

STORAGE TANKS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Keven J. Stratton

LONG TITLE

General Description:

This bill addresses regulation of storage tanks.

Highlighted Provisions:

This bill:

- defines terms;
- addresses fees;
- requires owners or operators of certain aboveground petroleum storage tanks to notify the director of the Division of Environmental Response and Remediation and establish financial assurance;
- provides for rulemaking;
- requires notifying the division in certain circumstances;
- addresses the Environmental Assurance Program and participation in the Petroleum Storage Tank Trust Fund;
- repeals outdated language;
- addresses state owned or leased tanks;
- imposes restrictions on delivery of petroleum;
- addresses civil penalties; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-6-105, as last amended by Laws of Utah 2020, Chapter 256
19-6-402, as last amended by Laws of Utah 2018, Chapter 281
19-6-403, as last amended by Laws of Utah 2012, Chapters 310 and 360
19-6-407, as last amended by Laws of Utah 2012, Chapter 360
19-6-408, as last amended by Laws of Utah 2014, Chapter 227
19-6-409, as last amended by Laws of Utah 2018, Chapter 31
19-6-410.5, as last amended by Laws of Utah 2014, Chapter 227
19-6-415, as last amended by Laws of Utah 1997, Chapter 172
19-6-415.5, as enacted by Laws of Utah 1997, Chapter 172
19-6-416, as last amended by Laws of Utah 2012, Chapter 360
19-6-420, as last amended by Laws of Utah 2014, Chapter 227
19-6-428, as last amended by Laws of Utah 2012, Chapter 360
19-8-119, as last amended by Laws of Utah 2014, Chapter 227

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

Section 1. Section **19-6-105** is amended to read:

19-6-105. Rules of board.

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

(a) establishing minimum standards for protection of human health and the environment, for the storage, collection, transport, transfer, recovery, treatment, and disposal of solid waste, including requirements for the approval by the director of plans for the construction, extension, operation, and closure of solid waste disposal sites;

(b) identifying wastes that are determined to be hazardous, including wastes designated

as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., Sec. 6921, et seq.;

(c) governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage, and disposal facilities, including requirements for keeping records, monitoring, submitting reports, and using a manifest, without treating high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling muds, and oil production brines in a manner more stringent than they are treated under federal standards;

(d) requiring an owner or operator of a treatment, storage, or disposal facility that is subject to a plan approval under Section 19-6-108 or that received waste after July 26, 1982, to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility;

(e) specifying the terms and conditions under which the director shall approve, disapprove, revoke, or review hazardous wastes operation plans;

(f) governing public hearings and participation under this part;

(g) establishing standards governing underground storage tanks and aboveground petroleum storage tanks, in accordance with Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

(h) relating to the collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities in accordance with the requirements of Section 19-6-106;

(i) defining closure plans, modification requests, or both for hazardous waste, as class I, class I with prior director approval, class II, or class III;

and

(j) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind to be thrown, or remain upon or in a street, road, ditch,

canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or well.

(2) If any of the following are determined to be hazardous waste and are therefore subjected to the provisions of this part, the board shall, in the case of landfills or surface impoundments that receive the solid wastes, take into account the special characteristics of the wastes, the practical difficulties associated with applying requirements for other wastes to the wastes, and site-specific characteristics, including the climate, geology, hydrology, and soil chemistry at the site, if the modified requirements assure protection of human health and the environment and are no more stringent than federal standards applicable to waste:

(a) solid waste from the extraction, beneficiation, or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium;

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; and

(c) cement kiln dust waste.

(3) The board shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. Those criteria shall apply to any facility or incinerator for which plan approval is required under Section 19-6-108.

Section 2. Section 19-6-402 is amended to read:

19-6-402. Definitions.

As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:

(a) a release from ~~[an underground storage tank or]~~ a petroleum storage tank; or

(b) the damage caused by that release.

(2) "Aboveground petroleum storage tank" means a storage tank that is, by volume, less than 10% buried in the ground, including the pipes connected to the storage tank and:

(a) (i) has attached underground piping; or

110 (ii) rests directly on the ground;

111 (b) contains regulated substances;

112 (c) has the capacity to hold 501 gallons or more; and

113 (d) is not:

114 (i) used in agricultural operations, as defined by the board by rule made in accordance
115 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

116 (ii) used for heating oil for consumptive use on the premises where stored;

117 (iii) related to a petroleum facility under SIC Code 2911 or 5171 of the 1987 Standard
118 Industrial Classification Manual of the federal Executive Office of the President, Office of
119 Management and Budget;

120 (iv) directly related to oil or gas production and gathering operations; or

121 (v) used in the fueling of aircraft or ground service equipment at a commercial airport
122 that serves passengers or cargo, with commercial airport defined in Section [72-10-102](#).

