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₵ 01-04-12 3:31 PM ₵

DEPARTMENT OF ENVIRONMENTAL QUALITY BOARDS REVISIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Bill Wright

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;

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

19-1-105, as enacted by Laws of Utah 1991, Chapter 112
19-1-201, as last amended by Laws of Utah 2010, Chapter 17
19-1-301, as last amended by Laws of Utah 2009, Chapter 377
19-2-102, as last amended by Laws of Utah 2008, Chapter 68
19-2-103, as last amended by Laws of Utah 2010, Chapter 286
19-2-104, as last amended by Laws of Utah 2011, Chapter 174
19-2-105, as last amended by Laws of Utah 2005, Chapter 2
19-2-107, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-2-108, as last amended by Laws of Utah 2009, Chapter 377
19-2-109, as last amended by Laws of Utah 2010, Chapter 90
19-2-109.1, as last amended by Laws of Utah 2011, Chapter 297
19-2-109.2, as last amended by Laws of Utah 2010, Chapters 286 and 324
19-2-110, as last amended by Laws of Utah 2009, Chapter 377
19-2-115, as last amended by Laws of Utah 2011, Chapter 297
19-2-116, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-2-117, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-2-120, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-3-102, as last amended by Laws of Utah 2001, Chapter 314

19-3-103, as last amended by Laws of Utah 2010, Chapter 286
19-3-103.5, as last amended by Laws of Utah 2009, Chapter 377
19-3-104, as last amended by Laws of Utah 2009, Chapter 183
19-3-105, as last amended by Laws of Utah 2007, Chapter 26
19-3-106.4, as last amended by Laws of Utah 2009, Chapter 183
19-3-108, as enacted by Laws of Utah 1991, Chapter 112
19-3-109, as last amended by Laws of Utah 2008, Chapter 382
19-3-111, as last amended by Laws of Utah 2008, Chapter 382
19-4-102, as last amended by Laws of Utah 2008, Chapter 51
19-4-103, as last amended by Laws of Utah 2010, Chapter 286
19-4-104, as last amended by Laws of Utah 2009, Chapter 377
19-4-106, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-4-107, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-4-109, as last amended by Laws of Utah 2008, Chapter 382
19-5-102 (Effective 07/01/12), as last amended by Laws of Utah 2011, Chapters 155, 297, and 304
19-5-103, as last amended by Laws of Utah 2010, Chapter 286
19-5-104 (Effective 07/01/12), as last amended by Laws of Utah 2011, Chapter 304
19-5-105.5, as enacted by Laws of Utah 2011, Chapter 155
19-5-106, as last amended by Laws of Utah 1995, Chapter 114
19-5-107, as last amended by Laws of Utah 1998, Chapter 271
19-5-108, as last amended by Laws of Utah 1995, Chapter 114
19-5-111, as last amended by Laws of Utah 2009, Chapter 377
19-5-112, as last amended by Laws of Utah 2009, Chapter 377
19-5-113, as last amended by Laws of Utah 2008, Chapter 382
19-5-114, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-5-115, as last amended by Laws of Utah 2011, Chapters 297 and 340
19-6-102, as last amended by Laws of Utah 2011, Chapter 366
19-6-102.1, as enacted by Laws of Utah 1996, Chapter 230
19-6-102.6, as last amended by Laws of Utah 2008, Chapter 382
19-6-103, as last amended by Laws of Utah 2010, Chapter 286

19-6-104, as last amended by Laws of Utah 2009, Chapter 377
19-6-105, as last amended by Laws of Utah 2008, Chapter 382
19-6-107, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-6-108, as last amended by Laws of Utah 2011, Chapters 133 and 297
19-6-108.3, as last amended by Laws of Utah 2008, Chapters 250 and 382
19-6-109, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-6-112, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-6-117, as renumbered and amended by Laws of Utah 1991, Chapter 112
19-6-119, as last amended by Laws of Utah 2006, Chapter 251
19-6-120, as last amended by Laws of Utah 2010, Chapter 391
19-6-402, as last amended by Laws of Utah 2010, Chapter 324
19-6-403, as last amended by Laws of Utah 2008, Chapters 56 and 382
19-6-404, as last amended by Laws of Utah 1997, Chapter 172
19-6-405.3, as last amended by Laws of Utah 2010, Chapter 186
19-6-405.7, as last amended by Laws of Utah 2002, Chapter 256
19-6-407, as last amended by Laws of Utah 1997, Chapter 172
19-6-408, as last amended by Laws of Utah 2009, Chapter 183
19-6-409, as last amended by Laws of Utah 2010, Chapter 186
19-6-411, as last amended by Laws of Utah 1998, Chapter 95
19-6-412, as last amended by Laws of Utah 1997, Chapter 172
19-6-413, as last amended by Laws of Utah 2011, Chapter 297
19-6-414, as last amended by Laws of Utah 1997, Chapter 172
19-6-416, as last amended by Laws of Utah 1999, Chapter 21
19-6-416.5, as enacted by Laws of Utah 1994, Chapter 297
19-6-417, as last amended by Laws of Utah 1997, Chapter 172
19-6-418, as last amended by Laws of Utah 1998, Chapter 255
19-6-419, as last amended by Laws of Utah 2010, Chapter 186
19-6-420, as last amended by Laws of Utah 1998, Chapter 255
19-6-421, as last amended by Laws of Utah 1997, Chapter 172
19-6-423, as last amended by Laws of Utah 2010, Chapter 186
19-6-424, as last amended by Laws of Utah 1997, Chapter 172

19-6-424.5, as last amended by Laws of Utah 1998, Chapter 255
19-6-425, as last amended by Laws of Utah 1997, Chapter 172
19-6-428, as last amended by Laws of Utah 2006, Chapter 107
19-6-601, as enacted by Laws of Utah 1991, Chapter 122 and renumbered and amended by Laws of Utah 1991, Chapter 112
19-6-606, as last amended by Laws of Utah 1996, Chapter 79
19-6-703, as last amended by Laws of Utah 2010, Chapter 324
19-6-704, as last amended by Laws of Utah 2009, Chapter 377
19-6-705, as last amended by Laws of Utah 1997, Chapter 186
19-6-706, as last amended by Laws of Utah 2010, Chapter 324
19-6-710, as last amended by Laws of Utah 1997, Chapter 186
19-6-711, as enacted by Laws of Utah 1993, Chapter 283
19-6-712, as last amended by Laws of Utah 2009, Chapter 388
19-6-717, as enacted by Laws of Utah 1993, Chapter 283
19-6-718, as enacted by Laws of Utah 1993, Chapter 283
19-6-721, as last amended by Laws of Utah 2008, Chapter 382
19-6-803, as last amended by Laws of Utah 2008, Chapter 382
19-6-804, as last amended by Laws of Utah 2002, Chapter 256
19-6-806, as last amended by Laws of Utah 2009, Chapter 183
19-6-811, as last amended by Laws of Utah 2002, Chapter 256
19-6-817, as last amended by Laws of Utah 2002, Chapter 256
19-6-819, as last amended by Laws of Utah 2008, Chapter 382
19-6-820, as last amended by Laws of Utah 2001, Chapter 165
19-6-821, as last amended by Laws of Utah 2008, Chapter 382
19-6-1002, as enacted by Laws of Utah 2006, Chapter 187
19-6-1003, as last amended by Laws of Utah 2009, Chapter 183
19-6-1004, as enacted by Laws of Utah 2006, Chapter 187
19-6-1005, as enacted by Laws of Utah 2006, Chapter 187
19-6-1102, as enacted by Laws of Utah 2009, Chapter 340
19-6-1104, as enacted by Laws of Utah 2009, Chapter 340
19-8-106, as enacted by Laws of Utah 1997, Chapter 247

19-8-119, as last amended by Laws of Utah 2009, Chapter 356

41-6a-1644, as last amended by Laws of Utah 2009, Chapter 333

59-1-403, as last amended by Laws of Utah 2011, Chapters 46, 344, and 410

72-6-106.5, as enacted by Laws of Utah 2009, Chapter 340

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

appointed by the executive director.

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

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

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

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

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

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

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

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

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

(1) The department shall:

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

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

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

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

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

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

(iv) is reviewed and updated annually[.]; and

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

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

(A) board meeting attendance; and

(B) conflicts of interest procedures; and

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

(2) The department may:

(a) investigate matters affecting the environment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19-1-301. Adjudicative proceedings.

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

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

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

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

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

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

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

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

(B) this title; and

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

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

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

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

(b) has a minimum of:

(i) 10 years of experience practicing law; and

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

(A) environmental compliance;

(B) natural resources;

(C) regulation by an administrative agency; or

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

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

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

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

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

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

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

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

(i) shall conduct an adjudicative proceeding;

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

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

(A) written findings of fact;

(B) written conclusions of law; and

(C) a recommended order.

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

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

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

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

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

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

(ii) a special master who:

(A) is appointed by the executive director; and

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

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

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

(a) compel:

(i) the attendance of a witness; and

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

(b) administer an oath;

(c) take testimony; and

(d) receive evidence as necessary.

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

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

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

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

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

19-2-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

[~~(11)~~] (12) (a) "Facility" means machinery, equipment, structures, or any part or accessories of them, installed or acquired for the primary purpose of controlling or disposing of

air pollution.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) one representative who:

(A) is not connected with industry;

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

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

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

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

(iv) one representative from the fuels industry;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) be a resident of Utah;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Section 63A-3-106;

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

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

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

19-2-104. Powers of board.

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

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

(b) establishing air quality standards;

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

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

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

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

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

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

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

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

requirements;

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

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

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

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

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

(3) (a) The board may:

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

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

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

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

(ii) order the director to:

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

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

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

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

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

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

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

(b) The board shall:

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

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

(B) approve or disapprove the settlement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

asbestos abatement contractors and supervisors, or asbestos abatement workers;

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

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

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

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

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

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

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

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

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

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

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

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

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

19-2-105. Duties of board.

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

(1) the implementation of a standardized inspection and maintenance program;

(2) out-of-state registration of vehicles used in Utah;

(3) out-of-county registration of vehicles used within the areas required to have an inspection and maintenance program;

(4) use of the farm truck exemption;

(5) mechanic training programs;

(6) emissions standards; and

(7) emissions waivers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The director may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The notice shall be:

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

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

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

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

(e) The order shall be published:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) revoke the operating permit.

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

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

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

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

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

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

(a) the applicant;

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

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

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

19-2-109.2. Small business assistance program.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Members may serve more than one term.

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

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

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

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

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

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

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

(a) Section 63A-3-106;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) an applicable standard or limitation;

(b) a permit condition; or

(c) a fee or filing requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the defendant.

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

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

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

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

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

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

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

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

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

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

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

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

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

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

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

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

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

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

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

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

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

(c) A bond is not required.

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

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

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

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

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

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

order.

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

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

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

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

19-3-102. Definitions.

As used in this chapter:

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

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

(i) arranges for transportation of the radioactive waste;

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

(iii) processes radioactive waste in some manner.

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

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

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

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

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

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

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

(a) possesses any material or component:

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

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

(b) transfers the material or component to:

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

(ii) a broker.

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

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

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

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

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

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

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

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

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

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

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

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

(i) one representative who is:

(A) a health physicist; or

(B) a professional employed in the field of radiation safety;

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

(iii) one representative from the radioactive waste management industry;

(iv) one representative from the uranium milling industry;

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

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

(vii) one Utah-licensed practicing attorney who is knowledgeable about radiation control regulatory issues.

