does not include used oil discarded as a result of abnormal operations resulting in  
4730 substantial leaks, spills, or other releases.

4731 (5) Used oil may not be used for road oiling, dust control, weed abatement, or other  
4732 similar uses that have the potential to release used oil in the environment, except in compliance  
4733 with Section 19-6-711 and board rule.

4734 (6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply  
4735 to the [~~executive secretary~~] director for an extension of time beyond that date to meet the  
4736 requirements of this section.

4737 (ii) The [~~executive secretary~~] director may grant an extension of time beyond July 1,  
4738 1993, upon a finding of need under Subsection (6)(b) or (c).

4739 (iii) The total of all extensions of time granted to one applicant under this Subsection

4740 (6)(a) may not extend beyond January 1, 1995.

4741 (b) The [~~executive secretary~~] director upon receipt of a request for an extension of time  
4742 may request from the facility any information the [~~executive secretary~~] director finds  
4743 reasonably necessary to evaluate the need for an extension. This information may include:

4744 (i) why the facility is unable to comply with the requirements of this section on or  
4745 before July 1, 1993;

4746 (ii) the processes or functions which prevent compliance on or before July 1, 1993;

4747 (iii) measures the facility has taken and will take to achieve compliance; and

4748 (iv) a proposed compliance schedule, including a proposed date for being in  
4749 compliance with this section.

4750 (c) Additional extensions of time may be granted by the [~~executive secretary~~] director  
4751 upon application by the facility and a showing by the facility that:

4752 (i) the additional extension is reasonably necessary; and

4753 (ii) the facility has made a diligent and good faith effort to comply with this section  
4754 within the time frame of the prior extension.

4755 Section 89. Section **19-6-710** is amended to read:

4756 **19-6-710. Registration and permitting of used oil handlers.**

4757 (1) (a) A person may not operate a DIYer used oil collection center or used oil  
4758 collection center without holding a registration number issued by the [~~executive secretary~~]  
4759 director.

4760 (b) The application for registration shall include the following information regarding  
4761 the DIYer used oil collection center or used oil collection center:

4762 (i) the name and address of the operator;

4763 (ii) the location of the center;

4764 (iii) whether the center will accept DIYer used oil;

4765 (iv) the type of containment or storage to be used;

4766 (v) the status of business, zoning, and other applicable licenses and permits required by  
4767 federal, state, and local governmental entities;

4768 (vi) emergency spill containment plan;

4769 (vii) proof of liability insurance or other means of financial responsibility in an amount  
4770 determined by board rule for any liability that may be incurred in collecting or storing the used

4771 oil, unless waived by the board; and

4772 (viii) any other information the [~~executive secretary~~] director finds necessary to ensure  
4773 the safe handling of used oil.

4774 (c) The owner or operator of the center shall notify the [~~executive secretary~~] director in  
4775 writing of any changes in the information submitted to apply for registration within 20 days of  
4776 the change.

4777 (d) To be reimbursed under Section 19-6-717 for collected DIYer used oil, the operator  
4778 of the DIYer used oil collection center shall maintain and submit to the [~~executive secretary~~]  
4779 director records of volumes of DIYer used oil picked up by a permitted used oil transporter, the  
4780 dates of pickup, and the name and federal EPA identification number of the transporter.

4781 (2) (a) A person may not act as a used oil transporter or operate a transfer facility  
4782 without holding a permit issued by the [~~executive secretary~~] director.

4783 (b) The application for a permit shall include the following information regarding  
4784 acting as a transporter or operating a transfer facility:

4785 (i) the name and address of the operator;

4786 (ii) the location of the transporter's base of operations or the location of the transfer  
4787 facility;

4788 (iii) maps of all transfer facilities;

4789 (iv) the methods to be used for collecting, storing, and delivering used oil;

4790 (v) the methods to be used to determine if used oil received by the transporter or  
4791 facility is on-specification or off-specification;

4792 (vi) the type of containment or storage to be used;

4793 (vii) the methods of disposing of the waste by-products;

4794 (viii) the status of business, zoning, and other applicable licenses and permits required  
4795 by federal, state, and local government entities;

4796 (ix) emergency spill containment plan;

4797 (x) proof of liability insurance or other means of financial responsibility in an amount  
4798 determined by board rule for any liability that may be incurred in collecting, transporting, or  
4799 storing the used oil;

4800 (xi) proof of form and amount of reclamation surety for any facility used in conjunction  
4801 with transportation or storage of used oil; and

4802 (xii) any other information the [~~executive secretary~~] director finds necessary to ensure  
4803 the safe handling of used oil.

4804 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director  
4805 in writing of any changes in the information submitted to apply for a permit within 20 days of  
4806 the change.

4807 (3) (a) A person may not operate a used oil processing or rerefining facility without  
4808 holding a permit issued by the [~~executive secretary~~] director.

4809 (b) The application for a permit shall include the following information regarding the  
4810 used oil processing or rerefining facility:

4811 (i) the name and address of the operator;

4812 (ii) the location of the facility;

4813 (iii) a map of the facility;

4814 (iv) methods to be used to determine if used oil is on-specification or off-specification;

4815 (v) the type of containment or storage to be used;

4816 (vi) the grades of oil to be produced;

4817 (vii) the methods of disposing of the waste by-products;

4818 (viii) the status of business, zoning, and other applicable licenses and permits required  
4819 by federal, state, and local governmental entities;

4820 (ix) emergency spill containment plan;

4821 (x) proof of liability insurance or other means of financial responsibility in an amount  
4822 determined by board rule for any liability that may be incurred in processing or rerefining used  
4823 oil;

4824 (xi) proof of form and amount of reclamation surety; and

4825 (xii) any other information the [~~executive secretary~~] director finds necessary to ensure  
4826 the safe handling of used oil.

4827 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director  
4828 in writing of any changes in the information submitted to apply for a permit within 20 days of  
4829 the change.

4830 (4) (a) A person may not act as a used oil fuel marketer without holding a registration  
4831 number issued by the [~~executive secretary~~] director.

4832 (b) The application for a registration number shall include the following information

4833 regarding acting as a used oil fuel marketer:

4834 (i) the name and address of the marketer;

4835 (ii) the location of any facilities used by the marketer to collect, transport, process, or  
4836 store used oil subject to separate permits under this part;

4837 (iii) the status of business, zoning, and other applicable licenses and permits required  
4838 by federal, state, and local governmental entities, including any registrations or permits  
4839 required under this part to collect, process, transport, or store used oil; and

4840 (iv) any other information the [~~executive secretary~~] director finds necessary to ensure  
4841 the safe handling of used oil.

4842 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director  
4843 in writing of any changes in the information submitted to apply for a permit within 20 days of  
4844 the change.

4845 (5) (a) Unless exempted under Subsection 19-6-708(2), a person may not burn used oil  
4846 for energy recovery without holding a permit issued by the [~~executive secretary~~] director or an  
4847 authorization from the department.

4848 (b) The application for a permit shall include the following information regarding the  
4849 used oil burning facility:

4850 (i) the name and address of the operator;

4851 (ii) the location of the facility;

4852 (iii) methods to be used to determine if used oil is on-specification or off-specification;

4853 (iv) the type of containment or storage to be used;

4854 (v) the type of burner to be used;

4855 (vi) the methods of disposing of the waste by-products;

4856 (vii) the status of business, zoning, and other applicable licenses and permits required  
4857 by federal, state, and local governmental entities;

4858 (viii) emergency spill containment plan;

4859 (ix) proof of liability insurance or other means of financial responsibility in an amount  
4860 determined by board rule for any liability that may be incurred in processing or rerefining used  
4861 oil;

4862 (x) proof of form and amount of reclamation surety for any facility receiving and  
4863 burning used oil; and

4864 (xi) any other information the [~~executive secretary~~] director finds necessary to ensure  
4865 the safe handling of used oil.

4866 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director  
4867 in writing of any changes in the information submitted to apply for a permit within 20 days of  
4868 the change.