123 ~~[(2)]~~ (3) "Board" means the Waste Management and Radiation Control Board created
124 in Section [19-1-106](#).

125 ~~[(3)]~~ (4) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a
126 person.

127 ~~[(4)]~~ (5) "Certificate of compliance" means a certificate issued to a facility by the
128 director:

129 (a) demonstrating that an owner or operator of a facility containing one or more
130 petroleum storage tanks has met the requirements of this part; and

131 (b) listing ~~[at]~~ petroleum storage tanks at the facility, specifying:

132 (i) which tanks may receive petroleum; and

133 (ii) which tanks have not met the requirements for compliance.

134 ~~[(5)]~~ (6) "Certificate of registration" means a certificate issued to a facility by the
135 director demonstrating that an owner or operator of a facility containing one or more
136 ~~[underground]~~ petroleum storage tanks has:

(a) registered the tanks; and

(b) paid the annual [~~underground storage~~] tank fee.

[~~(6)~~] (7) (a) "Certified [~~underground~~] petroleum storage tank consultant" means a person who:

(i) for a fee, or in connection with services for which a fee is charged, provides or contracts to provide information, opinions, or advice relating to underground storage tank release:

(A) management;

(B) abatement;

(C) investigation;

(D) corrective action; or

(E) evaluation;

(ii) has submitted an application to the director;

(iii) received a written statement of certification from the director; and

(iv) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vii).

(b) "Certified [~~underground~~] petroleum storage tank consultant" does not include:

(i) (A) an employee of the owner or operator of the underground storage tank; or

(B) an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and markets petroleum products or manages underground storage tanks; or

(ii) a person licensed to practice law in this state who offers only legal advice on underground storage tank release:

(A) management;

(B) abatement;

(C) investigation;

(D) corrective action; or

(E) evaluation.

~~[(7)]~~ (8) "Closed" means ~~[an underground]~~ a petroleum storage tank that is no longer in use that has been:

(a) emptied and cleaned to remove ~~[all]~~ the liquids and accumulated sludges; and

(b) (i) removed ~~[from the ground]~~ along with all underground components; or

(ii) filled with an inert solid material, and in the case of piping, secured and capped.

~~[(8)]~~ (9) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for any of the following:

(a) cleanup or removal of the release;

(b) containment or isolation of the release;

(c) treatment of the release;

(d) correction of the cause of the release;

(e) monitoring and maintenance of the site of the release;

(f) provision of alternative water supplies to a person whose drinking water has become contaminated by the release; or

(g) temporary or permanent relocation, whichever is determined by the director to be more cost-effective, of a person whose dwelling has been determined by the director to be no longer habitable due to the release.

~~[(9)]~~ (10) "Costs" means money expended for:

(a) investigation;

(b) abatement action;

(c) corrective action;

(d) judgments, awards, and settlements for bodily injury or property damage to third parties;

(e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or

(f) costs incurred by the state risk manager in determining the actuarial soundness of

191 the fund.

192 ~~[(10)]~~ (11) "Covered by the fund" means the requirements of Section 19-6-424 have
193 been met.

194 ~~[(11)]~~ (12) "Director" means the director of the Division of Environmental Response
195 and Remediation.

196 ~~[(12)]~~ (13) "Division" means the Division of Environmental Response and
197 Remediation, created in Subsection 19-1-105(1)(c).

198 ~~[(13)]~~ (14) "Dwelling" means a building that is usually occupied by a person lodging
199 there at night.

200 ~~[(14)]~~ (15) "Enforcement proceedings" means a civil action or the procedures to
201 enforce orders established by Section 19-6-425.

202 ~~[(15)]~~ (16) "Facility" means ~~[all underground]~~ the petroleum storage tanks located on a
203 single parcel of property or on any property adjacent or contiguous to that parcel.

204 ~~[(16)]~~ (17) "Fund" means the Petroleum Storage Tank Trust Fund created in Section
205 19-6-409.

206 ~~[(17)]~~ (18) "Operator" means a person in control of or who is responsible on a daily
207 basis for the maintenance of ~~[an underground]~~ a petroleum storage tank that is in use for the
208 storage, use, or dispensing of a regulated substance.

209 ~~[(18)]~~ (19) "Owner" means:

210 (a) in the case of an underground storage tank in use on or after November 8, 1984, a
211 person who owns an underground storage tank used for the storage, use, or dispensing of a
212 regulated substance; ~~[and]~~

213 (b) in the case of an underground storage tank in use before November 8, 1984, but not
214 in use on or after November 8, 1984, a person who owned the tank immediately before the
215 discontinuance of its use for the storage, use, or dispensing of a regulated substance~~[-]; and~~

216 (c) in the case of an aboveground petroleum storage tank, a person who owns the
217 aboveground petroleum storage tank.

218 ~~[(19)]~~ (20) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:

219 (a) 60 degrees Fahrenheit; and

220 (b) a pressure of 14.7 pounds per square inch absolute.