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

[~~(3)~~] (2) [~~The appointed members~~] A member of the board shall:

(a) be knowledgeable about radiation protection [~~and shall be as follows:~~], as evidenced by a professional degree, a professional accreditation, or documented experience;

[~~(a) one physician;~~]

[~~(b) one dentist;~~]

[~~(c) one health physicist or other professional employed in the field of radiation safety;~~]

[~~(d) three representatives of regulated industry, at least one of whom represents the radioactive waste management industry, and at least one of whom represents the uranium milling industry;~~]

[~~(e) one registrant or licensee representative from academia;~~]

[~~(f) one representative of a local health department;~~]

[~~(g) one elected county official; and~~]

[~~(h) three members of the general public, at least one of whom represents organized environmental interests.~~]

(b) be a resident of Utah;

(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

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

(3) No more than five appointed members shall be from the same political party.

(4) (a) Except as required by Subsection (4)(b), as terms of current board members

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

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

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

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

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

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

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

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

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

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

(a) Section 63A-3-106;

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

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

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

19-3-103.5. Board authority and duties.

(1) The board may:

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

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

~~disapproval, or termination;~~]

(b) order the director to:

[~~(b)~~] (i) issue orders necessary to enforce the provisions of this part[~~,~~];

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

(iii) institute judicial proceedings to secure compliance with this part;

(c) (i) hold a hearing that is not an adjudicative proceeding [~~and compel the attendance of witnesses, the production of documents, and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or~~]; or

(ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding[~~and authorize them to exercise the powers under this Subsection (1)~~];

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

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

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

[~~(d) settle or compromise any administrative or civil action initiated to compel compliance with this part or any rules adopted under this part;~~]

[~~(e) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, other states, interstate agencies, and affected groups, political subdivisions, industries, and other persons in carrying out the provisions of this part;~~]

[~~(f) promote the planning and application of pollution prevention and radioactive waste minimization measures to prevent the unnecessary waste and depletion of natural resources;~~]

[~~(g) cooperate with any persons in studies, research, or demonstration projects regarding radioactive waste management or control of radiation sources;~~]

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

[~~(i) exercise all incidental powers necessary to carry out the purposes of this part;~~]

[~~(j) submit an application to the U.S. Food and Drug Administration for approval as an accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of~~

~~1992;~~]

[~~(k) accredit mammography facilities, pursuant to approval as an accrediting body from the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992; and~~]

[~~(l) review the qualifications of and issue certificates of approval to individuals who survey mammography equipment and oversee quality assurance practices at mammography facilities.~~]

(e) order the director to impound radioactive material in accordance with Section 19-3-111.

(2) The board shall:

[~~(a) receive a proposed dispositive action from an administrative law judge on an appeal of final decisions made by the executive secretary as provided by Section 19-1-301;~~]

[~~(b)~~] (a) prepare a radioactive waste management plan in compliance with Section 19-3-107 as soon as practicable; [~~and~~]

[~~(c) impound radioactive material as authorized in Section 19-3-111.~~]

[~~(3) Representatives of the board upon presentation of appropriate credentials may enter at reasonable times upon the premises of public and private properties subject to regulation under this part to perform inspections to insure compliance with this part and rules made by the board.~~]

(b) promote the planning and application of pollution prevention and radioactive waste minimization measures to prevent the unnecessary waste and depletion of natural resources;

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

(i) review a settlement negotiated by the director in accordance with Subsection 19-3-108(3)(b) that requires a civil penalty of $25,000 or more; and

(ii) approve or disapprove the settlement;

(d) submit an application to the U.S. Food and Drug Administration for approval as an accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992;

(e) accredit mammography facilities, pursuant to approval as an accrediting body from the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992; and

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

(i) survey mammography equipment; or

(ii) oversee quality assurance practices at mammography facilities.

(3) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-3-108:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

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

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

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

(1) As used in this section:

(a) "Decommissioning" includes financial assurance.

(b) "Source material" and "byproduct material" have the same definitions as in 42 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

(2) The [~~board~~] division may require the registration or licensing of radiation sources that constitute a significant health hazard.

(3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

(4) The board may make rules:

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

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

(c) to establish:

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

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

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

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

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

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

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

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

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

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

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

(i) October 1, 2003; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(A) uranium mill tailings;

(B) naturally occurring radioactive materials; or

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

(I) uranium-233; and

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

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

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

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

(A) commercially for profit; or

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

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

(A) alternate feed material for reprocessing; or

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

(d) "Radioactive waste license" or "license" means a radioactive material license issued by the [~~executive secretary~~] director under Subsection 19-3-108(2)[~~(c)(i)~~](d), to own, construct, modify, or operate a radioactive waste facility.

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

(3) Subject to Subsection (10), a person may not own, construct, modify, or operate a radioactive waste facility without:

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

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

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

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

(4) Subject to Subsection (10), a new radioactive waste license application, or an application to renew or amend an existing radioactive waste license, is subject to the requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19-3-106.4. Generator site access permits.

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

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

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

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

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

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

(iii) $5,000 for brokers.

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

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

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

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

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

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

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

state;

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

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

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

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

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

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

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

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

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

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

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

(3) The director may:

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

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

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

inspecting and investigating conditions and records concerning radiation sources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

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

19-3-111. Impounding of radioactive material.

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

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

(b) that person is violating:

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

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

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

(2) Before any dispositive action may be taken with regard to impounded radioactive materials, the [~~board~~] director shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

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

19-4-102. Definitions.

As used in this chapter:

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

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

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

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

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

[~~(4)~~] (5) (a) "Groundwater source" means an underground opening from or through which groundwater flows or is pumped from a subsurface water-bearing formation.

(b) "Groundwater source" includes:

(i) a well;

(ii) a spring;

(iii) a tunnel; or

(iv) an adit.

[~~(5)~~] (6) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water system.

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

(i) has at least 15 service connections; or

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

(b) "Public water system" includes:

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

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

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

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

(b) has more than 500 service connections.

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

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

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

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

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

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

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

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

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

(ii) one representative who is:

(A) an elected official from municipal government; or

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

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

metropolitan water district;

(iv) one representative from an entity that manages or operates a public water system;

(v) one representative from:

(A) the state water research community; or

(B) an institution of higher education that has comparable expertise in water research to the state water research community;

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

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

(viii) one Utah-licensed practicing attorney who is knowledgeable about drinking water regulatory and legal issues.

[~~(2) No more than five appointed members shall be from the same political party.~~]

[~~(3)~~] (2) [~~The appointed members~~] A member of the board shall:

(a) be knowledgeable about drinking water and public water systems [~~and shall~~], as evidenced by a professional degree, a professional accreditation, or documented experience;

(b) represent different geographical areas within the state insofar as practicable[~~.~~];

(c) be a resident of Utah;

(d) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

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

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

[~~(4) The 10 appointed members shall be appointed from the following areas:~~]

[~~(a) two elected officials of municipal government or their representatives involved in management or operation of public water systems;~~]

[~~(b) two representatives of improvement districts, water conservancy districts, or metropolitan water districts;~~]

[~~(c) one representative from an industry which manages or operates a public water system;~~]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[~~(11)~~] (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

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

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

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

19-4-104. Powers of board.

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

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

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

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

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

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

(b) The board may:

(i) order the director to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The board shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The director shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

request for variance or exemption by a specific date.

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

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

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

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

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

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

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

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

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

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

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

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

As used in this chapter:

(1) "Agriculture discharge":

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

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

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

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

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

(b) does not include:

(i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land that is not part of a body of water; or

(ii) a release into a normally dry water conveyance to an active body of water, unless the release reaches the water of a lake, pond, stream, marshland, river, or other active body of water.

(2) "Agriculture water" means:

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

(b) return flows from irrigated agriculture; and

(c) agricultural storm water runoff.

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

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

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

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

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

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

(a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or

(b) generates or manages sewage sludge.

[~~(8)~~] (9) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

(10) "Division" means the Division of Water Quality, created in Subsection 19-1-105(1)(f).

[~~(9)~~] (11) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter which apply to discharges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) one representative who:

(A) is not connected with industry;

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

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

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

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

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

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

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

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

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

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

[~~(a) one member representing the mineral industry;~~]

[~~(b) one member representing the food processing industry;~~]

[~~(c) one member representing another manufacturing industry;~~]

[~~(d) two members who are officials of a municipal government or the officials' representative involved in the management or operation of a wastewater treatment facility;~~]

[~~(e) one member representing agricultural and livestock interests;~~]

[~~(f) one member representing fish, wildlife, and recreation interests;~~]

[~~(g) one member representing an improvement or special service district;~~]

[~~(h) two members at large, one of whom represents organized environmental interests, selected with due consideration of the areas of the state affected by water pollution and not representing other interests named in this Subsection (3); and~~]

[~~(i) one member representing a local health department.~~]

(2) A member of the board shall:

(a) be knowledgeable about water quality matters, as evidenced by a professional degree, a professional accreditation, or documented experience;

(b) be a resident of Utah;

(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

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

(3) No more than five of the appointed members may be from the same political party.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate.

(5) (a) Except as required by Subsection (5)(b), a member shall be appointed for a term of four years and is eligible for reappointment.

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

(6) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, not to exceed 90 days after the formal expiration of the term.

(7) The board shall:

(a) organize and annually select one of its members as chair and one of its members as vice chair;

(b) hold at least four regular meetings each calendar year; and

(c) keep minutes of its proceedings which are open to the public for inspection.

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

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

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

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

(a) Section 63A-3-106;

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

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

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

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

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

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

(a) taking into account Subsection (6):

(i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:

(A) requirements pertaining to applications for loans;

(B) requirements for determination of eligible projects;

(C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;

(D) a priority schedule for awarding loans, in which the board may consider, in addition to water pollution control needs, any financial needs relevant, including per capita cost, in making a determination of priority; and

(E) requirements for determination of the amount of the loan;

(ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;

(iii) set effluent limitations and standards subject to Section 19-5-116;

(iv) implement or effectuate the powers and duties of the board; and

(v) protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;

(b) govern inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for underground injections, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:

(i) injection may result in the presence of any contaminant in underground water that supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and

(ii) the presence of the contaminant may:

(A) result in the public water system not complying with any national primary drinking water standards; or

(B) otherwise adversely affect the health of persons;

(c) govern sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements; and

(d) notwithstanding the provisions of Section 19-4-112, govern design and construction of irrigation systems that:

(i) convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes; and

(ii) are constructed after May 4, 1998.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

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

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

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

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

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

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

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

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

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

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

(3) The board shall:

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

[~~(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies, and with affected groups, political subdivisions, and industries to further the purposes of this chapter;~~]

[~~(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as the board finds~~

~~necessary to discharge its duties;~~]

[~~(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;~~]

[~~(c)~~] (b) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;

[~~(f) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, taking into account Subsection (3), to:~~]

[~~(i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:~~]

[~~(A) requirements pertaining to applications for loans;~~]

[~~(B) requirements for determination of eligible projects;~~]

[~~(C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;~~]

[~~(D) a priority schedule for awarding loans, in which the board may consider in addition to water pollution control needs any financial needs relevant, including per capita cost, in making a determination of priority; and~~]

[~~(E) requirements for determination of the amount of the loan;~~]

[~~(ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;~~]

[~~(iii) set effluent limitations and standards subject to Section 19-5-116;~~]

[~~(iv) implement or effectuate the powers and duties of the board; and~~]

[~~(v) protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;~~]

(c) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;

(d) meet the requirements of federal law related to water pollution;

(e) establish and conduct a continuing planning process for control of water pollution,

including the specification and implementation of maximum daily loads of pollutants;

(f) (i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;

(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;

(g) (i) review all total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;

(ii) disapprove, approve, or approve with conditions all staff total daily maximum load recommendations; and

(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected; and

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

(i) review a settlement negotiated by the director in accordance with Subsection 19-5-106(2)(k) that requires a civil penalty of $25,000 or more; and

(ii) approve or disapprove the settlement.