4869 Section 90. Section **19-6-711** is amended to read:

4870 **19-6-711. Application of used oil to the land -- Limitations.**

4871 (1) A person may not apply used oil to the land as a dust or weed suppressant or for  
4872 other similar applications to the land unless the person has obtained:

4873 (a) written authorization as required under this chapter; and

4874 (b) a permit from the [~~executive secretary~~] director.

4875 (2) The applicant for a permit under this section shall demonstrate:

4876 (a) the used oil is not mixed with any hazardous waste;

4877 (b) the used oil does not exhibit any hazardous characteristic other than ignitability;

4878 and

4879 (c) how the applicant will minimize the impact on the environment of the use of used  
4880 oil as a dust or weed suppressant or for other similar applications to the land.

4881 (3) Prior to acting on the application, the [~~executive secretary~~] director shall provide  
4882 public notice of the application and shall provide opportunity for public comment under  
4883 Section 19-6-712.

4884 Section 91. Section **19-6-712** is amended to read:

4885 **19-6-712. Issuance of permits -- Public comments and hearing.**

4886 (1) In considering permit applications under this part, the [~~executive secretary~~] director  
4887 shall:

4888 (a) ensure the application is complete prior to acting on it;

4889 (b) (i) publish notice of the permit application and the opportunity for public comment

4890 in:

4891 (A) a newspaper of general circulation in the state; and

4892 (B) a newspaper of general circulation in the county where the operation for which the  
4893 application is submitted is located; and

4894 (ii) as required in Section 45-1-101;

4895 (c) allow the public to submit written comments to the [~~executive secretary~~] director  
4896 within 15 days after date of publication;

4897 (d) consider timely submitted public comments and the criteria established in this part  
4898 and by rule in determining whether to grant the permit; and

4899 (e) send a written copy of the decision to the applicant and to persons submitting  
4900 timely comments under Subsection (1)(c).

4901 (2) The [~~executive secretary's~~] director's decision under this section may be appealed to  
4902 the board only within the 30 days after the day the decision is mailed to the applicant.

4903 Section 92. Section **19-6-717** is amended to read:

4904 **19-6-717. Used oil collection incentive payment.**

4905 (1) (a) The division shall pay a recycling incentive to registered DIYer used oil  
4906 collection centers and curbside collection programs approved by the [~~executive secretary~~]  
4907 director for each gallon of used oil collected from DIYer used oil generators on and after July  
4908 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor,  
4909 rerefiner, burner, or to another disposal method authorized by board rule.

4910 (b) Payment of the incentive is subject to Section 19-6-720 regarding priorities.

4911 (2) The board shall by rule establish the amount of the payment, which shall be \$.16  
4912 per gallon unless the board determines the incentive should be:

4913 (a) reduced to ensure adequate funds to meet priorities set in Section 19-6-720 and to  
4914 reimburse all qualified operations under this section; or

4915 (b) increased to promote collection of used oil under this part and the funds are  
4916 available in the account created under Section 19-6-719 after meeting the priorities set in  
4917 Section 19-6-720.

4918 Section 93. Section **19-6-718** is amended to read:

4919 **19-6-718. Limitations on liability of operator of collection center.**

4920 (1) Subject to Subsection (2), a person may not recover from the owner, operator, or  
4921 lessor of a DIYer used oil collection center any costs of response actions at another location  
4922 resulting from a release or threatened release of used oil collected at the center if the owner,  
4923 operator, or lessor:

4924 (a) operates the DIYer used oil collection center in compliance with this part and rules  
4925 made under this part and the [~~executive secretary~~] director upon inspection finds the center is in

4926 compliance with this part and rules made under this part;

4927 (b) does not mix any used oil collected with any hazardous waste or PCBs or with any  
4928 material that would render the resulting mixture as a hazardous waste;

4929 (c) does not knowingly accept any used oil containing hazardous waste or PCBs;

4930 (d) ensures the used oil is transported from the center by a permitted used oil  
4931 transporter; and

4932 (e) complies with Section 114(c) of the federal Comprehensive Environmental  
4933 Response, Compensation, and Liability Act of 1980, as amended.

4934 (2) (a) This section applies only to that portion of a used oil collection center used for  
4935 the collection of DIYer used oil under this part.

4936 (b) This section does not apply to willful or grossly negligent activities of the owner,  
4937 operator, or lessor in operating the DIYer used oil collection center.

4938 (c) This section does not affect or modify in any way the obligations or liability of any  
4939 person other than the owner, operator, or lessor under any other provisions of state or federal  
4940 law, including common law, for injury or damage resulting from a release of used oil or  
4941 hazardous waste.

4942 (d) For the purposes of this section, the owner, operator, or lessor of a DIYer used oil  
4943 collection center may presume a quantity of not more than five gallons, except under  
4944 Subsection (2)(e), of used oil accepted from a member of the public is not mixed with a  
4945 hazardous waste or PCBs if:

4946 (i) the oil is accepted in accordance with the inspection and identification procedures  
4947 required by board rule; and

4948 (ii) the owner, operator, or lessor operates the DIYer used oil collection center in good  
4949 faith and in compliance with this part and rules made under this part.

4950 (e) The owner, operator, or lessor of a DIYer used oil collection center may claim the  
4951 presumption under Subsection (2)(d) for a quantity of more than five gallons but not more than  
4952 55 gallons, if the quantity received is:

4953 (i) from a farmer exempted under Subsection 19-6-708(1)(b);

4954 (ii) generated by farming equipment; and

4955 (iii) handled in accordance with all requirements of this section.

4956 (f) This section does not affect or modify the obligations or liability of any owner,



4957 operator, or lessor of a DIYer used oil collection center regarding that person's services or  
4958 functions other than accepting DIYer used oil under this part.

4959 Section 94. Section **19-6-721** is amended to read:

4960 **19-6-721. Violations -- Proceedings -- Orders.**

4961 (1) A person who violates any provision of this part or any order, permit, rule, or other  
4962 requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not  
4963 more than \$10,000 per day for each day of violation, in addition to any fine otherwise imposed  
4964 for violation of this part.

4965 (2) (a) The [~~board~~] director may bring suit in the name of the state to restrain the  
4966 person from continuing the violation and to require the person to perform necessary  
4967 remediation.

4968 (b) Suit under Subsection (2)(a) may be brought in any court in the state having  
4969 jurisdiction in the county of residence of the person charged or in the county where the  
4970 violation is alleged to have occurred.

4971 (c) The court may grant prohibitory and mandatory injunctions, including temporary  
4972 restraining orders.

4973 (3) When the [~~executive secretary~~] director finds a situation exists in violation of this  
4974 part that presents an immediate threat to the public health or welfare, the [~~executive secretary~~]  
4975 director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures  
4976 Act.

4977 (4) All penalties collected under this section shall be deposited in the account created  
4978 in Section 19-6-719.

4979 Section 95. Section **19-6-803** is amended to read:

4980 **19-6-803. Definitions.**

4981 As used in this part:

4982 (1) "Abandoned waste tire pile" means a waste tire pile regarding which the local  
4983 department of health has not been able to:

4984 (a) locate the persons responsible for the tire pile; or

4985 (b) cause the persons responsible for the tire pile to remove it.

4986 (2) (a) "Beneficial use" means the use of chipped tires in a manner that is not recycling,  
4987 storage, or disposal, but that serves as a replacement for another product or material for specific

4988 purposes.

4989 (b) "Beneficial use" includes the use of chipped tires:

4990 (i) as daily landfill cover;

4991 (ii) for civil engineering purposes;

4992 (iii) as low-density, light-weight aggregate fill; or

4993 (iv) for septic or drain field construction.

4994 (c) "Beneficial use" does not include the use of waste tires or material derived from  
4995 waste tires:

4996 (i) in the construction of fences; or

4997 (ii) as fill, other than low-density, light-weight aggregate fill.

4998 (3) "Board" means the Solid and Hazardous Waste Control Board created under  
4999 Section 19-1-106.

5000 (4) "Chip" or "chipped tire" means a two inch square or smaller piece of a waste tire.

5001 (5) "Commission" means the Utah State Tax Commission.