221 ~~[(20)]~~ (21) "Petroleum storage tank" means a tank that:

222 (a) ~~[(i)]~~ is an underground storage tank;

223 ~~[(ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42~~
224 ~~U.S.C. Sec. 6991c, et seq.; and]~~

225 ~~[(iii) contains petroleum; or]~~

226 ~~[(b) the owner or operator voluntarily submits]~~

227 (b) is an aboveground petroleum storage tank; or

228 (c) is a tank containing regulated substances that is voluntarily submitted for
229 participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.

230 ~~[(21)]~~ (22) "Petroleum Storage Tank Restricted Account" means the account created in
231 Section 19-6-405.5.

232 ~~[(22)]~~ (23) "Program" means the Environmental Assurance Program under Section
233 19-6-410.5.

234 ~~[(23)]~~ (24) "Property damage" means physical injury to, destruction of, or loss of use of
235 tangible property.

236 ~~[(24)]~~ (25) (a) "Regulated substance" means petroleum and petroleum-based
237 substances comprised of a complex blend of hydrocarbons derived from crude oil through
238 processes of separation, conversion, upgrading, and finishing.

239 (b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual
240 fuel oils, lubricants, petroleum solvents, and used oils.

241 ~~[(25)]~~ (26) (a) "Release" means spilling, leaking, emitting, discharging, escaping,
242 leaching, or disposing a regulated substance from ~~[an underground storage tank or]~~ a petroleum
243 storage tank into ground water, surface water, or subsurface soils.

244 (b) A release of a regulated substance from ~~[an underground storage tank or]~~ a

petroleum storage tank is considered a single release from that tank system.

~~[(26)]~~ (27) (a) "Responsible party" means a person who:

(i) is the owner or operator of a facility;

(ii) owns or has legal or equitable title in a facility or ~~[an underground]~~ a petroleum storage tank;

(iii) owned or had legal or equitable title in a facility at the time petroleum was received or contained at the facility;

(iv) operated or otherwise controlled activities at a facility at the time petroleum was received or contained at the facility; or

(v) is an underground storage tank installation company.

(b) "Responsible party" is as defined in Subsections ~~[(26)]~~ (27)(a)(i), (ii), and (iii) does not include:

(i) a person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:

(A) primarily to protect the person's security interest in the facility; or

(B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan; or

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

(c) The exemption created by Subsection ~~[(26)]~~ (27)(b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "security interest" under this part are in accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

(e) The terms "participate in management" and "indicia of ownership" as defined in 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to

the fiduciaries listed in Subsection ~~[(26)]~~ (27)(b)(i)(B).

(28) "Rests directly on the ground" means that at least some portion of a petroleum storage tank situated aboveground is in direct contact with soil.

~~[(27)]~~ (29) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

~~[(28)]~~ (30) "State cleanup appropriation" means money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.

(31) "Underground piping" means piping that is buried in the ground that is in direct contact with soil and connected to an aboveground petroleum storage tank.

~~[(29)]~~ (32) "Underground storage tank" means a tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

~~[(a) a petroleum storage tank;]~~

~~[(b)]~~ (a) underground pipes and lines connected to a storage tank;

~~[(c)]~~ (b) underground ancillary equipment;

~~[(d)]~~ (c) a containment system; and

~~[(e)]~~ (d) each compartment of a multi-compartment storage tank.

~~[(30)]~~ (33) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization that installs underground storage tanks.

~~[(31)]~~ (34) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the director.

~~[(32)]~~ (35) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified ~~[underground]~~ petroleum storage tank consultant to assist in carrying out the functions described in Subsection ~~[(6)]~~ (7)(a).

Section 3. Section **19-6-403** is amended to read:

19-6-403. Powers and duties of board.

299 The board shall regulate ~~[an underground storage tank or]~~ a petroleum storage tank by:

300 (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
301 making rules that:

302 (a) provide for the:

303 (i) certification of an underground storage tank installer, inspector, tester, or remover;

304 (ii) registration of an underground storage tank operator;

305 (iii) registration of an underground storage tank;

306 (iv) administration of the petroleum storage tank program;

307 (v) format of, and required information in, a record kept by an underground storage or
308 petroleum storage tank owner or operator who is participating in the fund;

309 (vi) voluntary participation in the fund for~~[:]~~ a tank containing regulated substances,
310 but excluded from the definition of a petroleum storage tank as provided in Section 19-6-415;

311 ~~[(A) an above ground petroleum storage tank; and]~~

312 ~~[(B) a tank;]~~

313 ~~[(F) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and]~~

314 ~~[(H) specified in Section 19-6-415; and]~~

315 (vii) certification of ~~[an underground]~~ a petroleum storage tank consultant including:

316 (A) a minimum education or experience requirement; and

317 (B) a recognition of the educational requirement of a professional engineer licensed
318 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
319 Act, as meeting the education requirement for certification; and

320 (viii) compliance with this chapter by an aboveground petroleum storage tank;

321 (b) adopt the requirements for an underground storage tank contained in:

322 (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may
323 be amended in the future; and

324 (ii) an applicable federal requirement authorized by the federal law referenced in
325 Subsection (1)(b)(i); and

(c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991[~~e~~], et seq., as may be amended in the future, for the state's assumption of primacy in the regulation of an underground storage tank; and

(2) applying the provisions of this part.