(4) The board may:

[~~(g)~~] (a) order the director to issue, modify, or revoke orders:

(i) prohibiting or abating discharges;

(ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;

(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; [~~and~~] or

(iv) requiring compliance with this chapter and with rules made under this chapter;

[~~(h) (i) review plans, specifications, or other data relative to disposal systems or any part of disposal systems;~~]

[~~(ii) issue construction or operating permits for the installation or modification of treatment works or any parts of the treatment works; and~~]

(b) advise, consult, and cooperate with other agencies of the state, the federal

government, other states, or interstate agencies, or with affected groups, political subdivisions, or industries to further the purposes of this chapter; or

[~~(iii)~~] (c) delegate the authority to issue an operating permit to a local health department[~~;~~].

[~~(i) after public notice and opportunity for a public hearing, issue, continue in effect, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to:~~]

[~~(i) control the management of sewage sludge; or~~]

[~~(ii) prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;~~]

[~~(j) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;~~]

[~~(k) exercise all incidental powers necessary to carry out the purposes of this chapter, including delegation to the department of its duties as appropriate to improve administrative efficiency;~~]

[~~(l) meet the requirements of federal law related to water pollution;~~]

[~~(m) establish and conduct a continuing planning process for control of water pollution including the specification and implementation of maximum daily loads of pollutants;~~]

[~~(n) make rules governing inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for them, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:~~]

[~~(i) injection may result in the presence of any contaminant in underground water that supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and~~]

[~~(ii) the presence of the contaminant may:~~]

[~~(A) result in the public water system not complying with any national primary drinking water standards; or~~]

[~~(B) otherwise adversely affect the health of persons;~~]

[~~(o) make rules governing sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements;~~]

[~~(p) adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political subdivisions;~~]

[~~(q) notwithstanding the provisions of Section 19-4-112, make rules governing design and construction of irrigation systems that:~~]

[~~(i) convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes; and~~]

[~~(ii) are constructed after May 4, 1998;~~]

[~~(r) (i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;~~]

[~~(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; and~~]

[~~(s) (i) review all total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;~~]

[~~(ii) disapprove, approve, or approve with conditions all staff total daily maximum load recommendations; and~~]

[~~(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected.~~]

[~~(2)~~] (5) In performing the duties listed in [~~Subsection~~] Subsections (1) through (4), the board shall give priority to pollution that results in a hazard to the public health.

[~~(3)~~] (6) The board shall take into consideration the availability of federal grants:

(a) in determining eligible project costs; and

(b) in establishing priorities pursuant to Subsection [~~(1)(f)(i)~~] (1)(a)(i).

[~~(4) In establishing certification rules under Subsection (1)(p), the board shall:~~]

[~~(a) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;~~]

[~~(b) allow operators until three years after the date of adoption of the rules to obtain initial certification;~~]

[~~(c) allow a new operator one year from the date the operator is hired by a treatment~~

~~plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;~~]

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

[~~(e) issue a certification upon application and without testing that is valid only at the treatment works or sewerage system where that operator is currently employed if the operator:~~]

[~~(i) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;~~]

[~~(ii) has been employed at least 10 years in the operation of that treatment works or sewerage system prior to March 16, 1991; and~~]

[~~(iii) demonstrates to the board the operator's capability to operate the treatment works or sewerage system at which the operator is currently employed by providing employment history and references as required by the board.~~]

(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-5-106:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

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

Section 36. Section **19-5-105.5** is amended to read:

19-5-105.5. Agriculture water.

(1) (a) The board shall draft any rules relating to agriculture water in cooperation with the commission.

(b) The commission shall advise the board before the board may adopt rules relating to agriculture water.

(2) A program or rule adopted by the board for agriculture production or irrigation

water shall:

(a) be consistent with the federal Clean Water Act; and

(b) if possible, be developed in a voluntary cooperative program with the agriculture producer associations and the commission.

(3) (a) The board's authority to regulate a discharge is subject to Subsection (3)(b) relating to an agriculture discharge.

(b) (i) A person responsible for an agriculture discharge shall mitigate the resulting damage in a reasonable manner, as approved by the [~~executive secretary~~] director after consulting with the commission chair.

(ii) A penalty imposed on an agriculture discharge shall be proportionate to the seriousness of the resulting harm, as determined by the [~~executive secretary~~] director in consultation with the commission chair.

(iii) An agriculture producer may not be held liable for an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures, as the board defines by rule, to prevent an agriculture discharge.

Section 37. Section **19-5-106** is amended to read:

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

[~~The executive secretary shall be appointed by the executive director with the approval of the board, shall serve under the administrative direction of the executive director, and has the following duties:~~]

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

(2) The director shall:

[~~(1) to~~] (a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

[~~(2) to~~] (b) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;

[~~(3) to employ full-time employees as necessary to carry out the provisions of this chapter;~~]

[~~(4) as authorized by the board and subject to the provisions of this chapter, to~~

~~authorize any employee or representative of the department to enter at reasonable times and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible water pollution;~~]

[~~(5) to encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;~~]

[~~(6) to collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;~~]

[~~(7) to~~] (c) develop programs for the management of sewage sludge;

[~~(8) as authorized by the board and~~]

(d) subject to the provisions of this chapter, [~~to~~] enforce rules made by the board through the issuance of orders [~~which may be subsequently amended or revoked by the board~~], which orders may include:

[~~(a)~~] (i) prohibiting or abating discharges of wastes into the waters of the state;

[~~(b)~~] (ii) requiring the construction of new control facilities or any parts of them or the modification, extension, or alteration of existing control facilities or any parts of them, or the adoption of other remedial measures to prevent, control, or abate water pollution; [~~and~~] or

[~~(c)~~] (iii) prohibiting any other violation of this chapter or rules made under this chapter;

[~~(9) to~~] (e) review plans, specifications, or other data relative to pollution control systems or any part of the systems provided for in this chapter;

(f) issue construction or operating permits for the installation or modification of treatment works or any parts of the treatment works;

(g) after public notice and opportunity for public hearing, issue, continue in effect, renew, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to:

(i) control the management of sewage sludge; or

(ii) prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;

(h) meet the requirements of federal law related to water pollution;

[~~(10) as authorized by the board and subject to the provisions of this chapter, to exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to any state or federal authorities for tax purposes only if the fact of construction, installation, or acquisition of any facility, land, or building, machinery, or equipment, or any part of them conforms with this chapter;~~]

[~~(11) to cooperate, where the board finds appropriate, with any person in studies and research regarding water pollution and its control, abatement, and prevention; and~~]

[~~(12) to~~] (i) under the direction of the executive director, represent the state [~~with the specific concurrence of the executive director~~] in all matters pertaining to water pollution, including interstate compacts and other similar agreements[~~.~~];

(j) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution; and

(k) subject to Subsection 19-5-104(3)(h), settle or compromise any civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter.

(3) The director may:

(a) employ full-time employees as necessary to carry out the provisions of this chapter;

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

(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;

(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(e) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to any state or federal authorities for tax purposes only if the construction, installation, or acquisition of any facility, land, building, machinery, equipment, or any part of them conforms with this chapter;

(f) cooperate with any person in studies and research regarding water pollution and its

control, abatement, and prevention;

(g) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution; or

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

Section 38. Section **19-5-107** is amended to read:

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

(1) (a) Except as provided in this chapter or rules made under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution.

(b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.

(2) (a) A person may not generate, store, treat, process, use, transport, dispose, or otherwise manage sewage sludge, except in compliance with this chapter and rules made under it.

(b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.

(3) It is unlawful for any person, without first securing a permit from the [~~executive secretary as authorized by the board~~] director, to:

(a) make any discharge or manage sewage sludge not authorized under an existing valid discharge permit; or

(b) construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works, or construct, install, or operate any establishment or extension or modification of or addition to any treatment works, the operation of which would probably result in a discharge.

Section 39. Section **19-5-108** is amended to read:

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

(1) The board may [~~prescribe conditions~~] make rules, in accordance with Title 63G,

Chapter 3, Utah Administrative Rulemaking Act, for and require the submission of plans, specifications, and other information to the [~~executive secretary~~] director in connection with the issuance of discharge permits.

(2) Each discharge permit shall have a fixed term not exceeding five years. Upon expiration of a discharge permit, a new permit may be issued by the [~~executive secretary~~] director as authorized by the board after notice and an opportunity for public hearing and upon condition that the applicant meets or will meet all applicable requirements of this chapter, including the conditions of any permit granted by the board.

(3) The board may require notice to the [~~executive secretary~~] director of the introduction of pollutants into publicly-owned treatment works and identification to the [~~executive secretary~~] director of the character and volume of any pollutant of any significant source subject to pretreatment standards under Subsection 307(b) of the federal Clean Water Act. The [~~executive secretary~~] director shall provide in the permit for compliance with pretreatment standards.

(4) The [~~board~~] director may impose as conditions in permits for the discharge of pollutants from publicly-owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under this chapter or the rules adopted under it.

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

Section 40. Section **19-5-111** is amended to read:

19-5-111. Notice of violations -- Hearings.

(1) Whenever the [~~board~~] director determines there are reasonable grounds to believe that there has been a violation of this chapter or any order of the director or the board, [~~it~~] the director may give written notice to the alleged violator specifying the provisions that have been violated and the facts that constitute the violation.

(2) The notice shall require that the matters complained of be corrected.

(3) The notice may order the alleged violator to appear before an administrative law judge as provided by Section 19-1-301 at a time and place specified in the notice and answer

the charges.

Section 41. Section **19-5-112** is amended to read:

19-5-112. Hearings conducted by an administrative law judge -- Decisions on denial or revocation of permit conducted by executive director.

(1) [~~(a)~~] Except as provided by Subsection (2), an administrative law judge shall conduct hearings authorized by Section 19-5-111 in accordance with Section 19-1-301.

[~~(b) All decisions shall be rendered by a majority of the board.~~]

(2) (a) An administrative law judge shall conduct, on the executive director's behalf, a hearing regarding an appeal of a permit decision for which the state has assumed primacy under the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

[~~(b) Notwithstanding Subsection 19-1-301(6), the administrative law judge shall submit to the executive director a proposed dispositive action.~~]

[~~(c) The executive director may:~~]

[~~(i) approve, approve with modifications, or disapprove a proposed dispositive action submitted to the executive director under Subsection (2)(b); or~~]

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

[~~(d)~~] (b) The decision of the executive director is final and binding on all parties [~~as a final determination of the board~~] unless stayed or overturned on appeal.