5002 (6) (a) "Consumer" means a person who purchases a new tire to satisfy a direct need,  
5003 rather than for resale.

5004 (b) "Consumer" includes a person who purchases a new tire for a motor vehicle to be  
5005 rented or leased.

5006 (7) "Crumb rubber" means waste tires that have been ground, shredded, or otherwise  
5007 reduced in size such that the particles are less than or equal to 3/8 inch in diameter and are 98%  
5008 wire free by weight.

5009 (8) "Director" means the director of the Division of Solid and Hazardous Waste.

5010 ~~[(8)]~~ (9) "Disposal" means the deposit, dumping, or permanent placement of any waste  
5011 tire in or on any land or in any water in the state.

5012 ~~[(9)]~~ (10) "Dispose of" means to deposit, dump, or permanently place any waste tire in  
5013 or on any land or in any water in the state.

5014 ~~[(10)]~~ (11) "Division" means the Division of Solid and Hazardous Waste, created in  
5015 ~~[Section 19-1-105, within the Department of Environmental Quality]~~ Subsection  
5016 19-1-105(1)(e).

5017 ~~[(11)]~~ "Executive secretary" means the executive secretary of the Solid and Hazardous  
5018 ~~Waste Control Board created in Section 19-1-106.]~~

5019 (12) "Fund" means the Waste Tire Recycling Fund created in Section 19-6-807.

5020 (13) "Landfill waste tire pile" means a waste tire pile:

5021 (a) located within the permitted boundary of a landfill operated by a governmental  
5022 entity; and

5023 (b) consisting solely of waste tires brought to a landfill for disposal and diverted from  
5024 the landfill waste stream to the waste tire pile.

5025 (14) "Local health department" means the local health department, as defined in  
5026 Section 26A-1-102, with jurisdiction over the recycler.

5027 (15) "Materials derived from waste tires" means tire sections, tire chips, tire  
5028 shreddings, rubber, steel, fabric, or other similar materials derived from waste tires.

5029 (16) "Mobile facility" means a mobile facility capable of cutting waste tires on site so  
5030 the waste tires may be effectively disposed of by burial, such as in a landfill.

5031 (17) "New motor vehicle" means a motor vehicle which has never been titled or  
5032 registered.

5033 (18) "Passenger tire equivalent" means a measure of mixed sizes of tires where each 25  
5034 pounds of whole tires or material derived from waste tires is equal to one waste tire.

5035 (19) "Proceeds of the fee" means the money collected by the commission from  
5036 payment of the recycling fee including interest and penalties on delinquent payments.

5037 (20) "Recycler" means a person who:

5038 (a) annually uses, or can reasonably be expected within the next year to use, a  
5039 minimum of 100,000 waste tires generated in the state or 1,000 tons of waste tires generated in  
5040 the state to recover energy or produce energy, crumb rubber, chipped tires, or an ultimate  
5041 product; and

5042 (b) is registered as a recycler in accordance with Section 19-6-806.

5043 (21) "Recycling fee" means the fee provided for in Section 19-6-805.

5044 (22) "Shredded waste tires" means waste tires or material derived from waste tires that  
5045 has been reduced to a six inch square or smaller.

5046 (23) (a) "Storage" means the placement of waste tires in a manner that does not  
5047 constitute disposal of the waste tires.

5048 (b) "Storage" does not include:

5049 (i) the use of waste tires as ballast to maintain covers on agricultural materials or to

5050 maintain covers at a construction site; or

5051 (ii) the storage for five or fewer days of waste tires or material derived from waste tires  
5052 that are to be recycled or applied to a beneficial use.

5053 (24) (a) "Store" means to place waste tires in a manner that does not constitute disposal  
5054 of the waste tires.

5055 (b) "Store" does not include:

5056 (i) to use waste tires as ballast to maintain covers on agricultural materials or to  
5057 maintain covers at a construction site; or

5058 (ii) to store for five or fewer days waste tires or material derived from waste tires that  
5059 are to be recycled or applied to a beneficial use.

5060 (25) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a  
5061 vehicle in which a person or property is or may be transported or drawn upon a highway.

5062 (26) "Tire retailer" means any person engaged in the business of selling new tires either  
5063 as replacement tires or as part of a new vehicle sale.

5064 (27) (a) "Ultimate product" means a product that has as a component materials derived  
5065 from waste tires and that the [~~executive secretary~~] director finds has a demonstrated market.

5066 (b) "Ultimate product" includes pyrolyzed materials derived from:

5067 (i) waste tires; or

5068 (ii) chipped tires.

5069 (c) "Ultimate product" does not include a product regarding which a waste tire remains  
5070 after the product is disposed of or disassembled.

5071 (28) "Waste tire" means a tire that is no longer suitable for its original intended  
5072 purpose because of wear, damage, or defect.

5073 (29) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.

5074 (30) (a) "Waste tire transporter" means a person or entity engaged in picking up or  
5075 transporting at one time more than 10 whole waste tires, or the equivalent amount of material  
5076 derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal.

5077 (b) "Waste tire transporter" includes any person engaged in the business of collecting,  
5078 hauling, or transporting waste tires or who performs these functions for another person, except  
5079 as provided in Subsection (30)(c).

5080 (c) "Waste tire transporter" does not include:

- 5081 (i) a person transporting waste tires generated solely by:  
5082 (A) that person's personal vehicles;  
5083 (B) a commercial vehicle fleet owned or operated by that person or that person's  
5084 employer;  
5085 (C) vehicles sold, leased, or purchased by a motor vehicle dealership owned or  
5086 operated by that person or that person's employer; or  
5087 (D) a retail tire business owned or operated by that person or that person's employer;  
5088 (ii) a solid waste collector operating under a license issued by a unit of local  
5089 government as defined in Section 63M-5-103, or a local health department;  
5090 (iii) a recycler of waste tires;  
5091 (iv) a person transporting tires by rail as a common carrier subject to federal regulation;  
5092 or  
5093 (v) a person transporting processed or chipped tires.

5094 Section 96. Section **19-6-804** is amended to read:

5095 **19-6-804. Restrictions on disposal of tires -- Penalties.**

5096 (1) (a) After January 1, 1994, an individual, including a waste tire transporter, may not  
5097 dispose of more than four whole tires at one time in a landfill or any other location in the state  
5098 authorized by the [~~executive secretary~~] director to receive waste tires, except for purposes  
5099 authorized by board rule.

5100 (b) Tires are exempt from this Subsection (1) if the original tire has a rim diameter  
5101 greater than 24.5 inches.

5102 (c) No person, including a waste tire transporter, may dispose of waste tires or store  
5103 waste tires in any manner not allowed under this part or rules made under this part.

5104 (2) The operator of the landfill or other authorized location shall direct that the waste  
5105 tires be disposed in a designated area to facilitate retrieval if a market becomes available for the  
5106 disposed waste tires or material derived from waste tires.

5107 (3) An individual, including a waste tire transporter, may dispose of shredded waste  
5108 tires in a landfill in accordance with Section 19-6-812, and may also, without reimbursement,  
5109 dispose in a landfill materials derived from waste tires that do not qualify for reimbursement  
5110 under Section 19-6-812, but the landfill shall dispose of the material in accordance with  
5111 Section 19-6-812.

5112 (4) (a) An individual, including a waste tire transporter, violating this section is subject  
5113 to enforcement proceedings and a civil penalty of not more than \$100 per waste tire or per  
5114 passenger tire equivalent disposed of in violation of this section. A warning notice may be  
5115 issued prior to taking further enforcement action under this Subsection (4).

5116 (b) A civil proceeding to enforce this section and collect penalties under this section  
5117 may be brought in the district court where the violation occurred by the board, the local health  
5118 department, or the county attorney having jurisdiction over the location where the tires were  
5119 disposed in violation of this section.

5120 (c) Penalties collected under this section shall be deposited in the fund.

5121 Section 97. Section **19-6-806** is amended to read:

5122 **19-6-806. Registration of waste tire transporters and recyclers.**

5123 (1) (a) The [~~executive secretary~~] director shall register each applicant for registration to  
5124 act as a waste tire transporter if the applicant meets the requirements of this section.