Section 4. Section **19-6-407** is amended to read:

19-6-407. Underground storage tank registration -- Change of ownership or operation -- Aboveground petroleum storage tank -- Civil penalty.

(1) (a) ~~[Each]~~ An owner or operator of an underground storage tank shall register the tank with the director if the tank:

(i) is in use; or

(ii) was closed after January 1, 1974.

(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the ~~[executive secretary]~~ director of the change within 30 days after the change occurs.

(c) Each installer of an underground storage tank shall notify the director of the completed installation within 60 days following the installation of an underground storage tank.

(2) (a) The owner or operator of an aboveground petroleum storage tank shall notify the director of the location of the aboveground petroleum storage tank by no later than:

(i) June 30, 2022, if the aboveground petroleum storage tank is installed on or before June 30, 2022;

(ii) if the aboveground petroleum storage tank is installed on or after July 1, 2022, 30 days after the day on which the aboveground petroleum storage tank is installed;

(iii) 30 days before the aboveground petroleum storage tank is closed; or

(iv) within 24 hours of the discovery of a reportable release or suspected release, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, from an aboveground petroleum storage tank.

(b) When notifying the director under this Subsection (2), an owner of an aboveground

petroleum storage tank described in this Subsection (2) shall pay a processing fee established under Section [63J-1-504](#).

(c) Before operating an aboveground petroleum storage tank on or after June 30, 2023, the owner or operator of the aboveground petroleum storage tank shall provide financial responsibility by participating in the Environmental Assurance Program or demonstrating coverage through another method approved by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) (i) The director shall certify when an owner or operator of an aboveground petroleum storage tank is in compliance with this Subsection (2).

(ii) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of an aboveground petroleum storage tank under Subsection (2)(a) that is not certified by the director as in compliance with this Subsection (2).

~~[(2)]~~ (3) The director may issue a notice of agency action assessing a civil penalty in the amount of \$1,000 if an owner, operator, or installer of a petroleum ~~[or underground]~~ storage tank fails to register the tank or provide notice as required in Subsection (1) or (2).

~~[(3)]~~ (4) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section [19-6-405.5](#).

Section 5. Section **19-6-408** is amended to read:

19-6-408. Petroleum storage tank registration fee -- Processing fee.

(1) The department may assess an annual ~~[underground]~~ petroleum storage tank registration fee against an owner or operator of ~~[an underground]~~ a petroleum storage tank that has not been closed. These fees shall be:

(a) billed per facility;

(b) due on July 1 annually;

(c) deposited with the department as dedicated credits;

(d) used by the department for the administration of the ~~[underground]~~ petroleum storage tank program outlined in this part; and

(e) established under Section 63J-1-504.

(2) (a) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.

(b) (i) In addition to the fee under Subsection (1), an owner or operator of a petroleum storage tank who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee established under Section 63J-1-504.

(ii) This Subsection (2)(b) does not apply to a self-insured public entity.

(c) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee under Subsection (2)(b) shall be paid for each document submitted.

(3) ~~[Any funds]~~ Money provided for administration of the ~~[underground]~~ petroleum storage tank program under this section that ~~[are]~~ is not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

(4) The director shall provide all owners or operators who pay the annual ~~[underground]~~ petroleum storage tank registration fee a certificate of registration.

(5) (a) The director may issue a notice of agency action assessing a civil penalty of \$1,000 per facility if an owner or operator of ~~[an underground]~~ a petroleum storage tank facility fails to pay the required fee within 60 days after the July 1 due date.

(b) The registration fee and late payment penalty accrue interest at 12% per annum.

(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The director may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.

(d) The director may waive any penalty assessed under this Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

Section 6. Section **19-6-409** is amended to read:

19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.

(1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Trust Fund."

(b) The sole sources of revenues for the fund are:

(i) petroleum storage tank fees paid under Section 19-6-411;

(ii) underground storage tank installation company permit fees paid under Section 19-6-411;

(iii) the environmental assurance fee and penalties paid under Section 19-6-410.5;

(iv) appropriations to the fund;

(v) principal and interest received from the repayment of loans made by the director under Subsection (5); and

(vi) interest accrued on revenues listed in this Subsection (1)(b).

(c) Interest earned on fund money is deposited into the fund.