Section 42. Section **19-5-113** is amended to read:

19-5-113. Power of director to enter property for investigation -- Records and reports required of owners or operators.

(1) The [~~board~~] director or [~~its~~] the director's authorized representative has, after presentation of credentials, the authority to enter at reasonable times upon any private or public property for the purpose of:

(a) sampling, inspecting, or investigating matters or conditions relating to pollution or the possible pollution of any waters of the state, effluents or effluent sources, monitoring equipment, or sewage sludge; and

(b) reviewing and copying records required to be maintained under this chapter.

(2) (a) The board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that require a person managing sewage sludge, or the owner

or operator of a disposal system, including a system discharging into publicly owned treatment works, to:

(i) establish and maintain reasonable records and make reports relating to the operation of the system or the management of the sewage sludge;

(ii) install, use, and maintain monitoring equipment or methods;

(iii) sample, and analyze effluents or sewage sludges; and

(iv) provide other information reasonably required.

(b) The records, reports, and information shall be available to the public except as provided in Subsection 19-1-306(2) or Subsections 63G-2-305(1) and (2), Government Records Access and Management Act, as appropriate, for other than effluent information.

Section 43. Section **19-5-114** is amended to read:

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

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

Section 44. Section **19-5-115** is amended to read:

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

(1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed $10,000 per day of violation.

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

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned

treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed $50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding $10,000 per day of violation if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it; or

(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter.

(5) (a) As used in this section:

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

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

(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than $250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

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

(c) If a person is an organization, it shall, upon conviction of violating Subsection (5)(b), be subject to a fine of not more than $1,000,000.

(d) (i) A defendant who is an individual is considered to have acted knowingly if:

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

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

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

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

(e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

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

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

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7) (a) The [~~board~~] director may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(8) (a) The attorney general is the legal advisor for the board and [~~its executive secretary~~] the director and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the board, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the [~~executive secretary~~] director issued under this chapter.

(c) The board or the director may [~~itself~~] initiate any action under this section and be represented by the attorney general.

(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the [~~board~~] director may[~~, through its executive secretary,~~] initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

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

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

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Section 45. Section **19-6-102** is amended to read:

19-6-102. Definitions.

As used in this part:

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

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

(3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"

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

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

(i) receives waste for recycling;

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

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

(4) "Construction waste or demolition waste":

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

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

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

(6) "Director" means the director of the Division of Solid and Hazardous Waste.

[~~(6)~~] (7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

(8) "Division" means the Division of Solid and Hazardous Waste, created in Subsection 19-1-105(1)(e).

[~~(7) "Executive secretary" means the executive secretary of the board.~~]

[~~(8)~~] (9) "Generation" or "generated" means the act or process of producing nonhazardous solid or hazardous waste.

[~~(9)~~] (10) "Hazardous waste" means a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an

increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

[~~(10)~~] (11) "Health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for people with an intellectual disability, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.

[~~(11)~~] (12) "Household waste" means any waste material, including garbage, trash, and sanitary wastes in septic tanks, derived from households, including single-family and multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

[~~(12)~~] (13) "Infectious waste" means a solid waste that contains or may reasonably be expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.

[~~(13)~~] (14) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

[~~(14)~~] (15) "Mixed waste" means any material that is a hazardous waste as defined in this chapter and is also radioactive as defined in Section 19-3-102.

[~~(15)~~] (16) "Modification plan" means a plan under Section 19-6-108 to modify a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.

[~~(16)~~] (17) "Operation plan" or "nonhazardous solid or hazardous waste operation plan" means a plan or approval under Section 19-6-108, including:

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

(b) a closure plan;

(c) a modification plan; or

(d) an approval that the [~~executive secretary~~] director is authorized to issue.

[~~(17)~~] (18) "Permittee" means a person who is obligated under an operation plan.

[~~(18)~~] (19) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

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

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

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

(iii) 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;

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

(v) cement kiln dust.

[~~(19)~~] (20) "Storage" means the actual or intended containment of solid or hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of the waste.

[~~(20)~~] (21) "Transportation" means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.

[~~(21)~~] (22) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume.

[~~(22)~~] (23) "Underground storage tank" means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

Section 46. Section **19-6-102.1** is amended to read:

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

As used in Subsections 19-6-104[~~(1)(j)(ii)(B)~~] (1)(d)(ii)(B), 19-6-108(3)(b) and (3)(c)(ii)(B), and 19-6-119(1)(a), the term "treatment and disposal" specifically excludes the recycling, use, reuse, or reprocessing of fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; waste from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust, including recycle, reuse, use, or reprocessing for road sanding, sand blasting, road construction, railway ballast, construction fill, aggregate, and other construction-related purposes.

Section 47. Section **19-6-102.6** is amended to read:

19-6-102.6. Legislative participation in landfill siting disputes.

(1) (a) Upon the Legislature's receipt of a written request by a county governing body or a member of the Legislature whose district is involved in a landfill siting dispute, the president of the Senate and the speaker of the House shall appoint a committee as described under Subsection (2) and volunteers under Subsection (3) to actively seek an acceptable location for a municipal landfill if there is a dispute between two or more counties regarding the proposed site of a municipal landfill.

(b) The president and the speaker shall consult with the legislators appointed under this subsection regarding their appointment of members of the committee under Subsection (2), and volunteers under Subsection (3).

(2) The committee shall consist of the following members, appointed jointly by the president and the speaker:

(a) two members from the Senate:

(i) one member from the county where the proposed landfill site is located; and

(ii) one member from the other county involved in the dispute, but if more than one other county is involved, still only one senator from one of those counties;

(b) two members from the House:

(i) one member from the county where the proposed landfill site is located; and

(ii) one member from the other county involved in the dispute, but if more than one other county is involved, still only one representative from one of those counties;

(c) one individual whose current principal residence is within a community located

within 20 miles of any exterior boundary of the proposed landfill site, but if no community is located within 20 miles of the community, then an individual whose current residence is in the community nearest the proposed landfill site;

(d) two resident citizens from the county where the proposed landfill site is located; and

(e) three resident citizens from the other county involved in the dispute, but if more than one other county is involved, still only three citizen representatives from those counties.

(3) Two volunteers shall be appointed under Subsection (1). The volunteers shall be individuals who agree to assist, as requested, the committee members who represent the interests of the county where the proposed landfill site is located.

(4) (a) Funding and staffing for the committee shall be provided jointly and equally by the Senate and the House.

(b) The Department of Environmental Quality shall, at the request of the committee and as funds are available within the department's existing budget, provide support in arranging for committee hearings to receive public input and secretarial staff to make a record of those hearings.

(5) The committee shall:

(a) appoint a chair from among its members; and

(b) meet as necessary, but not less often than once per month, until its work is completed.

(6) The committee shall report in writing the results of its work and any recommendations it may have for legislative action to the interim committees of the Legislature as directed by the Legislative Management Committee.

(7) (a) All action by the division, the [~~executive secretary~~] director, or the division board of the Department of Environmental Quality regarding any proposed municipal landfill site, regarding which a request has been submitted under Subsection (1), is tolled for one year from the date the request is submitted, or until the committee completes its work under this section, whichever occurs first. This Subsection (7) also tolls the time limits imposed by Subsection 19-6-108(13).

(b) This Subsection (7) applies to any proposed landfill site regarding which the department has not granted final approval on or before March 21, 1995.

(c) As used in this Subsection (7), "final approval" means final agency action taken after conclusion of proceedings under Sections 63G-4-207 through 63G-4-405.

(8) This section does not apply to a municipal solid waste facility that is, on or before March 23, 1994:

(a) operating under an existing permit or the renewal of an existing permit issued by the local health department or other authority granted by the Department of Environmental Quality; or

(b) operating under the approval of the local health department, regardless of whether a formal permit has been issued.

Section 48. Section **19-6-103** is amended to read:

19-6-103. Solid and Hazardous Waste Control Board -- Members -- Terms -- Organization -- Meetings -- Per diem and expenses.

(1) The [~~Solid and Hazardous Waste Control Board created by Section 19-1-106 comprises the~~] board consists of the following nine members:

(a) (i) the executive director [~~and 12~~]; or

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

(b) the following eight members, who shall be nominated by the executive director and appointed by the governor with the consent of the Senate[~~.~~]:

(i) one representative who:

(A) is not connected with industry;

(B) is an expert in waste management matters; and

(C) is a Utah-licensed professional engineer;

(ii) two government representatives who do not represent the federal government;

(iii) one representative from the manufacturing, mining, or fuel industry;

(iv) one representative from either:

(A) the private solid or hazardous waste disposal industry; or

(B) the private hazardous waste recovery industry;

(v) one representative from the public who represents a nongovernmental organization;

(vi) one representative from the public who is trained and experienced in public health; and

(vii) one Utah-licensed practicing attorney who is knowledgeable about waste

management regulatory issues.

(2) [~~The appointed members~~] A member of the board shall:

(a) be knowledgeable about solid and hazardous waste matters [~~and consist of:~~] as evidenced by a professional degree, a professional accreditation, or documented experience;

[~~(a) one representative of municipal government;~~]

[~~(b) one representative of county government;~~]

[~~(c) one representative of the manufacturing or fuel industry;~~]

[~~(d) one representative of the mining industry;~~]

[~~(e) one representative of the private solid waste disposal or solid waste recovery industry;~~]

[~~(f) one registered professional engineer;~~]

[~~(g) one representative of a local health department;~~]

[~~(h) one representative of the hazardous waste disposal industry; and~~]

[~~(i) four representatives of the public, at least one of whom is a representative of organized environmental interests.~~]

(b) be a resident of Utah;

(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department in accordance with Subsection 19-1-201(1)(d)(ii)(B).

(3) [~~Not~~] No more than [~~six~~] five of the appointed members may be from the same political party.

(4) (a) [~~Except as required by Subsection (4)(b), members~~] Members shall be appointed for terms of four years each.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(5) Each member is eligible for reappointment.

(6) Board members shall continue in office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor, after considering recommendations of the board and with the consent of the Senate.

(8) The board shall elect a chair and vice chair on or before April 1 of each year from its membership.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) (a) The board shall hold a meeting at least once every three months including one meeting during each annual general session of the Legislature.

(b) Meetings shall be held on the call of the chair, the [~~executive secretary~~] director, or any three of the members.

(11) [~~Seven~~] Five members constitute a quorum at any meeting, and the action of the majority of members present is the action of the board.

Section 49. Section **19-6-104** is amended to read:

19-6-104. Powers of board -- Creation of statewide solid waste management plan.