5125 (b) An applicant for registration as a waste tire transporter shall:

5126 (i) submit an application in a form prescribed by the [~~executive secretary~~] director;

5127 (ii) pay a fee as determined by the board under Section 63J-1-504;

5128 (iii) provide the name and business address of the operator;

5129 (iv) provide proof of liability insurance or other form of financial responsibility in an  
5130 amount determined by board rule, but not more than \$300,000, for any liability the waste tire  
5131 transporter may incur in transporting waste tires; and

5132 (v) meet requirements established by board rule.

5133 (c) The holder of a registration under this section shall advise the [~~executive secretary~~]  
5134 director in writing of any changes in application information provided to the [~~executive~~  
5135 ~~secretary~~] director within 20 days of the change.

5136 (d) If the [~~executive secretary~~] director has reason to believe a waste tire transporter has  
5137 disposed of tires other than as allowed under this part, the [~~executive secretary~~] director shall  
5138 conduct an investigation and, after complying with the procedural requirements of Title 63G,  
5139 Chapter 4, Administrative Procedures Act, may revoke the registration.

5140 (2) (a) The [~~executive secretary~~] director shall register each applicant for registration to  
5141 act as a waste tire recycler if the applicant meets the requirements of this section.

5142 (b) An applicant for registration as a waste tire recycler shall:

5143 (i) submit an application in a form prescribed by the [~~executive secretary~~] director;  
5144 (ii) pay a fee as determined by the board under Section 63J-1-504;  
5145 (iii) provide the name and business address of the operator of the recycling business;  
5146 (iv) provide proof of liability insurance or other form of financial responsibility in an  
5147 amount determined by board rule, but not more than \$300,000, for any liability the waste tire  
5148 recycler may incur in storing and recycling waste tires;

5149 (v) engage in activities as described under the definition of recycler in Section  
5150 19-6-803; and

5151 (vi) meet requirements established by board rule.

5152 (c) The holder of a registration under this section shall advise the [~~executive secretary~~]  
5153 director in writing of any changes in application information provided to the [~~executive~~  
5154 secretary] director within 20 days of the change.

5155 (d) If the [~~executive secretary~~] director has reason to believe a waste tire recycler has  
5156 falsified any information provided in an application for partial reimbursement under this  
5157 section, the [~~executive secretary~~] director shall, after complying with the procedural  
5158 requirements of Title 63G, Chapter 4, Administrative Procedures Act, revoke the registration.

5159 (3) The board shall establish a uniform fee for registration which shall be imposed by  
5160 any unit of local government or local health department that requires a registration fee as part  
5161 of the registration of waste tire transporters or waste tire recyclers.

5162 Section 98. Section **19-6-811** is amended to read:

5163 **19-6-811. Funding for management of certain landfill or abandoned waste tire**  
5164 **piles -- Limitations.**

5165 (1) (a) A county or municipality may apply to the [~~executive secretary~~] director for  
5166 payment from the fund for costs of a waste tire transporter or recycler to remove waste tires  
5167 from an abandoned waste tire pile or a landfill waste tire pile operated by a state or local  
5168 governmental entity and deliver the waste tires to a recycler.

5169 (b) The [~~executive secretary~~] director may authorize a maximum reimbursement of:

5170 (i) 100% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to  
5171 remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the  
5172 waste tires to a recycler, if no waste tires have been added to the abandoned waste tire pile or  
5173 landfill waste tire pile on or after July 1, 2001; or

5174 (ii) 60% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to  
5175 remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the  
5176 waste tires to a recycler, if waste tires have been added to the abandoned waste tire pile or  
5177 landfill waste tire pile on or after July 1, 2001.

5178 (c) The ~~[executive secretary]~~ director may deny an application for payment of waste  
5179 tire pile removal and delivery costs, if the ~~[executive secretary]~~ director determines that  
5180 payment of the costs will result in there not being sufficient money in the fund to pay expected  
5181 reimbursements for recycling or beneficial use under Section 19-6-809 during the next quarter.

5182 (2) (a) The maximum number of miles for which the ~~[executive secretary]~~ director may  
5183 reimburse for transportation costs incurred by a waste tire transporter under this section, is the  
5184 number of miles, one way, between the location of the waste tire pile and the State Capitol  
5185 Building, in Salt Lake City, Utah, or to the recycler, whichever is less.

5186 (b) This maximum number of miles available for reimbursement applies regardless of  
5187 the location of the recycler to which the waste tires are transported under this section.

5188 (c) The ~~[executive secretary]~~ director shall, upon request, advise any person preparing a  
5189 bid under this section of the maximum number of miles available for reimbursement under this  
5190 Subsection (2).

5191 (d) The cost under this Subsection (2) shall be calculated based on the cost to transport  
5192 one ton of waste tires one mile.

5193 (3) (a) The county or municipality shall through a competitive bidding process make a  
5194 good faith attempt to obtain a bid for the removal of the landfill or abandoned waste tire pile  
5195 and transport to a recycler.

5196 (b) The county or municipality shall submit to the ~~[executive secretary]~~ director:

5197 (i) (A) (I) a statement from the local health department stating the landfill waste tire  
5198 pile is operated by a state or local governmental entity and consists solely of waste tires  
5199 diverted from the landfill waste stream;

5200 (II) a description of the size and location of the landfill waste tire pile; and

5201 (III) landfill records showing the origin of the waste tires; or

5202 (B) a statement from the local health department that the waste tire pile is abandoned;

5203 and

5204 (ii) (A) the bid selected by the county or municipality; or



5205 (B) if no bids were received, a statement to that fact.

5206 (4) (a) If a bid is submitted, the ~~[executive secretary]~~ director shall determine if the bid  
5207 is reasonable, taking into consideration:

5208 (i) the location and size of the landfill or abandoned waste tire pile;

5209 (ii) the number and size of any other landfill or abandoned waste tire piles in the area;

5210 and

5211 (iii) the current market for waste tires of the type in the landfill or abandoned waste tire  
5212 pile.

5213 (b) The ~~[executive secretary]~~ director shall advise the county or municipality within 30  
5214 days of receipt of the bid whether or not the bid is determined to be reasonable.

5215 (5) (a) If the bid is found to be reasonable, the county or municipality may proceed to  
5216 have the landfill or abandoned waste tire pile removed pursuant to the bid.

5217 (b) The county or municipality shall advise the ~~[executive secretary]~~ director that the  
5218 landfill or abandoned waste tire pile has been removed.

5219 (6) The recycler or waste tire transporter that removed the landfill or abandoned waste  
5220 tires pursuant to the bid shall submit to the ~~[executive secretary]~~ director a copy of the  
5221 manifest, which shall state:

5222 (a) the number or tons of waste tires transported;

5223 (b) the location from which they were removed;

5224 (c) the recycler to which the waste tires were delivered; and

5225 (d) the amount charged by the transporter or recycler.

5226 (7) Upon receipt of the information required under Subsection (6), and determination  
5227 that the information is complete, the ~~[executive secretary]~~ director shall, within 30 days after  
5228 receipt authorize the Division of Finance to reimburse the waste tire transporter or recycler the  
5229 amount established under this section.

5230 Section 99. Section **19-6-817** is amended to read:

5231 **19-6-817. Administrative fees to local health departments -- Reporting by local**  
5232 **health departments.**

5233 (1) (a) The Division of Finance shall pay quarterly to the local health departments from  
5234 the fund \$5 per ton of tires for which a partial reimbursement is made under this part.

5235 (b) The payment under Subsection (1)(a) shall be allocated among the local health

5236 departments in accordance with recommendations of the Utah Association of Local Health  
5237 Officers.

5238 (c) The recommendation shall be based on the efforts expended and the costs incurred  
5239 by the local health departments in enforcing this part and rules made under this part.

5240 (2) (a) Each local health department shall track all waste tires removed from  
5241 abandoned waste tire piles within its jurisdiction, to determine the amount of waste tires  
5242 removed and the recycler to which they are transported.