(2) The director may expend money from the fund to pay costs:

(a) covered by the fund under Section 19-6-419;

(b) of administering the:

(i) fund; and

(ii) environmental assurance program and fee under Section 19-6-410.5;

(c) incurred by the state for a legal service or claim adjusting service provided in connection with a claim, judgment, award, or settlement for bodily injury or property damage to a third party;

(d) incurred by the ~~[executive]~~ director in determining the actuarial soundness of the fund;

(e) incurred by a third party claiming injury or damages from a release reported on or after May 11, 2010, for hiring a certified ~~[underground]~~ petroleum storage tank consultant:

(i) to review an investigation or corrective action by a responsible party; and

- 434 (ii) in accordance with Subsection (4); and
435 ~~[(f) incurred by the department to implement the study described in Subsection~~
436 ~~19-6-410.5(8), including a one-time cost of up to \$200,000 for the actuarial study described in~~
437 ~~Subsection 19-6-410.5(8)(a)(ii); and]~~
438 ~~[(g)]~~ (f) allowed under this part that are not listed under this Subsection (2).
439 (3) Costs for the administration of the fund and the environmental assurance fee shall
440 be appropriated by the Legislature.
441 (4) The director shall:
442 (a) in paying costs under Subsection (2)(e):
443 (i) determine a reasonable limit on costs paid based on the:
444 (A) extent of the release;
445 (B) impact of the release; and
446 (C) services provided by the certified [~~underground~~] petroleum storage tank consultant;
447 (ii) pay, per release, costs for one certified [~~underground~~] petroleum storage tank
448 consultant agreed to by all third parties claiming damages or injury;
449 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and
450 (iv) not pay legal costs of third parties;
451 (b) review and give careful consideration to reports and recommendations provided by
452 a certified [~~underground~~] petroleum storage tank consultant hired by a third party; and
453 (c) make reports and recommendations provided under Subsection (4)(b) available on
454 the Division of Environmental Response and Remediation's website.
455 (5) The director may loan, in accordance with this section, money available in the fund
456 to a person to be used for:
457 (a) upgrading an underground storage tank;
458 (b) replacing an underground storage tank; or
459 (c) permanently closing an underground storage tank.
460 (6) (a) A person may apply to the director for a loan under Subsection (5)(c) if all tanks

owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the fund.

(b) A person may apply to the director for a loan under Subsection (5)(a) or (b) if:

(i) the requirements of Subsection (6)(a) are met; and

(ii) the person participates in the Environmental Assurance Program under Section 19-6-410.5.

(7) The director shall consider loan applications under Subsection (6) to meet the following objectives:

(a) support availability of gasoline in rural parts of the state;

(b) support small businesses; and

(c) reduce the threat of a petroleum release endangering the environment.

(8) (a) A loan made under this section may not be for more than:

(i) \$300,000 for all tanks at any one facility;

(ii) \$100,000 per tank; and

(iii) 80% of the total cost of:

(A) upgrading an underground storage tank;

(B) replacing an underground storage tank; or

(C) permanently closing an underground storage tank.

(b) A loan made under this section shall:

(i) have a fixed annual interest rate of 0%;

(ii) have a term no longer than 10 years;

(iii) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (9); and

(iv) comply with rules made by the board under Subsection (9).

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:

(a) form, content, and procedure for a loan application;

488 (b) criteria and procedures for prioritizing a loan application;
489 (c) requirements and procedures for securing a loan;
490 (d) procedures for making a loan;
491 (e) procedures for administering and ensuring repayment of a loan, including late
492 payment penalties;
493 (f) procedures for recovering on a defaulted loan; and
494 (g) the maximum amount of the fund that may be used for loans.
495 (10) A decision by the director to loan money from the fund and otherwise administer
496 the fund is not subject to Title 63G, Chapter 4, Administrative Procedures Act.
497 (11) The Legislature shall appropriate money from the fund to the department for the
498 administration costs associated with making loans under this section.
499 (12) The director may enter into an agreement with a public entity or private
500 organization to perform a task associated with administration of loans made under this section.
501 Section 7. Section **19-6-410.5** is amended to read:
502 **19-6-410.5. Environmental Assurance Program -- Participant fee -- State Tax**
503 **Commission administration, collection, and enforcement of tax.**
504 (1) As used in this section:
505 (a) "Cash balance" means cash plus investments and current accounts receivable minus
506 current accounts payable, excluding the liabilities estimated by the executive director.
507 (b) "Commission" means the State Tax Commission, as defined in Section [59-1-101](#).
508 (2) (a) There is created an Environmental Assurance Program.
509 (b) The program shall provide to a participating owner or operator, upon payment of
510 the fee imposed under Subsection (4), assistance with satisfying the financial responsibility
511 requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum
512 Storage Tank Trust Fund established in Section [19-6-409](#), subject to the terms and conditions
513 of [~~Chapter 6, Part 4, Underground Storage Tank Act~~] this part, and rules implemented under
514 [~~that~~] this part.