(1) The board shall:

(a) survey solid and hazardous waste generation and management practices within this state and, after public hearing and after providing opportunities for comment by local governmental entities, industry, and other interested persons, prepare and revise, as necessary, a waste management plan for the state;

[~~(b) carry out inspections pursuant to Section 19-6-109;~~]

[~~(c) (i) hold a hearing that is not an adjudicative proceeding and compel the attendance of witnesses, the production of documents, and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or appoint hearing officers to conduct a hearing that is not an adjudicative proceeding who shall be delegated these powers;~~]

[~~(ii) receive a proposed dispositive action from an administrative law judge as provided by Section 19-1-301; and~~]

[~~(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive action; or~~]

[~~(B) return the proposed dispositive action to the administrative law judge for further action as directed;~~]

(b) order the director to:

[~~(d)~~] (i) issue orders necessary to effectuate the provisions of this part and [~~implementing~~] rules [~~and~~] made under this part;

(ii) enforce [~~them~~] the orders by administrative and judicial proceedings[~~, and cause the initiation of~~]; or

(iii) initiate judicial proceedings to secure compliance with this part;

[~~(e) settle or compromise any administrative or civil action initiated to compel compliance with this part and any rules adopted under this part;~~]

[~~(f) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review the plans;~~]

[~~(g) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, other states, interstate agencies, and affected groups, political subdivisions, industries, and other persons in carrying out the purposes of this part;~~]

[~~(h)~~] (c) promote the planning and application of resource recovery systems to prevent the unnecessary waste and depletion of natural resources;

[~~(i)~~] (d) meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste;

[~~(j)~~] (e) (i) require any facility, including those listed in Subsection (1)[~~(j)~~](e)(ii), that is intended for disposing of nonhazardous solid waste or wastes listed in Subsection (1)[~~(j)~~](e)(ii)(B) to submit plans, specifications, and other information required by the board to the board prior to construction, modification, installation, or establishment of a facility to allow the board to determine whether the proposed construction, modification, installation, or establishment of the facility will be in accordance with rules made under this part;

(ii) facilities referred to in Subsection (1)[~~(j)~~](e)(i) include:

(A) any incinerator that is intended for disposing of nonhazardous solid waste; and

(B) except for facilities that receive the following wastes solely for the purpose of

recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; and

[~~(k) exercise all other incidental powers necessary to carry out the purposes of this part.~~]

(f) to ensure compliance with applicable statutes and regulations:

(i) review a settlement negotiated by the director in accordance with Subsection 19-6-107(3)(a) that requires a civil penalty of $25,000 or more; and

(ii) approve or disapprove the settlement.

(2) The board may:

(a) (i) hold a hearing that is not an adjudicative proceeding; or

(ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding; or

(b) advise, consult, cooperate with, or provide technical assistance to other agencies of the state or federal government, other states, interstate agencies, or affected groups, political subdivisions, industries, or other persons in carrying out the purposes of this part.

[~~(2)~~] (3) (a) The board shall establish a comprehensive statewide solid waste management plan by January 1, 1994.

(b) The plan shall:

(i) incorporate the solid waste management plans submitted by the counties;

(ii) provide an estimate of solid waste capacity needed in the state for the next 20 years;

(iii) assess the state's ability to minimize waste and recycle;

(iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste needs and existing capacity;

(v) evaluate facility siting, design, and operation;

(vi) review funding alternatives for solid waste management; and

(vii) address other solid waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

(c) The board shall consider the economic viability of solid waste management strategies prior to incorporating them into the plan and shall consider the needs of population centers.

(d) The board shall review and modify the comprehensive statewide solid waste management plan no less frequently than every five years.

[~~(3)~~] (4) (a) The board shall determine the type of solid waste generated in the state and tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid waste management plan.

(b) The board shall review and modify the inventory no less frequently than once every five years.

[~~(4)~~] (5) Subject to the limitations contained in Subsection 19-6-102[~~(18)~~](19)(b), the board shall establish siting criteria for nonhazardous solid waste disposal facilities, including incinerators.

(6) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-6-107:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

(7) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Section 50. 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, recovery, treatment, and disposal of solid waste, including requirements for the approval by the director of plans for the construction, extension, operation, and closure of solid waste disposal sites;

(b) identifying wastes which are determined to be hazardous, including wastes

designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., Sec. 6921, et seq.;

(c) governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage, and disposal facilities, including requirements for keeping records, monitoring, submitting reports, and using a manifest, without treating high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling muds, and oil production brines in a manner more stringent than they are treated under federal standards;

(d) requiring an owner or operator of a treatment, storage, or disposal facility that is subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982, to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility;

(e) specifying the terms and conditions under which the [~~board~~] director shall approve, disapprove, revoke, or review hazardous wastes operation plans;

(f) governing public hearings and participation under this part;

(g) establishing standards governing underground storage tanks, in accordance with Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

(h) relating to the collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities in accordance with the requirements of Section 19-6-106;

(i) defining closure plans as major or minor;

(j) defining modification plans as major or minor; and

(k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch, canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or well.

(2) If any of the following are determined to be hazardous waste and are therefore subjected to the provisions of this part, the board shall, in the case of landfills or surface impoundments that receive the solid wastes, take into account the special characteristics of the wastes, the practical difficulties associated with applying requirements for other wastes to the

wastes, and site specific characteristics, including the climate, geology, hydrology, and soil chemistry at the site, if the modified requirements assure protection of human health and the environment and are no more stringent than federal standards applicable to wastes:

(a) solid waste from the extraction, beneficiation, or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium;

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; and

(c) cement kiln dust waste.

(3) The board shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. Those criteria shall apply to any facility or incinerator for which plan approval is required under Section 19-6-108.

Section 51. Section **19-6-107** is amended to read:

19-6-107. Director -- Appointment -- Powers.

[~~The executive secretary shall be appointed by the executive director with the approval of the board and shall serve under the administrative direction of the executive director. The executive secretary may:~~]

(1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.

(2) The director shall:

(a) carry out inspections pursuant to Section 19-6-109;

(b) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review the plans;

[~~(1)~~] (c) develop programs for solid waste and hazardous waste management and control within the state;

[~~(2)~~] (d) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this part;

(e) subject to the provisions of this part, enforce rules made or revised by the board through the issuance of orders;

(f) review plans, specifications or other data relative to solid waste and hazardous

waste control systems or any part of the systems as provided in this part;

(g) under the direction of the executive director, represent the state in all matters pertaining to interstate solid waste and hazardous waste management and control including, under the direction of the board, entering into interstate compacts and other similar agreements; and

(h) as authorized by the board and subject to the provisions of this part, act as executive secretary of the board under the direction of the chairman of the board.

(3) The director may:

(a) subject to Subsection 19-6-104(1)(f), settle or compromise any administrative or civil action initiated to compel compliance with this part and any rules adopted under this part;

[~~(3)~~] (b) employ full-time employees necessary to carry out this part;

[~~(4)~~] (c) as authorized by the board pursuant to the provisions of this part, authorize any employee or representative of the department to conduct inspections as permitted in this part;

[~~(5)~~] (d) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to solid waste and hazardous waste management and control necessary for the discharge of duties assigned under this part;

[~~(6)~~] (e) collect and disseminate information relating to solid waste and hazardous waste management control; and

[~~(7) as authorized by the board pursuant to the provisions of this part, enforce rules made or revised by the board through the issuance of orders which may be subsequently amended or revoked by the board;~~]

[~~(8) review plans, specifications or other data relative to solid waste and hazardous waste control systems or any part of the systems as provided in this part;~~]

[~~(9)~~] (f) cooperate with any person in studies and research regarding solid waste and hazardous waste management and control[~~;~~].

[~~(10) represent the state with the specific concurrence of the executive director in all matters pertaining to interstate solid waste and hazardous waste management and control including, under the direction of the board, entering into interstate compacts and other similar agreements; and~~]

[~~(11) as authorized by the board and subject to the provisions of this chapter, exercise~~

~~all incidental powers necessary to carry out the purposes of this chapter.~~]

Section 52. Section **19-6-108** is amended to read:

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Revocation of approval -- Periodic review.

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990;

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or

(e) a submission of an operation plan to construct a facility, if previous approvals of the operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of

7,000 hours.

(3) (a) (i) No person may own, construct, modify, or operate any facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste without first submitting and receiving the approval of the [~~executive secretary~~] director for an operation plan for that facility or site.

(ii) (A) A permittee who is the current owner of a facility or site that is subject to an operation plan may submit to the [~~executive secretary~~] director information, a report, a plan, or other request for approval for a proposed activity under an operation plan:

(I) after obtaining the consent of any other permittee who is a current owner of the facility or site; and

(II) without obtaining the consent of any other permittee who is not a current owner of the facility or site.

(B) The [~~executive secretary~~] director may not:

(I) withhold an approval of an operation plan requested by a permittee who is a current owner of the facility or site on the grounds that another permittee who is not a current owner of the facility or site has not consented to the request; or

(II) give an approval of an operation plan requested by a permittee who is not a current owner before receiving consent of the current owner of the facility or site.

(b) (i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the [~~executive secretary~~] director for an operation plan for that facility site.

(ii) Wastes referred to in Subsection (3)(b)(i) are:

(A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

(C) cement kiln dust wastes.

(c) (i) No person may construct a facility listed under Subsection (3)(c)(ii) until the person receives:

(A) local government approval and the approval described in Subsection (3)(a);

(B) approval from the Legislature; and

(C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B), approval from the governor.

(ii) A facility referred to in Subsection (3)(c)(i) is:

(A) a commercial nonhazardous solid waste disposal facility;

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; or

(C) a commercial hazardous waste treatment, storage, or disposal facility.

(iii) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

(A) the governor's approval is received on or after May 10, 2011, and the facility is not operational within five years after the day on which the governor's approval is received; or

(B) the governor's approval is received before May 10, 2011, and the facility is not operational on or before May 10, 2016.

(iv) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to another person for five years after the day on which the governor's approval is received.

(d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary of the board under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary of the board to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary of the board under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive

secretary of the board determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The [~~executive secretary~~] director shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that the [~~executive secretary~~] director cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The [~~executive secretary~~] director shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The [~~executive secretary~~] director shall review each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the [~~executive secretary~~] director shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the [~~executive secretary~~] director shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the [~~executive secretary~~] director shall issue a notice of completeness.

(ii) If the plan is determined by the [~~executive secretary~~] director to be incomplete, the [~~executive secretary~~] director shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The [~~executive secretary~~] director shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period

for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the [~~executive secretary~~] director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the [~~executive secretary~~] director shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the [~~executive secretary~~] director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any facility, the [~~executive secretary~~] director determines that the proposed plan, or any part of it, will not comply with applicable rules, the [~~executive secretary~~] director shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the [~~board~~] director determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) No proposed nonhazardous solid or hazardous waste operation plan may be approved unless it contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or

disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the [~~executive secretary~~] director determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the [~~executive secretary~~] director considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board; and

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit.

(10) The [~~executive secretary~~] director may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:

(a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:

(i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

(ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and

(iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment,

storage, or disposal of the nonhazardous solid or hazardous waste;

(b) a description of the public benefits of the proposed facility, including:

(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;

(ii) the energy and resources recoverable by the proposed facility;

(iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility; and

(iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and

(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the [~~executive secretary~~] director in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The [~~executive secretary~~] director may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the [~~executive secretary~~] director determines that:

(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The [~~executive secretary~~] director shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary of the board on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation

plans for hazardous waste facilities.

(15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the [~~executive secretary~~] director, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in the state where it is generated and which is received for disposal in this state may not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the [~~executive secretary~~] director.

(17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

Section 53. Section **19-6-108.3** is amended to read:

19-6-108.3. Director to issue written assurances, make determinations, and partition operation plans -- Board to make rules.