5243 (b) The local health department shall report this information quarterly to the [executive  
5244 secretary] director.

5245 Section 100. Section **19-6-819** is amended to read:

5246 **19-6-819. Powers and duties of the board.**

5247 (1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative  
5248 Rulemaking Act, as necessary to administer this part. For these purposes the board shall  
5249 establish by rule:

5250 (a) conditions and procedures for acting to issue or revoke a registration as a waste tire  
5251 recycler or transporter under Section 19-6-806;

5252 (b) the amount of liability insurance or other financial responsibility the applicant is  
5253 required to have to qualify for registration under Section 19-6-806, which amount may not be  
5254 more than \$300,000 for any liability the waste tire transporter or recycler may incur in  
5255 recycling or transporting waste tires;

5256 (c) the form and amount of financial assurance required for a site or facility used to  
5257 store waste tires, which amount shall be sufficient to ensure the cleanup or removal of waste  
5258 tires from that site or facility;

5259 (d) standards and required documentation for tracking and record keeping of waste  
5260 tires subject to regulation under this part, including:

5261 (i) manifests for handling and transferring waste tires;

5262 (ii) records documenting date, quantities, and size or type of waste tires transported,  
5263 processed, transferred, or sold;

5264 (iii) records documenting persons between whom transactions under this Subsection  
5265 (1)(d) occurred and the amounts of waste tires involved in those transactions; and

5266 (iv) requiring that documentation under this Subsection (1)(d) be submitted on a

- 5267 quarterly basis, and that this documentation be made available for public inspection;
- 5268 (e) authorize inspections and audits of waste tire recycling, transportation, or storage
- 5269 facilities and operations subject to this part;
- 5270 (f) standards for payments authorized under Sections 19-6-809, 19-6-810, 19-6-811,
- 5271 and 19-6-812;
- 5272 (g) regarding applications to the [~~executive secretary~~] director for reimbursements
- 5273 under Section 19-6-811, the content of the reimbursement application form and the procedure
- 5274 to apply for reimbursement;
- 5275 (h) requirements for the storage of waste tires, including permits for storage;
- 5276 (i) the types of energy recovery or other appropriate environmentally compatible uses
- 5277 eligible for reimbursement, which:
- 5278 (i) shall include pyrolyzation, but not retreading; and
- 5279 (ii) shall apply to all waste tire recycling and beneficial use reimbursements within the
- 5280 state;
- 5281 (j) the applications of waste tires that are not eligible for reimbursement;
- 5282 (k) the applications of waste tires that are considered to be the storage or disposal of
- 5283 waste tires; and
- 5284 (l) provisions governing the storage or disposal of waste tires, including the process for
- 5285 issuing permits for waste tire storage sites.
- 5286 (2) The board may:
- 5287 (a) require retention and submission of the records required under this part;
- 5288 (b) require audits of the records and record keeping procedures required under this part
- 5289 and rules made under this part, except that audits of records regarding the fee imposed and
- 5290 collected by the commission under Sections 19-6-805 and 19-6-808 are the responsibility of the
- 5291 commission; and
- 5292 (c) as necessary, make rules requiring additional information as the board determines
- 5293 necessary to effectively administer Section 19-6-812, which rules may not place an undue
- 5294 burden on the operation of landfills.
- 5295 Section 101. Section **19-6-820** is amended to read:
- 5296 **19-6-820. Powers and duties of the director.**
- 5297 (1) The [~~executive secretary~~] director shall:

- 5298 (a) administer and enforce the rules and orders of the board;
- 5299 (b) issue and revoke registrations for waste tire recyclers and transporters; and
- 5300 (c) require forms, analyses, documents, maps, and other records as the [~~executive~~
- 5301 ~~secretary~~] director finds necessary to:
- 5302 (i) issue recycler and transporter registrations;
- 5303 (ii) authorize reimbursements under Section 19-6-811;
- 5304 (iii) inspect a site, facility, or activity regulated under this part; and
- 5305 (iv) issue permits for and inspect waste tire storage sites.
- 5306 (2) The [~~executive secretary~~] director may:
- 5307 (a) authorize any division employee to enter any site or facility regulated under this
- 5308 part at reasonable times and upon presentation of credentials, for the purpose of inspection,
- 5309 audit, or sampling:
- 5310 (i) at the site or facility; or
- 5311 (ii) of the records, operations, or products;
- 5312 (b) as authorized by the board, enforce board rules by issuing orders which are
- 5313 subsequently subject to the board's amendment or revocation; and
- 5314 (c) coordinate with federal, state, and local governments, and other agencies, including
- 5315 entering into memoranda of understanding, to:
- 5316 (i) ensure effective regulation of waste tires under this part;
- 5317 (ii) minimize duplication of regulation; and
- 5318 (iii) encourage responsible recycling of waste tires.
- 5319 Section 102. Section **19-6-821** is amended to read:
- 5320 **19-6-821. Violations -- Civil proceedings and penalties -- Orders.**
- 5321 (1) A person who violates any provision of this part or any order, permit, plan
- 5322 approval, or rule issued or adopted under this part is subject to a civil penalty of not more than
- 5323 \$10,000 per day for each day of violation as determined in a civil hearing under Title 63G,
- 5324 Chapter 4, Administrative Procedures Act, except:
- 5325 (a) any violation of Subsection 19-6-804(1) or (3), regarding landfills, is subject to the
- 5326 penalty under Subsection 19-6-804(4) rather than the penalties under this section; and
- 5327 (b) any violation of Subsection 19-6-808(1), (2), or (3) regarding payment of the
- 5328 recycling fee by the tire retailer is subject to penalties as provided in Subsection 19-6-808(4)

5329 rather than the penalties under this section.

5330 (2) The ~~[board]~~ director may bring an action in the name of the state to restrain a  
5331 person from continuing a violation of this part and to require the person to perform necessary  
5332 remediation regarding a violation of this part.

5333 (3) When the ~~[executive secretary]~~ director finds a situation exists in violation of this  
5334 part that presents an immediate threat to the public health or welfare, the ~~[executive secretary]~~  
5335 director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures  
5336 Act.

5337 (4) The ~~[executive secretary]~~ director may revoke the registration of a waste tire  
5338 recycler or transporter who violates any provision of this part or any order, plan approval,  
5339 permit, or rule issued or adopted under this part.

5340 (5) The ~~[executive secretary]~~ director may revoke the tire storage permit for a storage  
5341 facility that is in violation of any provision of this part or any order, plan approval, permit, or  
5342 rule issued or adopted under this part.

5343 (6) If a person has been convicted of violating a provision of this part prior to a finding  
5344 by the ~~[executive secretary]~~ director of a violation of the same provision in an administrative  
5345 hearing, the ~~[executive secretary]~~ director may not assess a civil monetary penalty under this  
5346 section for the same offense for which the conviction was obtained.

5347 (7) All penalties collected under this section shall be deposited in the fund.

5348 Section 103. Section **19-6-1002** is amended to read:

5349 **19-6-1002. Definitions.**

5350 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
5351 ~~[+9-6-103]~~ 19-1-106.

5352 ~~[(2) "Executive secretary" means the executive secretary of the Solid and Hazardous  
5353 Waste Control Board appointed under Section 19-6-107.]~~

5354 (2) "Director" means the director of the Division of Solid and Hazardous Waste.

5355 (3) "Division" means the Division of Solid and Hazardous Waste, created in  
5356 Subsection 19-1-105(1)(e).

5357 ~~[(3)]~~ (4) "Manufacturer" means the last person in the production or assembly process of  
5358 a vehicle.

5359 ~~[(4)]~~ (5) "Mercury switch" means a mercury-containing capsule that is part of a

5360 convenience light switch assembly installed in a vehicle's hood or trunk.

5361 ~~[(5)]~~ (6) "Person" means an individual, a firm, an association, a partnership, a  
5362 corporation, the state, or a local government.

5363 ~~[(6)]~~ (7) "Plan" means a plan for removing and collecting mercury switches from  
5364 vehicles.