515 (3) (a) Subject to Subsection (3)(b), participation in the program is voluntary.

516 (b) An owner or operator seeking to satisfy financial responsibility requirements
517 through the program shall use the program for all petroleum [~~underground~~] storage tanks that
518 the owner or operator owns or operates.

519 (4) (a) There is assessed an environmental assurance fee of 13/20 cent per gallon on the
520 first sale or use of petroleum products in the state.

521 (b) The environmental assurance fee and any other revenue collected under this section
522 shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and
523 used solely for the purposes listed in Section 19-6-409.

524 (5) (a) The commission shall administer, collect, and enforce the fee imposed under
525 this section according to the same procedures used in the administration, collection, and
526 enforcement of the state sales and use tax under:

527 (i) Title 59, Chapter 1, General Taxation Policies; and

528 (ii) Title 59, Chapter 12, Part 1, Tax Collection.

529 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
530 commission shall make rules to establish:

531 (i) the method of payment of the environmental assurance fee;

532 (ii) the procedure for reimbursement or exemption of an owner or operator that does
533 not participate in the program, including an owner or operator of an above ground storage tank;
534 and

535 (iii) the procedure for confirming with the department that an owner or operator
536 qualifies for reimbursement or exemption under Subsection (5)(b)(ii).

537 (c) The commission may retain an amount not to exceed 2.5% of fees collected under
538 this section for the cost to the commission of rendering its services.

539 (d) By January 1, 2015, for underground storage tanks, and by July 1, 2026, for
540 aboveground petroleum storage tanks, the division shall, by rule, create:

541 (i) a model for assessing the risk profile of each facility participating in the program,

for purposes of qualifying for a rebate of a portion of the environmental assurance fee described in Subsection (4) collected from an owner or operator that participates in the program; and

(ii) a rebate schedule listing the amount of the environmental assurance fee that an owner or operator participating in the program may qualify for based on risk profiles determined by the model developed under Subsection (5)(d)(i).

(e) The rebate described in Subsection (5)(d):

(i) may not exceed 40% of the actual fee collected from an owner or operator of a low-risk underground storage tank as defined in the risk-based model developed under Subsection (5)(d);

(ii) is administered on a per facility basis;

(iii) is based on the facility's risk profile at the end of the prior calendar year;

(iv) is only applicable to an environmental assurance fee collected after December 30, 2014, for underground storage tanks, and June 30, 2026, for aboveground petroleum storage tanks; and

(v) shall be claimed in the form of a refund from the commission.

(f) The refund described in Subsection (5)(e)(v) may be claimed on a monthly basis.

(6) (a) The person responsible for payment of the fee under this section shall, by the last day of the month following the month in which the sale occurs:

(i) complete and submit the form prescribed by the commission; and

(ii) pay the fee to the commission.

(b) (i) The penalties and interest for failure to file the form or to pay the environmental assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.

(ii) The commission shall deposit penalties and interest collected under this section in the Petroleum Storage Tank Trust Fund.

(c) The commission shall report to the department a person who is delinquent in payment of the fee under this section.

(7) (a) (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of any year exceeds ~~[\$30,000,000]~~ \$50,000,000, the assessment of the environmental assurance fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.

(ii) The reduction under this Subsection (7)(a) remains in effect until modified by the Legislature in a general or special session.

(b) The commission shall determine the cash balance of the fund each year as of June 30.

(c) Before September 1 of each year, the department shall provide the commission with the accounts payable of the fund as of June 30.

~~[(8) The department shall:]~~

~~[(a) (i) study the adverse selection of participants in the program and the actuarial deficit of the fund;]~~

~~[(ii) obtain an actuarial study and related consultation that provides the necessary calculations to minimize adverse selection in the program and the actuarial deficit of the fund;]~~

~~[(iii) develop a risk characterization profile for participants in the program and recommend a fee schedule based on fair market rates;]~~

~~[(iv) develop a strategy to reduce the negative equity balance of the fund and, based on the fee schedule described in Subsection (8)(a)(iii), a corresponding time schedule showing an actuarial reduction in the negative equity balance of the fund; and]~~

~~[(v) identify and study other adverse impacts to the program and the fund; and]~~

~~[(b) based on the information obtained and developed under Subsection (8)(a), prepare a recommendation to implement a strategy to minimize adverse selection of participants in the program and eliminate or reduce the actuarial deficit of the fund.]~~

~~[(9) The department shall report to the Natural Resources, Agriculture, and Environment Interim Committee before December 31, 2013, regarding:]~~

~~[(a) the information obtained and developed under Subsection (8)(a); and]~~

~~[(b) the recommendation prepared under Subsection (8)(b).]~~

Section 8. Section **19-6-415** is amended to read:

19-6-415. Participation of excluded or exempt tanks.