(1) Based upon risk to human health or the environment from potential exposure to hazardous waste, the [~~executive secretary~~] director may:

(a) even if corrective action is incomplete, issue an enforceable written assurance to a person acquiring an interest in real property covered by an operation plan that the person to whom the assurance is issued:

(i) is not a permittee under the operation plan; and

(ii) will not be subject to an enforcement action under this part for contamination that exists or for violations under this part that occurred before the person acquired the interest in the real property covered by the operation plan;

(b) determine that corrective action to the real property covered by the operation plan is:

(i) complete;

(ii) incomplete;

(iii) unnecessary with an environmental covenant; or

(iv) unnecessary without an environmental covenant; and

(c) partition from an operation plan a portion of real property subject to the operation plan after determining that corrective action for that portion of real property is:

(i) complete;

(ii) unnecessary with an environmental covenant; or

(iii) unnecessary without an environmental covenant.

(2) If the [~~executive secretary~~] director determines that an environmental covenant is necessary under Subsection (1)(b) or (c), the [~~executive secretary~~] director shall require that the real property be subject to an environmental covenant according to Title 57, Chapter 25, Uniform Environmental Covenants Act.

(3) An assurance issued under Subsection (1) protects the person to whom the assurance is issued from any cost recovery and contribution action under state law.

(4) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may adopt rules to administer this section.

Section 54. Section **19-6-109** is amended to read:

19-6-109. Inspections authorized.

Any duly authorized officer, employee, or representative of the [~~board~~] director may, at any reasonable time and upon presentation of appropriate credentials, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated, or disposed of, and have access to and the right to copy any records relating to the wastes, for the purpose of ascertaining compliance with this part and the rules of the board. Those persons referred to in this section may also inspect any waste and obtain waste samples, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator, or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

Section 55. Section **19-6-112** is amended to read:

19-6-112. Notice of violations -- Order for correction -- Civil action to enforce.

(1) Whenever the [~~board~~] director determines that any person is in violation of any applicable approved hazardous wastes operation plan or solid waste plan, the requirements of this part, or any of the board's rules, [~~it~~] the director may cause written notice of that violation to be served upon the alleged violator. The notice shall specify the provisions of the plan, this part or rule alleged to have been violated, and the facts alleged to constitute the violation.

(2) The [~~board~~] director may:

(a) issue an order requiring that necessary corrective action be taken within a reasonable time; or

(b) request the attorney general or the county attorney in the county in which the violation is taking place to bring a civil action for injunctive relief and enforcement of this part.

(3) Pending promulgation of rules for corrective action under Section 19-6-105, the [~~board~~] director may issue corrective action orders on a case-by-case basis, as necessary to carry out the purposes of this part.

Section 56. Section **19-6-117** is amended to read:

19-6-117. Action against insurer or guarantor.

(1) The state may assert a cause of action directly against an insurer or guarantor of an owner or operator if:

(a) a cause of action exists against an owner or operator of a treatment, storage, or disposal facility, based upon conduct for which the [~~board~~] director requires evidence of financial responsibility under Section 19-6-108, and that owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code; or

(b) jurisdiction over an owner or operator, who is likely to be solvent at the time of judgment, cannot be obtained in state or federal court.

(2) In that action, the insurer or guarantor may assert all rights and defenses available to the owner or operator, in addition to rights and defenses that would be available to the insurer or guarantor in an action brought against him by the owner or operator.

Section 57. Section **19-6-119** is amended to read:

19-6-119. Nonhazardous solid waste disposal fees.

(1) (a) Except as provided in Subsection (5), the owner or operator of a commercial nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste received for treatment or disposal at the facility if the facility or incinerator is required to have

operation plan approval under Section 19-6-108 and primarily receives waste generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator:

(i) 13 cents per ton on all municipal waste and municipal incinerator ash;

(ii) 50 cents per ton on the following wastes if the facility disposes of one or more of the following wastes in a cell exclusively designated for the waste being disposed:

(A) construction waste or demolition waste;

(B) yard waste, including vegetative matter resulting from landscaping, land maintenance, and land clearing operations;

(C) dead animals;

(D) waste tires and materials derived from waste tires disposed of in accordance with Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and

(E) petroleum contaminated soils that are approved by the [~~executive secretary~~] director; and

(iii) $2.50 per ton on:

(A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and

(B) (I) fly ash waste;

(II) bottom ash waste;

(III) slag waste;

(IV) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(V) waste from the extraction, beneficiation, and processing of ores and minerals; and

(VI) cement kiln dust wastes.

(b) A commercial nonhazardous solid waste disposal facility or incinerator subject to the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii) for those wastes described in Subsections (1)(a)(i) and (ii).

(c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.

(2) (a) Except as provided in Subsections (2)(b) and (5), a waste facility that is owned by a political subdivision shall pay the following annual facility fee to the department by January 15 of each year:

(i) $800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal

waste each year;

(ii) $1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of municipal waste each year;

(iii) $3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of municipal waste each year;

(iv) $12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of municipal waste each year;

(v) $14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of municipal waste each year;

(vi) $33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of municipal waste each year; and

(vii) $66,000 if the facility receives 500,000 or more tons of municipal waste each year.

(b) Except as provided in Subsection (5), a waste facility that is owned by a political subdivision shall pay $2.50 per ton for:

(i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii) received for disposal if the waste is:

(A) generated outside the boundaries of the political subdivision; and

(B) received from a single generator and exceeds 500 tons in a calendar year; and

(ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:

(A) generated outside the boundaries of the political subdivision; and

(B) received from a single generator and exceeds 500 tons in a calendar year.

(c) Waste received at a facility owned by a political subdivision under Subsection (2)(b) may not be counted as part of the total tonnage received by the facility under Subsection (2)(a).

(3) (a) As used in this Subsection (3):

(i) "Recycling center" means a facility that extracts valuable materials from a waste stream or transforms or remanufactures the material into a usable form that has demonstrated or potential market value.

(ii) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is used to deposit collected solid waste from off-site into a transfer

vehicle for transport to a solid waste handling or disposal facility.

(b) Except as provided in Subsection (5), the owner or operator of a transfer station or recycling center shall pay to the department the following fees on waste sent for disposal to a nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this section:

(i) $1.25 per ton on:

(A) all nonhazardous solid waste; and

(B) waste described in Subsection (1)(a)(iii)(B);

(ii) 10 cents per ton on all construction and demolition waste; and

(iii) 5 cents per ton on all municipal waste or municipal incinerator ash.

(c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee required under Subsection (3)(b)(i).

(4) If a facility required to pay fees under this section receives nonhazardous solid waste for treatment or disposal, and the fee required under this section is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this section.

(5) The owner or operator of a waste disposal facility that receives waste described in Subsection (1)(a)(iii)(B) is not required to pay any fee on those wastes if received solely for the purpose of recycling, reuse, or reprocessing.

(6) Except as provided in Subsection (2)(a), a facility required to pay fees under this section shall:

(a) calculate the fees by multiplying the total tonnage of waste received during the calendar month, computed to the first decimal place, by the required fee rate;

(b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and

(c) with the fees required under Subsection (6)(b), submit to the department, on a form prescribed by the department, information that verifies the amount of waste received and the fees that the owner or operator is required to pay.

(7) The department shall:

(a) deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108; and

(b) in preparing its budget for the governor and the Legislature, separately indicate the amount of the department's budget necessary to administer the solid and hazardous waste program established by this part.

(8) The department may contract or agree with a county to assist in performing nonhazardous solid waste management activities, including agreements for:

(a) the development of a solid waste management plan required under Section 17-15-23; and

(b) pass-through of available funding.

(9) This section does not exempt any facility from applicable regulation under the Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

Section 58. Section **19-6-120** is amended to read:

19-6-120. New hazardous waste operation plans -- Designation of hazardous waste facilities -- Fees for filing and plan review.

(1) For purposes of this section, the following items shall be treated as submission of a new hazardous waste operation plan:

(a) the submission of a revised hazardous waste operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the commercial hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990; or

(c) an application for modification of a commercial hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if initial approval is subsequent to January 1, 1990.

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) Hazardous waste facilities that are subject to payment of fees under this section or Section 19-1-201 for plan reviews under Section 19-6-108 shall be designated by the department as either class I, class II, class III, or class IV facilities.

(b) The department shall designate commercial hazardous waste facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, incinerators, or underground injection wells, which primarily receive wastes generated by off-site sources not owned, controlled, or operated by the facility owner or operator, as class I facilities.

(4) The maximum fee for filing and review of each class I facility operation plan is $200,000, and is due and payable as follows:

(a) The owner or operator of a class I facility shall, at the time of filing for plan review, pay to the department the nonrefundable sum of $50,000.

(b) Upon issuance by the [~~executive secretary~~] director of a notice of completeness under Section 19-6-108, the owner or operator of the facility shall pay to the department an additional nonrefundable sum of $50,000.

(c) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional $100,000.

(5) (a) The department shall designate hazardous waste incinerators that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator as class II facilities.

(b) The maximum fee for filing and review of each class II facility operation plan is $150,000, and shall be due and payable as follows:

(i) The owner or operator of a class II facility shall, at the time of filing for plan review under Section 19-6-108, pay to the department the nonrefundable sum of $50,000.

(ii) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional $100,000.

(6) (a) The department shall designate hazardous waste facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, or underground injection wells, that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator, as class III facilities.

(b) The maximum fee for filing and review of each class III facility operation plan is

$100,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of $1,000.

(ii) The department shall bill the owner or operator of each class III facility for actual costs of operation plan review, up to an additional $99,000.

(7) (a) All other hazardous waste facilities are designated as class IV facilities.

(b) The maximum fee for filing and review of each class IV facility operation plan is $50,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of $1,000.

(ii) The department shall bill the owner or operator of each class IV facility for actual costs of operation plan review, up to an additional $49,000.

(8) (a) The maximum fee for filing and review of each major modification plan and major closure plan for a class I, class II, or class III facility is $50,000 and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of $1,000.

(ii) The department shall bill the owner or operator of the hazardous waste facility for actual costs of the review, up to an additional $49,000.

(b) The maximum fee for filing and review of each minor modification and minor closure plan for a class I, class II, or class III facility, and of any modification or closure plan for a class IV facility, is $20,000, and is due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of $1,000.

(ii) The department shall bill the owner or operator of the hazardous waste facility for actual costs of review up to an additional $19,000.

(c) The owner or operator of a thermal treatment unit shall submit a trial or test burn schedule 90 days prior to any planned trial or test burn. At the time the schedule is submitted, the owner or operator shall pay to the department the nonrefundable fee of $25,000. The department shall apply the fee to the costs of the review and processing of each trial or test burn plan, trial or test burn, and trial or test burn data report. The department shall bill the

owner or operator of the facility for any additional actual costs of review and preparation.

(9) (a) The owner or operator of a class III facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(b) The owner or operator of a class IV facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(c) An owner or operator of a class I, class II, or class III facility who submits a major modification plan or a major closure plan may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(d) An owner or operator of a class I, class II, or class III facility who submits a minor modification plan or a minor closure plan, and an owner or operator of a class IV facility who submits a modification plan or a closure plan, may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(10) All fees received by the department under this section shall be deposited in the General Fund as dedicated credits for hazardous waste plan reviews in accordance with Subsection (12) and Section 19-6-108.

(11) (a) (i) The [~~executive secretary~~] director shall establish an accounting procedure that separately accounts for fees paid by each owner or operator who submits a hazardous waste operation plan for approval under Section 19-6-108 and pays fees for hazardous waste plan reviews under this section or Section 19-1-201.