5365 ~~[(7)]~~ (8) "Vehicle" means any passenger automobile or car, station wagon, truck, van,  
5366 or sport utility vehicle that may contain one or more mercury switches.

5367 Section 104. Section **19-6-1003** is amended to read:

5368 **19-6-1003. Board and director powers.**

5369 (1) By following the procedures and requirements of Title 63G, Chapter 3, Utah  
5370 Administrative Rulemaking Act, the board shall make rules:

5371 (a) governing administrative proceedings under this part;

5372 (b) specifying the terms and conditions under which the ~~[executive secretary]~~ director  
5373 shall approve, disapprove, revoke, or review a plan submitted by a manufacturer; and

5374 (c) governing reports and educational materials required by this part.

5375 (2) These rules shall include:

5376 (a) time requirements for plan submission, review, approval, and implementation;

5377 (b) a public notice and comment period for a proposed plan; and

5378 (c) safety standards for the collection, packaging, transportation, storage, recycling, and  
5379 disposal of mercury switches.

5380 ~~[(3) The board may request the attorney general to bring an action for injunctive relief  
5381 and enforcement of this part, including, without limitation, imposition of the penalty provided  
5382 in Section 19-6-1006.]~~

5383 ~~[(4) As authorized by the board, the executive secretary may:]~~

5384 (3) The director may:

5385 (a) review and approve or disapprove plans, specifications, or other data related to  
5386 mercury switch removal;

5387 (b) enforce a rule by issuing a notice, an order, or both ~~[-, which may be subsequently  
5388 amended or revoked by the board; and];~~

5389 (c) initiate an administrative action to compel compliance with this part and any rules  
5390 adopted under this part ~~[-];~~ or

5391 (d) request the attorney general to bring an action for injunctive relief and enforcement  
5392 of this part, including imposition of the penalty described in Section 19-6-1006.

5393 (5) The [~~executive secretary~~] director shall establish a fee to cover the costs of a plan's  
5394 review by following the procedures and requirements of Section 63J-1-504.

5395 Section 105. Section **19-6-1004** is amended to read:

5396 **19-6-1004. Mercury switch collection plan -- Reimbursement for mercury switch**  
5397 **removal.**

5398 (1) (a) Each manufacturer of any vehicle sold within this state, individually or in  
5399 cooperation with other manufacturers, shall submit a plan, accompanied by a fee, to the  
5400 [~~executive secretary~~] director.

5401 (b) If the [~~executive secretary~~] director disapproves a plan, the manufacturer shall  
5402 submit an amended plan within 90 days.

5403 (c) A manufacturer shall submit an updated plan within 90 days of any change in the  
5404 information required by Subsection (2).

5405 (d) The [~~executive secretary~~] director may require the manufacturer to modify the plan  
5406 at any time upon finding that an approved plan as implemented has failed to meet the  
5407 requirements of this part.

5408 (e) If the manufacturer does not know or is uncertain about whether or not a switch  
5409 contains mercury, the plan shall presume that the switch contains mercury.

5410 (2) The plan shall include:

5411 (a) the make, model, and year of any vehicle, including current and anticipated future  
5412 production models, sold by the manufacturer that may contain one or more mercury switches;

5413 (b) the description and location of each mercury switch for each make, model, and year  
5414 of vehicle;

5415 (c) education materials that include:

5416 (i) safe and environmentally sound methods for mercury switch removal; and

5417 (ii) information about hazards related to mercury and the proper handling of mercury;

5418 (d) a method for storage and disposal of the mercury switches, including packaging and  
5419 shipping of mercury switches to an authorized recycling, storage, or disposal facility;

5420 (e) a procedure for the transfer of information among persons involved with the plan to  
5421 comply with reporting requirements; and

5422 (f) a method to implement and finance the plan, which shall include the prompt  
5423 reimbursement by the manufacturer of costs incurred by a person removing and collecting  
5424 mercury switches.

5425 (3) In order to ensure that the costs of removal and collection of mercury switches are  
5426 not borne by any other person, the manufacturers of vehicles sold in the state shall pay:

5427 (a) a minimum of \$5 for each mercury switch removed by a person as partial  
5428 compensation for the labor and other costs incurred in removing the mercury switch;

5429 (b) the cost of packaging necessary to store or transport mercury switches to recycling,  
5430 storage, or disposal facilities;

5431 (c) the cost of shipping mercury switches to recycling, storage, or disposal facilities;

5432 (d) the cost of recycling, storage, or disposal of mercury switches;

5433 (e) the cost of the preparation and distribution of educational materials; and

5434 (f) the cost of maintaining all appropriate record-keeping systems.

5435 (4) Manufacturers of vehicles sold within this state shall reimburse a person for each  
5436 mercury switch removed and collected without regard to the date on which the mercury switch  
5437 is removed and collected.

5438 (5) The manufacturer shall ensure that plan implementation occurs by July 1, 2007.

5439 Section 106. Section **19-6-1005** is amended to read:

5440 **19-6-1005. Reporting requirements.**

5441 (1) Each manufacturer that is required to implement a plan shall submit, either  
5442 individually or in cooperation with other manufacturers, an annual report on the plan's  
5443 implementation to the [~~executive secretary~~] director within 90 days after the anniversary of the  
5444 date on which the manufacturer is required to begin plan implementation.

5445 (2) The report shall include:

5446 (a) the number of mercury switches collected;

5447 (b) the number of mercury switches for which the manufacturer has provided  
5448 reimbursement;

5449 (c) a description of the successes and failures of the plan; and

5450 (d) a statement that details the costs required to implement the plan.

5451 Section 107. Section **19-6-1102** is amended to read:

5452 **19-6-1102. Definitions.**



5453 As used in this part:

5454 (1) "Board" means the Solid and Hazardous Waste Control Board created under  
5455 Section 19-1-106.

5456 [~~(2)~~ "Executive secretary" means the executive secretary of the board.]

5457 (2) "Director" means the director of the Division of Solid and Hazardous Waste.

5458 (3) "Division" means the Division of Solid and Hazardous Waste, created in  
5459 Subsection 19-1-105(1)(e).

5460 [~~(3)~~] (4) (a) "Industrial byproduct" means an industrial residual, including:

5461 (i) inert construction debris;

5462 (ii) fly ash;

5463 (iii) bottom ash;

5464 (iv) slag;

5465 (v) flue gas emission control residuals generated primarily from the combustion of coal  
5466 or other fossil fuel;

5467 (vi) residual from the extraction, beneficiation, and processing of an ore or mineral;

5468 (vii) cement kiln dust; or

5469 (viii) contaminated soil extracted as a result of a corrective action subject to an  
5470 operation plan under Part 1, Solid and Hazardous Waste Act.

5471 (b) "Industrial byproduct" does not include material that:

5472 (i) causes a public nuisance or public health hazard; or

5473 (ii) is a hazardous waste under Part 1, Solid and Hazardous Waste Act.

5474 [~~(4)~~] (5) "Public project" means a project of the Department of Transportation to  
5475 construct:

5476 (a) a highway or road;

5477 (b) a curb;

5478 (c) a gutter;

5479 (d) a walkway;

5480 (e) a parking facility;

5481 (f) a public transportation facility; or

5482 (g) a facility, infrastructure, or transportation improvement that benefits the public.

5483 [~~(5)~~] (6) "Reuse" means to use an industrial byproduct in place of a raw material.

5484 Section 108. Section **19-6-1104** is amended to read:

5485 **19-6-1104. Applications for industrial byproduct reuse -- Approval by the**  
5486 **director.**

5487 (1) A person may submit to the [~~executive secretary~~] director an application for reuse  
5488 of an industrial byproduct from an inactive industrial site, as defined in Section 17C-1-102.

5489 (2) The [~~executive secretary~~] director shall respond to an application submitted under  
5490 Subsection (1) within 60 days of the day on which the [~~executive secretary~~] director determines  
5491 the application is complete.