(1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280, Subpart A, may become eligible for payments from the Petroleum Storage Tank Trust Fund if [it] the underground storage tank:

(a) (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;

(ii) is used for storing heating oil for consumptive use on the premises where stored; or

(iii) is used for any oxygenate blending component for motor fuels;

(b) complies with the requirements of Section **19-6-412**;

(c) meets other requirements established by rules made under Section **19-6-403**; and

(d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections **19-6-408**, **19-6-410.5**, and **19-6-411**.

(2) An [~~above ground petroleum storage tank~~] aboveground petroleum storage tank excluded from the definition of aboveground petroleum storage tank under Section **19-6-402**, may become eligible for payments from the Petroleum Storage Tank Trust Fund if the owner or operator:

(a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections **19-6-408**, **19-6-410.5**, and **19-6-411**;

(b) complies with the requirements of Section **19-6-412**; and

(c) meets other requirements established by rules made under Section **19-6-403**.

Section 9. Section **19-6-415.5** is amended to read:

19-6-415.5. State owned or leased tanks to participate in program.

Any underground storage tank or aboveground petroleum storage tank owned or leased by the state [~~of Utah~~] and subject to the financial assurance requirements established by division rule shall participate in the program.

Section 10. Section **19-6-416** is amended to read:

19-6-416. Restrictions on delivery of petroleum -- Civil penalty.

(1) (a) ~~[After July 1, 1991, a]~~ A person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection [19-6-411\(7\)](#).

(b) Beginning July 1, 2023, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in an aboveground petroleum storage tank that is not in compliance with Subsection [19-6-407\(2\)](#).

(2) ~~[Any]~~ A person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank or aboveground petroleum storage tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each occurrence.

(3) The director shall issue a notice of agency action assessing a civil penalty of not more than \$500 against any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank ~~[or underground storage tank]~~.

(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank ~~[or underground storage tank]~~ that is identified in compliance with Subsection [19-6-411\(7\)](#) or 19-6-407(2) and rules made under ~~[that]~~ the relevant subsection, whether or not the tank is in actual compliance with the other requirements of Section [19-6-411](#) or 19-6-407.

Section 11. Section **19-6-420** is amended to read:

19-6-420. Releases -- Abatement actions -- Corrective actions.

(1) If the director determines that a release from a petroleum storage tank has occurred, the director shall:

(a) identify and name as many of the responsible parties as reasonably possible; and

(b) determine which responsible parties, if any, are covered by the fund regarding the release in question.

650 (2) Regardless of whether the petroleum storage tank generating the release is covered
651 by the fund:

652 (a) the director may order the owner or operator to take abatement, or investigative or
653 corrective action, including the submission of a corrective action plan; and

654 (b) if the owner or operator fails to comply with the action ordered by the director
655 under Subsection (2)(a), the director may take one or more of the following actions:

656 (i) subject to the conditions in this part, use money from the fund, if the tank involved
657 is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup
658 Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective
659 action;

660 (ii) commence an enforcement proceeding;

661 (iii) enter into agreements or issue orders as allowed by Section 19-6-424.5;

662 (iv) recover costs from responsible parties equal to their proportionate share of liability
663 as determined by Section 19-6-424.5; or

664 (v) where the owner or operator is the responsible party, revoke the responsible party's
665 certificate of compliance, as described in Section 19-6-414.

666 (3) (a) Subject to the limitations established in Section 19-6-419, the director shall
667 provide money from the fund for abatement action for a release generated by a tank covered by
668 the fund if:

669 (i) the owner or operator takes the abatement action ordered by the director; and

670 (ii) the director approves the abatement action.

671 (b) If a release presents the possibility of imminent and substantial danger to the public
672 health or the environment, the owner or operator may take immediate abatement action and
673 petition the director for reimbursement from the fund for the costs of the abatement action. If
674 the owner or operator can demonstrate to the satisfaction of the director that the abatement
675 action was reasonable and timely in light of circumstances, the director shall reimburse the
676 petitioner for costs associated with immediate abatement action, subject to the limitations

established in Section 19-6-419.

(c) The owner or operator shall notify the director within 24 hours of the abatement action taken.

(4) (a) If the director determines corrective action is necessary, the director shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the director shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the director shall consider the following:

(i) the threat to public health;

(ii) the threat to the environment; and

(iii) the cost-effectiveness of alternative corrective actions.

(5) If the director approves the corrective action plan or develops the director's own corrective action plan, the director shall:

(a) approve the estimated cost of implementing the corrective action plan;

(b) order the owner or operator to implement the corrective action plan;

(c) (i) if the release is covered by the fund, determine the amount of fund money to be allocated to an owner or operator to implement a corrective action plan; and

(ii) subject to the limitations established in Section 19-6-419, provide money from the fund to the owner or operator to implement the corrective action plan.