(ii) The [~~executive secretary~~] director shall credit all fees paid by the owner or operator to that owner or operator.

(iii) The [~~executive secretary~~] director shall account for costs actually incurred in reviewing each operation plan and may only use the fees of each owner or operator for review of that owner or operator's plan.

(b) If the costs actually incurred by the department in reviewing a hazardous waste operation plan of any facility are less than the nonrefundable fee paid by the owner or operator under this section, the department may, upon approval or disapproval of the plan by the board

or upon withdrawal of the plan by the owner or operator, use any remaining funds that have been credited to that owner or operator for the purposes of administering provisions of the hazardous waste programs and activities authorized by this part.

(12) (a) With regard to any review of a hazardous waste operation plan, modification plan, or closure plan that is pending on April 25, 1988, the [~~executive secretary~~] director may assess fees for that plan review.

(b) The total amount of fees paid by an owner or operator of a hazardous waste facility whose plan review is affected by this subsection may not exceed the maximum fees allowable under this section for the appropriate class of facility.

(13) (a) The department shall maintain accurate records of its actual costs for each plan review under this section.

(b) Those records shall be available for public inspection.

Section 59. 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 release from an underground storage tank or petroleum storage tank, or to limit or reduce, mitigate, or eliminate the damage caused by that release.

(2) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any person.

(4) "Certificate of compliance" means a certificate issued to a facility by the [~~executive secretary~~] director:

(a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and

(b) listing all tanks at the facility, specifying which tanks may receive petroleum and which tanks have not met the requirements for compliance.

(5) "Certificate of registration" means a certificate issued to a facility by the [~~executive secretary~~] director demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:

(a) registered the tanks; and

(b) paid the annual underground storage tank fee.

(6) (a) "Certified underground storage tank consultant" means any person who:

(i) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions, or advice relating to underground storage tank management, release abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged; and

(ii) has submitted an application to the board and received a written statement of certification from the board.

(b) "Certified underground storage tank consultant" does not include:

(i) an employee of the owner or operator of the underground storage tank, or an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and that markets petroleum products or manages underground storage tanks; or

(ii) persons licensed to practice law in this state who offer only legal advice on underground storage tank management, release abatement, investigation, corrective action, or evaluation.

(7) "Closed" means an underground storage tank no longer in use that has been:

(a) emptied and cleaned to remove all liquids and accumulated sludges; and

(b) either removed from the ground or filled with an inert solid material.

(8) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for all or 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 persons whose drinking water has become contaminated by the release; or

(g) temporary or permanent relocation, whichever is determined by the [~~executive~~

~~secretary~~] director to be more cost-effective, of persons whose dwellings have been determined by the [~~executive secretary~~] director to be no longer habitable due to the release.

(9) "Costs" means any money expended for:

(a) investigation;

(b) abatement action;

(c) corrective action;

(d) judgments, awards, and settlements for bodily injury or property damage to third parties;

(e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or

(f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.

(10) "Covered by the fund" means the requirements of Section 19-6-424 have been met.

(11) "Director" means the director of the Division of Environmental Response and Remediation.

(12) "Division" means the Division of Environmental Response and Remediation, created in Subsection 19-1-105(1)(c).

[~~(11)~~] (13) "Dwelling" means a building that is usually occupied by a person lodging there at night.

[~~(12)~~] (14) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.

[~~(13) "Executive secretary" means the executive secretary of the board.~~]

[~~(14)~~] (15) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.

[~~(15)~~] (16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

[~~(16)~~] (17) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section 19-6-405.3.

[~~(17)~~] (18) "Operator" means any person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or

dispensing of a regulated substance.

[~~(18)~~] (19) "Owner" means:

(a) in the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and

(b) in the case of any underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, any person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

[~~(19)~~] (20) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

[~~(20)~~] (21) "Petroleum storage tank" means a tank that:

(a) (i) is underground;

(ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c, et seq.; and

(iii) contains petroleum; or

(b) is a tank that the owner or operator voluntarily submits for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.

[~~(21)~~] (22) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.

[~~(22)~~] (23) "Program" means the Environmental Assurance Program under Section 19-6-410.5.

[~~(23)~~] (24) "Property damage" means physical injury to or destruction of tangible property including loss of use of that property.

[~~(24)~~] (25) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

[~~(25)~~] (26) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or petroleum storage tank. The entire release is considered a single release.

[~~(26)~~] (27) (a) "Responsible party" means any person who:

(i) is the owner or operator of a facility;

(ii) owns or has legal or equitable title in a facility or an underground storage tank;

(iii) owned or had legal or equitable title in the facility at the time any petroleum was received or contained at the facility;

(iv) operated or otherwise controlled activities at the facility at the time any petroleum was received or contained at the facility; or

(v) is an underground storage tank installation company.

(b) "Responsible party" as defined in Subsections [~~(26)~~] (27)(a)(i), (ii), and (iii) does not include:

(i) any 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 his 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 CFR 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 CFR 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).

[~~(27)~~] (28) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

[~~(28)~~] (29) "State cleanup appropriation" means the money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.

[~~(29)~~] (30) "Underground storage tank" means any tank regulated under Subtitle I,

Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

(a) a petroleum storage tank;

(b) underground pipes and lines connected to a storage tank; and

(c) any underground ancillary equipment and containment system.

[~~(30)~~] (31) "Underground storage tank installation company" means any person, firm, partnership, corporation, governmental entity, association, or other organization who installs underground storage tanks.

[~~(31)~~] (32) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the [~~executive secretary~~] director.

[~~(32)~~] (33) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

Section 60. Section **19-6-403** is amended to read:

19-6-403. Powers and duties of board.

The board shall regulate an underground storage tank or petroleum storage tank by:

(1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that:

(a) provide for the:

(i) certification of an installer, inspector, tester, or remover;

(ii) registration of a tank;

(iii) administration of the petroleum storage tank program;

(iv) format of and required information in a record kept by a tank owner or operator who is participating in the fund;

(v) voluntary participation in the fund for:

(A) an above ground petroleum storage tank; and

(B) a tank:

(I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

(II) specified in Section 19-6-415; and

(vi) certification of an underground storage tank consultant including:

(A) a minimum education or experience requirement; and

(B) a recognition of the educational requirement of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, as meeting the education requirement for certification;

(b) adopt the requirements for an underground storage tank contained in:

(i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may be amended in the future; and

(ii) an applicable federal requirement authorized by the federal law referenced in Subsection (1)(b)(i); and

(c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of primacy in the regulation of an underground storage tank; and

(2) [~~applying~~] apply the provisions of this part.

Section 61. Section **19-6-404** is amended to read:

19-6-404. Powers and duties of director.

(1) The [~~executive secretary~~] director shall:

(a) administer the petroleum storage tank program established in this part[~~.~~]; and

(b) as authorized by the board and subject to the provisions of this part, act as executive secretary of the board under the direction of the chairman of the board.

(2) As necessary to meet the requirements or carry out the purposes of this part, the [~~executive secretary~~] director may:

(a) advise, consult, and cooperate with other persons;

(b) employ persons;

(c) authorize a certified employee or a certified representative of the department to conduct facility inspections and reviews of records required to be kept by this part and by rules made under this part;

(d) encourage, participate in, or conduct studies, investigation, research, and demonstrations;

(e) collect and disseminate information;

(f) enforce rules made by the board and any requirement in this part by issuing notices and orders;

(g) review plans, specifications, or other data;

(h) under the direction of the executive director, represent the state in all matters pertaining to interstate underground storage tank management and control, including[~~, with the concurrence of the executive director,~~] entering into interstate compacts and other similar agreements;

(i) enter into contracts or agreements with political subdivisions for the performance of any of the department's responsibilities under this part if:

(i) the contract or agreement is not prohibited by state or federal law and will not result in a loss of federal funding; and

(ii) the [~~executive secretary~~] director determines that:

(A) the political subdivision is willing and able to satisfactorily discharge its responsibilities under the contract or agreement; and

(B) the contract or agreement will be practical and effective;

(j) take any necessary enforcement action authorized under this part;

(k) require an owner or operator of an underground storage tank to:

(i) furnish information or records relating to the tank, its equipment, and contents;

(ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils, air, or water; or

(iii) provide access to the tank at reasonable times;

(l) take any abatement, investigative, or corrective action as authorized in this part; [~~and~~] or

(m) enter into agreements or issue orders to apportion percentages of liability of responsible parties under Section 19-6-424.5.

[~~(3) Except as otherwise provided in Subsection 19-6-414(3), appeals of decisions made by the executive secretary under this part shall be made to the board.~~]

Section 62. Section **19-6-405.3** is amended to read:

19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan eligibility -- Loan restrictions -- Rulemaking.

(1) There is created a revolving loan fund known as the Petroleum Storage Tank Loan Fund.

(2) The sources of money for the loan fund are:

(a) appropriations to the loan fund;

(b) principal and interest received from the repayment of loans made by the [~~executive secretary~~] director under Subsection (3); and

(c) all investment income derived from money in the fund.

(3) The [~~executive secretary~~] director may loan, in accordance with this section, money available in the loan fund to a person to be used for:

(a) upgrading a petroleum storage tank;

(b) replacing an underground storage tank; or

(c) permanently closing an underground storage tank.

(4) A person may apply to the [~~executive secretary~~] director for a loan under Subsection (3) 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 loan fund.

(5) The [~~executive secretary~~] director shall consider loan applications under Subsection (4) 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.

(6) Loans made under this section may not:

(a) be for more than $150,000 for all tanks at any one facility;

(b) be for more than $50,000 per tank;

(c) be for more than 80% of the total cost of:

(i) upgrading a tank;

(ii) replacing the underground storage tank; or

(iii) permanently closing the underground storage tank;

(d) have a fixed annual interest rate of 3%;

(e) have a term no longer than 10 years;

(f) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (7); and

(g) comply with rules made by the board under Subsection (7).

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:

(a) form, content, and procedure for a loan application;

(b) criteria and procedures for prioritizing a loan application;

(c) requirements and procedures for securing a loan;

(d) procedures for making a loan;

(e) procedures for administering and ensuring repayment of a loan, including late payment penalties; and

(f) procedures for recovering on a defaulted loan.

(8) A decision by the [~~executive secretary~~] director to loan money from the loan fund and otherwise administer the loan fund is not subject to Title 63G, Chapter 4, Administrative Procedures Act.

(9) The Legislature shall appropriate money from the loan fund to the department for the administration of the loan.

(10) The [~~executive secretary~~] director may enter into an agreement with a public entity or private organization to perform a task associated with administration of the loan fund.

Section 63. Section **19-6-405.7** is amended to read:

19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.

(1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Cleanup Fund," which is referred to in this section as the cleanup fund.

(2) The cleanup fund sources of revenue are:

(a) any voluntary contributions received by the department for the cleanup of facilities;

(b) legislative appropriations made to the cleanup fund; and

(c) costs recovered under this part.

(3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

(4) The [~~executive secretary~~] director may use the cleanup fund money for administration, investigation, abatement action, and preparing and implementing a corrective action plan regarding releases not covered by the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

Section 64. Section **19-6-407** is amended to read:

19-6-407. Underground storage tank registration -- Change of ownership or operation -- Civil penalty.