5492 (3) The [~~executive secretary~~] director shall approve an application submitted under  
5493 Subsection (1) if the applicant shows:

5494 (a) the industrial byproduct meets the applicable health risk standard;

5495 (b) the industrial byproduct satisfies the applicable toxicity characteristic leaching  
5496 procedure; and

5497 (c) the proposed method of installation and type of reuse meet the applicable health  
5498 risk standard.

5499 Section 109. Section **19-8-106** is amended to read:

5500 **19-8-106. Rejection of application -- Notice to applicant -- Resubmission**  
5501 **procedure.**

5502 (1) The executive director may in his sole discretion reject an application prior to  
5503 accepting the application fee, and return the application fee to the applicant if:

5504 (a) the executive director has reason to believe that a working relationship with the  
5505 applicant cannot be achieved; or

5506 (b) the application site is not eligible under Section 19-8-105.

5507 (2) (a) The executive director may reject an application after processing the application  
5508 if [~~the executive secretary determines~~]:

5509 (i) the application is not complete or is not accurate; or

5510 (ii) the applicant has not demonstrated financial capability to perform the voluntary  
5511 cleanup.

5512 (b) The applicant is not entitled to refund of an application fee for an application  
5513 rejected under this Subsection (2).

5514 (3) An application rejected under Subsection (1) or (2) shall be promptly returned to

5515 the applicant with a letter of explanation.

5516 (4) (a) If the executive director rejects an application because it is incomplete or  
5517 inaccurate, the executive director shall, not later than 60 days after receipt of the application,  
5518 provide to the applicant a list in writing of all information needed to make the application  
5519 complete or accurate, as appropriate.

5520 (b) The applicant may submit for a second time an application rejected due to  
5521 inaccuracy or incompleteness without submitting an additional application fee.

5522 Section 110. Section **19-8-119** is amended to read:

5523 **19-8-119. Apportionment or contribution.**

5524 (1) Any party who incurs costs under a voluntary agreement entered into under this part  
5525 in excess of his liability may seek contribution in an action in district court from any other  
5526 party who is or may be liable under Subsection 19-6-302(21) or [~~19-6-402(26)~~] 19-6-402(27)  
5527 for the excess costs after providing written notice to any other party that the party bringing the  
5528 action has entered into a voluntary agreement and will incur costs.

5529 (2) In resolving claims made under Subsection (1), the court shall allocate costs using  
5530 the standards in Subsection 19-6-310(2).

5531 Section 111. Section **41-6a-1644** is amended to read:

5532 **41-6a-1644. Diesel emissions program -- Implementation -- Monitoring --**  
5533 **Exemptions.**

5534 (1) The legislative body of each county required by the comprehensive plan for air  
5535 pollution control developed by the [~~Air Quality Board under Subsection 19-2-104(3)(c)~~]  
5536 director of the Division of Air Quality in accordance with Subsection 19-2-107(2)(a)(i) to use  
5537 an emissions opacity inspection and maintenance program for diesel-powered motor vehicles  
5538 shall:

5539 (a) make regulations or ordinances to implement and enforce the requirement  
5540 established by the Air Quality Board;

5541 (b) collect information about and monitor the program; and

5542 (c) by August 1 of each year, supply written information to the Department of  
5543 Environmental Quality to identify program status.

5544 (2) The following vehicles are exempt from an emissions opacity inspection and  
5545 maintenance program for diesel-powered motor vehicles established by a legislative body of a

5546 county under Subsection (1):

5547 (a) an implement of husbandry; and

5548 (b) a motor vehicle that:

5549 (i) meets the definition of a farm truck under Section 41-1a-102; and

5550 (ii) has a gross vehicle weight rating of 12,001 pounds or more.

5551 (3) (a) The legislative body of a county identified in Subsection (1) shall exempt a  
5552 pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or  
5553 less from the emissions opacity inspection and maintenance program requirements of this  
5554 section, if the registered owner of the pickup truck provides a signed statement to the  
5555 legislative body stating the truck is used:

5556 (i) by the owner or operator of a farm located on property that qualifies as land in  
5557 agricultural use under Sections 59-2-502 and 59-2-503; and

5558 (ii) exclusively for the following purposes in operating the farm:

5559 (A) for the transportation of farm products, including livestock and its products,  
5560 poultry and its products, and floricultural and horticultural products; and

5561 (B) for the transportation of farm supplies, including tile, fence, and every other thing  
5562 or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production  
5563 and maintenance.

5564 (b) The county shall provide to the registered owner who signs and submits a signed  
5565 statement under this section a certificate of exemption from emissions opacity inspection and  
5566 maintenance program requirements for purposes of registering the exempt vehicle.

5567 Section 112. Section **59-1-403** is amended to read:

5568 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

5569 (1) (a) Any of the following may not divulge or make known in any manner any  
5570 information gained by that person from any return filed with the commission:

5571 (i) a tax commissioner;

5572 (ii) an agent, clerk, or other officer or employee of the commission; or

5573 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or  
5574 town.

5575 (b) An official charged with the custody of a return filed with the commission is not  
5576 required to produce the return or evidence of anything contained in the return in any action or

5577 proceeding in any court, except:

5578 (i) in accordance with judicial order;

5579 (ii) on behalf of the commission in any action or proceeding under:

5580 (A) this title; or

5581 (B) other law under which persons are required to file returns with the commission;

5582 (iii) on behalf of the commission in any action or proceeding to which the commission  
5583 is a party; or

5584 (iv) on behalf of any party to any action or proceeding under this title if the report or  
5585 facts shown by the return are directly involved in the action or proceeding.

5586 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may  
5587 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically  
5588 pertinent to the action or proceeding.

5589 (2) This section does not prohibit:

5590 (a) a person or that person's duly authorized representative from receiving a copy of  
5591 any return or report filed in connection with that person's own tax;

5592 (b) the publication of statistics as long as the statistics are classified to prevent the  
5593 identification of particular reports or returns; and

5594 (c) the inspection by the attorney general or other legal representative of the state of the  
5595 report or return of any taxpayer:

5596 (i) who brings action to set aside or review a tax based on the report or return;

5597 (ii) against whom an action or proceeding is contemplated or has been instituted under  
5598 this title; or

5599 (iii) against whom the state has an unsatisfied money judgment.

5600 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the  
5601 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative  
5602 Rulemaking Act, provide for a reciprocal exchange of information with:

5603 (i) the United States Internal Revenue Service; or

5604 (ii) the revenue service of any other state.

5605 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
5606 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,  
5607 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and

5608 other written statements with the federal government, any other state, any of the political  
5609 subdivisions of another state, or any political subdivision of this state, except as limited by  
5610 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal  
5611 government grant substantially similar privileges to this state.

5612 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
5613 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,  
5614 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the  
5615 identity and other information of taxpayers who have failed to file tax returns or to pay any tax  
5616 due.

5617 (d) Notwithstanding Subsection (1), the commission shall provide to the [~~Solid and~~  
5618 ~~Hazardous Waste Control Board executive secretary~~] director of the division of Solid and  
5619 Hazardous Waste, as defined in Section 19-6-102, as requested by the [~~executive secretary~~]  
5620 director of the division of Solid and Hazardous Waste, any records, returns, or other  
5621 information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or  
5622 Section 19-6-410.5 regarding the environmental assurance program participation fee.

5623 (e) Notwithstanding Subsection (1), at the request of any person the commission shall  
5624 provide that person sales and purchase volume data reported to the commission on a report,  
5625 return, or other information filed with the commission under:

5626 (i) Chapter 13, Part 2, Motor Fuel; or

5627 (ii) Chapter 13, Part 4, Aviation Fuel.