(6) (a) The director may not distribute any money from the fund for corrective action until the owner or operator obtains the director's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the director and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

(i) the owner or operator submits the corrective action plan to the director within seven days after beginning corrective action; and

(ii) the director approves the corrective action plan.

(7) If the director disapproves the plan, the director shall solicit a new corrective action plan from the owner or operator.

(8) If the director disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the director may:

(a) develop an alternative corrective action plan; and

(b) act as authorized under Subsections (2) and (5).

(9) (a) When notified that the corrective action plan has been implemented, the director shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.

(b) If the director determines the corrective action has not been properly performed or completed, the director may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.

(10) (a) For releases not covered by the fund, the director may recover from the responsible party expenses incurred by the division for managing and overseeing the abatement, and investigation or corrective action of the release. These expenses shall be:

(i) billed quarterly per release;

(ii) due within 30 days of billing;

(iii) deposited with the division as dedicated credits;

(iv) used by the division for the administration of the underground storage tank program outlined in this part; and

(v) billed per hourly rates as established under Section 63J-1-504.

(b) If the responsible party fails to pay expenses under Subsection 10(a), the director may:

(i) revoke the responsible party's certificate of compliance, as described in Section 19-6-414, if the responsible party is also the owner or operator; and

(ii) pursue an action to collect expenses in Subsection 10(a), including the costs of collection.

(11) This section does not apply to a release of a substance defined as a regulated substance in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Section 12. Section **19-6-428** is amended to read:

19-6-428. Eligibility for participation in the fund.

(1) Subject to the requirements of Section **19-6-410.5**, ~~[all owners and operators of]~~ an owner or operator of an existing petroleum storage [tanks that were] tank that is covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying the tank fees and environmental assurance fee as provided in Sections **19-6-410.5** and **19-6-411**.

(2) ~~[Any new petroleum storage tanks that were]~~ A new petroleum storage tank that is installed after May 5, 1997, or ~~[tanks]~~ a tank eligible under Section **19-6-415**, may elect to participate in the program by complying with the requirements of this part.

(3) (a) ~~[All owners and operators of petroleum storage tanks who elect]~~ An owner or operator of a petroleum storage tank who elects to not participate in the program, including by the use of an alternative financial assurance mechanism, shall, in order to subsequently participate in the program:

(i) perform a tank tightness test;

(ii) except as provided in Subsection (3)(b), ~~(c), or (d)~~, perform a site check, including soil and, when applicable, groundwater samples, to demonstrate that no release of petroleum exists or that there has been adequate remediation of releases as required by board rules;

(iii) provide the required tests and samples to the director; and

(iv) comply with the requirements of this part.

(b) A site check under Subsection (3)(a)(ii) is not required if the director determines, with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released.

(c) For an aboveground petroleum storage tank, a site check under Subsection (3)(a)(ii)

is not required to participate in the program except that if the aboveground petroleum storage tank does not conduct a site check:

(i) historic contamination, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(A) subject to the other provisions of this Subsection (3)(c), is covered only if the historic contamination is discovered more than five years after the day the owner or operator elects to participate in the program;

(B) is 20% covered beginning on the five-year date; and

(C) is covered at increasing amounts of 20% each year after the five-year date until at the 10-year date historic contamination is covered at 100%; and

(ii) new releases, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are covered at 100% beginning on the day the aboveground petroleum storage tank participates in the program.

(d) For an underground storage tank that previously elected not to participate in the program, a site check under Subsection (3)(a)(ii) is not required to begin participating in the program, except that if the underground storage tank does not conduct a site check:

(i) historic contamination, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(A) subject to the other provisions of this Subsection (3)(d), is covered only if the historic contamination is discovered more than five years after the day the owner or operator elects to participate in the program;

(B) is 20% covered beginning on the five-year date; and

(C) is covered at increasing amounts of 20% each year after the five-year date until at the 10-year date historic contamination is covered at 100%; and

(ii) new releases, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are covered at 100% beginning on the day the underground storage tank participates in the program.

(4) The director shall review the tests and samples provided under Subsection (3)(a)(iii) to determine:

(a) whether or not any release of the petroleum has occurred; or

(b) if the remediation is adequate.

Section 13. Section **19-8-119** is amended to read:

19-8-119. Apportionment or contribution.

(1) Any party who incurs costs under a voluntary agreement entered into under this part in excess of ~~his~~ the party's liability may seek contribution in an action in district court from any other party who is or may be liable under Subsection 19-6-302(21) or 19-6-402~~[(26)]~~(27) for the excess costs after providing written notice to any other party that the party bringing the action has entered into a voluntary agreement and will incur costs.

(2) In resolving claims made under Subsection (1), the court shall allocate costs using the standards in Subsection 19-6-310(2).