5628 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,  
5629 as defined in Section 59-22-202, the commission shall report to the manufacturer:

5630 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
5631 manufacturer and reported to the commission for the previous calendar year under Section  
5632 59-14-407; and

5633 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
5634 manufacturer for which a tax refund was granted during the previous calendar year under  
5635 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

5636 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,  
5637 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited  
5638 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

- 5639 (h) Notwithstanding Subsection (1), the commission may:
- 5640 (i) provide to the Division of Consumer Protection within the Department of
- 5641 Commerce and the attorney general data:
- 5642 (A) reported to the commission under Section 59-14-212; or
- 5643 (B) related to a violation under Section 59-14-211; and
- 5644 (ii) upon request, provide to any person data reported to the commission under
- 5645 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).
- 5646 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
- 5647 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
- 5648 and Budget, provide to the committee or office the total amount of revenues collected by the
- 5649 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
- 5650 specified by the committee or office.
- 5651 (j) Notwithstanding Subsection (1), the commission shall make the directory required
- 5652 by Section 59-14-603 available for public inspection.
- 5653 (k) Notwithstanding Subsection (1), the commission may share information with
- 5654 federal, state, or local agencies as provided in Subsection 59-14-606(3).
- 5655 (l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of
- 5656 Recovery Services within the Department of Human Services any relevant information
- 5657 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer
- 5658 who has become obligated to the Office of Recovery Services.
- 5659 (ii) The information described in Subsection (3)(l)(i) may be provided by the Office of
- 5660 Recovery Services to any other state's child support collection agency involved in enforcing
- 5661 that support obligation.
- 5662 (m) (i) Notwithstanding Subsection (1), upon request from the state court
- 5663 administrator, the commission shall provide to the state court administrator, the name, address,
- 5664 telephone number, county of residence, and Social Security number on resident returns filed
- 5665 under Chapter 10, Individual Income Tax Act.
- 5666 (ii) The state court administrator may use the information described in Subsection
- 5667 (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.
- 5668 (n) Notwithstanding Subsection (1), the commission shall at the request of a
- 5669 committee, commission, or task force of the Legislature provide to the committee, commission,

5670 or task force of the Legislature any information relating to a tax imposed under Chapter 9,  
5671 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

5672 (o) (i) As used in this Subsection (3)(o), "office" means the:

5673 (A) Office of the Legislative Fiscal Analyst; or

5674 (B) Office of Legislative Research and General Counsel.

5675 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii),  
5676 the commission shall at the request of an office provide to the office all information:

5677 (A) gained by the commission; and

5678 (B) required to be attached to or included in returns filed with the commission.

5679 (iii) (A) An office may not request and the commission may not provide to an office a  
5680 person's:

5681 (I) address;

5682 (II) name;

5683 (III) Social Security number; or

5684 (IV) taxpayer identification number.

5685 (B) The commission shall in all instances protect the privacy of a person as required by  
5686 Subsection (3)(o)(iii)(A).

5687 (iv) An office may provide information received from the commission in accordance  
5688 with this Subsection (3)(o) only:

5689 (A) as:

5690 (I) a fiscal estimate;

5691 (II) fiscal note information; or

5692 (III) statistical information; and

5693 (B) if the information is classified to prevent the identification of a particular return.

5694 (v) (A) A person may not request information from an office under Title 63G, Chapter  
5695 2, Government Records Access and Management Act, or this section, if that office received the  
5696 information from the commission in accordance with this Subsection (3)(o).

5697 (B) An office may not provide to a person that requests information in accordance with  
5698 Subsection (3)(o)(v)(A) any information other than the information the office provides in  
5699 accordance with Subsection (3)(o)(iv).

5700 (p) Notwithstanding Subsection (1), the commission may provide to the governing



5701 board of the agreement or a taxing official of another state, the District of Columbia, the United  
5702 States, or a territory of the United States:

5703 (i) the following relating to an agreement sales and use tax:

5704 (A) information contained in a return filed with the commission;

5705 (B) information contained in a report filed with the commission;

5706 (C) a schedule related to Subsection (3)(p)(i)(A) or (B); or

5707 (D) a document filed with the commission; or

5708 (ii) a report of an audit or investigation made with respect to an agreement sales and  
5709 use tax.

5710 (q) Notwithstanding Subsection (1), the commission may provide information  
5711 concerning a taxpayer's state income tax return or state income tax withholding information to  
5712 the Driver License Division if the Driver License Division:

5713 (i) requests the information; and

5714 (ii) provides the commission with a signed release form from the taxpayer allowing the  
5715 Driver License Division access to the information.

5716 (r) Notwithstanding Subsection (1), the commission shall provide to the Utah 911  
5717 Committee the information requested by the Utah 911 Committee under Subsection  
5718 53-10-602(3).

5719 (s) Notwithstanding Subsection (1), the commission shall provide to the Utah  
5720 Educational Savings Plan information related to a resident or nonresident individual's  
5721 contribution to a Utah Educational Savings Plan account as designated on the resident or  
5722 nonresident's individual income tax return as provided under Section 59-10-1313.

5723 (t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under  
5724 Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the  
5725 Department of Health or its designee with the adjusted gross income of an individual if:

5726 (i) an eligibility worker with the Department of Health or its designee requests the  
5727 information from the commission; and

5728 (ii) the eligibility worker has complied with the identity verification and consent  
5729 provisions of Sections 26-18-2.5 and 26-40-105.

5730 (u) Notwithstanding Subsection (1), the commission may provide to a county, as  
5731 determined by the commission, information declared on an individual income tax return in

5732 accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption  
5733 authorized under Section 59-2-103.

5734 (4) (a) Each report and return shall be preserved for at least three years.

5735 (b) After the three-year period provided in Subsection (4)(a) the commission may  
5736 destroy a report or return.

5737 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

5738 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,  
5739 the person shall be dismissed from office and be disqualified from holding public office in this  
5740 state for a period of five years thereafter.

5741 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in  
5742 accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with  
5743 Subsection (3)(o)(v):

5744 (i) is not guilty of a class A misdemeanor; and

5745 (ii) is not subject to:

5746 (A) dismissal from office in accordance with Subsection (5)(b); or

5747 (B) disqualification from holding public office in accordance with Subsection (5)(b).

5748 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.  
5749 Section 113. Section **72-6-106.5** is amended to read:

5750 **72-6-106.5. Reuse of industrial byproducts.**

5751 (1) As used in this section:

5752 (a) [~~"Executive secretary" has the same meaning~~] "Director" is as defined in Section  
5753 19-6-1102.

5754 (b) "Industrial byproduct" has the same meaning as defined in Section 19-6-1102.

5755 (c) "Public project" has the same meaning as defined in Section 19-6-1102.

5756 (d) "Reuse" has the same meaning as defined in Section 19-6-1102.

5757 (2) Consistent with the protection of public health and the environment and generally  
5758 accepted engineering practices, the department shall, to the maximum extent possible  
5759 considering budgetary factors:

5760 (a) allow and encourage the reuse of an industrial byproduct in:

5761 (i) a plan, specification, and estimate for a public project; and

5762 (ii) advertising for a bid for a public project;

5763 (b) allow for the reuse of an industrial byproduct in, among other uses:  
5764 (i) landscaping;  
5765 (ii) a general geotechnical fill;  
5766 (iii) a structural fill;  
5767 (iv) concrete or asphalt;  
5768 (v) a base or subbase; and  
5769 (vi) geotechnical drainage materials; and  
5770 (c) promulgate and apply public project specifications that allow reuse of an industrial  
5771 byproduct based upon:  
5772 (i) cost;  
5773 (ii) performance; and  
5774 (iii) engineered equivalency in lifespan, durability, and maintenance.  
5775 (3) After the ~~[executive secretary]~~ director issues an approval under Section 19-6-1104  
5776 and the department uses the industrial byproduct in compliance with the ~~[executive secretary's]~~  
5777 director's approval:  
5778 (a) the department is not responsible for further management of the industrial  
5779 byproduct; and  
5780 (b) the generator or originator of the industrial byproduct is not responsible for the  
5781 industrial byproduct under Title 19, Environmental Quality Code.  
5782 Section 114. **Effective date.**  
5783 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.  
5784 (2) The amendments to Sections 19-5-102 (Effective 07/01/12) and 19-5-104  
5785 (Effective 07/01/12) take effect on July 1, 2012.

---

---

**Legislative Review Note**  
**as of 11-17-11 11:55 AM**

**Office of Legislative Research and General Counsel**