(1) (a) Each owner or operator of an underground storage tank shall register the tank

with the [~~executive secretary~~] director if the tank:

(i) is in use; or

(ii) was closed after January 1, 1974.

(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the executive secretary of the change within 30 days after the change occurs.

(c) Each installer of an underground storage tank shall notify the [~~executive secretary~~] director of the completed installation within 60 days following the installation of an underground storage tank.

(2) The [~~executive secretary~~] director may issue a notice of agency action assessing a civil penalty in the amount of $1,000 if an owner, operator, or installer, of a petroleum or underground storage tank fails to register the tank or provide notice as required in Subsection (1).

(3) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

Section 65. Section **19-6-408** is amended to read:

19-6-408. Underground storage tank registration fee -- Processing fee for tanks not in the program.

(1) The department may assess an annual underground storage tank registration fee against owners or operators of underground storage tanks that have not been closed. These fees shall be:

(a) billed per facility;

(b) due on July 1 annually;

(c) deposited with the department as dedicated credits;

(d) used by the department for the administration of the underground storage tank program outlined in this part; and

(e) established under Section 63J-1-504.

(2) (a) In addition to the fee under Subsection (1), an owner or operator who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee of:

(i) for fiscal year 1997-98, $1,000 for each financial assurance mechanism document

submitted to the division for review; and

(ii) on and after July 1, 1998, a processing fee established under Section 63J-1-504.

(b) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee under Subsection (2)(a) shall be paid for each document submitted.

(c) 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.

(3) Any funds provided for administration of the underground storage tank program under this section that are not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

(4) The [~~executive secretary~~] director shall provide all owners or operators who pay the annual underground storage tank registration fee a certificate of registration.

(5) (a) The [~~executive secretary~~] director may issue a notice of agency action assessing a civil penalty of $1,000 per facility if an owner or operator of an underground storage tank facility fails to pay the required fee within 60 days after the July 1 due date.

(b) The registration fee and late payment penalty accrue interest at 12% per annum.

(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The [~~executive secretary~~] director may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.

(d) The [~~executive secretary~~] 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 66. 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; and

(iv) interest accrued on revenues listed in this Subsection (1)(b).

(c) Interest earned on fund money is deposited into the fund.

(2) The [~~executive secretary~~] 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 state risk manager in determining the actuarial soundness of the fund;

(e) incurred by a third party claiming injury or damages from a release reported on or after May 11, 2010, for hiring a certified underground storage tank consultant:

(i) to review an investigation or corrective action by a responsible party; and

(ii) in accordance with Subsection (4); and

(f) allowed under this part that are not listed under this Subsection (2).

(3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.

(4) The [~~executive secretary~~] director shall:

(a) in paying costs under Subsection (2)(e):

(i) determine a reasonable limit on costs paid based on the:

(A) extent of the release;

(B) impact of the release; and

(C) services provided by the certified underground storage tank consultant;

(ii) pay, per release, costs for one certified underground storage tank consultant agreed to by all third parties claiming damages or injury;

(iii) include costs paid in the coverage limits allowed under Section 19-6-419; and

(iv) not pay legal costs of third parties;

(b) review and give careful consideration to reports and recommendations provided by

a certified underground storage tank consultant hired by a third party; and

(c) make reports and recommendations provided under Subsection (4)(b) available on the Division of Environmental Response and Remediation's website.

Section 67. Section **19-6-411** is amended to read:

19-6-411. Petroleum storage tank fee for program participants.

(1) In addition to the underground storage tank registration fee paid in Section 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum storage tank fee to the department for each facility as follows:

(a) on and after July 1, 1990, through June 30, 1993, an annual fee of:

(i) $250 for each tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or

(B) with an annual monthly throughput of more than 10,000 gallons; and

(ii) $125 for each tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing; and

(B) with an annual monthly throughput of 10,000 gallons or less;

(b) on and after July 1, 1993, through June 30, 1994, an annual fee of:

(i) $150 for each tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or

(B) with an average monthly throughput of more than 10,000 gallons; and

(ii) $75 for each tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing; and

(B) with an average monthly throughput of 10,000 gallons or less; and

(c) on and after July 1, 1994, an annual fee of:

(i) $50 for each tank in a facility with an annual facility throughput rate of 400,000 gallons or less;

(ii) $150 for each tank in a facility with an annual facility throughput rate of more than 400,000 gallons; and

(iii) $150 for each tank in a facility regarding which:

(A) the facility's throughput rate is not reported to the department within 30 days after the date this throughput information is requested by the department; or

(B) the owner or operator elects to pay the fee under this subsection, rather than report under Subsection (1)(c)(i) or (ii); and

(d) on and after July 1, 1998, for any new tank:

(i) which is installed to replace an existing tank at an existing facility, any annual petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to the new tank; and

(ii) installed at a new facility or at an existing facility, which is not a replacement for another existing tank, the fees are as provided in Subsection (1)(c) of this section.

(2) (a) As a condition of receiving a permit and being eligible for benefits under Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank installation company shall pay to the department the following fees to be deposited in the fund:

(i) an annual fee of:

(A) $2,000 per underground storage tank installation company if the installation company has installed 15 or fewer underground storage tanks within the 12 months preceding the fee due date; or

(B) $4,000 per underground storage tank installation company if the installation company has installed 16 or more underground storage tanks within the 12 months preceding the fee due date; and

(ii) $200 for each underground storage tank installed in the state, to be paid prior to completion of installation.

(b) The board shall make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full underground storage tank system is installed.

(3) (a) Fees under Subsection (1) are due on or before July 1 annually.

(b) If the department does not receive the fee on or before July 1, the department shall impose a late penalty of $60 per facility.

(c) (i) The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, the late penalty, and all accrued interest are not received by the department within 60 days after July 1, the eligibility of the owner or operator to receive

payments for claims against the fund lapses on the 61st day after July 1.

(iii) In order for the owner or operator to reinstate eligibility to receive payments for claims against the fund, the owner or operator shall meet the requirements of Subsection 19-6-428(3).

(4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the department does not receive the fees on or before July 1, the department shall impose a late penalty of $60 per installation company. The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, late penalty, and all accrued interest due are not received by the department within 60 days after July 1, the underground storage tank installation company's permit and eligibility to receive payments for claims against the fund lapse on the 61st day after July 1.

(b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If the department does not receive the fees prior to completion of installation, the department shall impose a late penalty of $60 per facility. The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, late penalty, and all accrued interest are not received by the department within 60 days after the underground storage tank installation is completed, eligibility to receive payments for claims against the fund for that tank lapse on the 61st day after the tank installation is completed.

(c) The [~~executive secretary~~] director may not reissue the underground storage tank installation company permit until the fee, late penalty, and all accrued interest are received by the department.

(5) If the state risk manager determines the fees established in Subsections (1) and (2) and the environmental assurance fee established in Section 19-6-410.5 are insufficient to maintain the fund on an actuarially sound basis, he shall petition the Legislature to increase the petroleum storage tank and underground storage tank installation company permit fees, and the environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

(6) The [~~executive secretary~~] director may waive all or part of the fees required to be paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has been dispensed from the tank on or after July 1, 1991.

(7) (a) Each petroleum storage tank or underground storage tank, for which payment of fees has been made and other requirements have been met to qualify for a certificate of compliance under this part, shall be issued a form of identification, as determined by the board under Subsection (7)(b).

(b) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of petroleum storage tanks or underground storage tanks under Subsection (7)(a) that qualify for a certificate of compliance under this part.

Section 68. Section **19-6-412** is amended to read:

19-6-412. Petroleum storage tank -- Certificate of compliance.

(1) (a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may obtain a certificate of compliance for the facility.

(b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall have a certificate of compliance for the facility.

(2) The [~~executive secretary~~] director shall issue a certificate of compliance if:

(a) the owner or operator has a certificate of registration;

(b) the owner or operator demonstrates it is participating in the Environmental Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with financial assurance requirements as defined by rule;

(c) all state and federal statutes, rules, and regulations have been substantially complied with; and

(d) all tank test requirements of Section 19-6-413 have been met.

(3) If the ownership of or responsibility for the petroleum storage tank changes, the certificate of compliance is still valid unless it has been revoked or has lapsed.

(4) The [~~executive secretary~~] director may issue a certificate of compliance for a period of less than one year to maintain an administrative schedule of certification.

(5) The [~~executive secretary~~] director shall reissue a certificate of compliance if the owner or operator of an underground storage tank has complied with the requirements of Subsection (2).

(6) If the owner or operator electing to participate in the program has a number of tanks in an area where the [~~executive secretary~~] director finds it would be difficult to accurately determine which of the tanks may be the source of a release, the owner may only elect to place

all of the tanks in the area in the program, but not just some of the tanks in the area.

Section 69. Section **19-6-413** is amended to read:

19-6-413. Tank tightness test -- Actions required after testing.

(1) The owner or operator of any petroleum storage tank registered before July 1, 1991, shall submit to the [~~executive secretary~~] director the results of a tank tightness test conducted:

(a) on or after September 1, 1989, and before January 1, 1990, if the test meets requirements set by rule regarding tank tightness tests that were applicable during that period; or

(b) on or after January 1, 1990, and before July 1, 1991.

(2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, shall submit to the [~~executive secretary~~] director the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.

(3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the [~~executive secretary~~] director at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.

(4) (a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:

(i) correct the problem; and

(ii) submit evidence of the correction to the [~~executive secretary~~] director.

(b) When the [~~executive secretary~~] director receives evidence from an owner or operator of a petroleum storage tank that the problem with the tank has been corrected, the [~~executive secretary~~] director shall:

(i) approve or disapprove the correction; and

(ii) notify the owner or operator that the correction has been approved or disapproved.

(5) The [~~executive secretary~~] director shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.

(6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D,

to perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

Section 70. Section **19-6-414** is amended to read:

19-6-414. Grounds for revocation of certificate of compliance and ineligibility for payment of costs from fund.

(1) If the [~~executive secretary~~] director determines that any of the requirements of Subsection 19-6-412(2) and Section 19-6-413 have not been met, the [~~executive secretary~~] director shall notify the owner or operator by certified mail that:

(a) his certificate of compliance may be revoked;

(b) if he is participating in the program, he is violating the eligibility requirements for the fund; and

(c) he shall demonstrate his compliance with this part within 60 days after receipt of the notification or his certificate of compliance will be revoked and if participating in the program he will be ineligible to receive payment for claims against the fund.

(2) If the [~~executive secretary~~] director determines the owner's or operator's compliance problems have not been resolved within 60 days after receipt of the notification in Subsection (1), the [~~executive secretary~~] director shall send written notice to the owner or operator that the owner's or operator's certificate of compliance is revoked and he is no longer eligible for payment of costs from the fund.

(3) Revocation of certificates of compliance may be appealed to the executive director.

Section 71. Section **19-6-416** is amended to read:

19-6-416. Restrictions on delivery of petroleum -- Civil penalty.

(1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(7).

(2) Any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank in violation of Subsection (1) is subject to a civil penalty of not more than $500 for each occurrence.

(3) The [~~executive secretary~~] director shall issue a notice of agency action assessing a civil penalty of not more than $500 against any person who delivers or accepts delivery of

petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank or underground storage tank.

(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank or underground storage tank that is identified in compliance with Subsection 19-6-411(7) and rules made under that subsection, whether or not the tank is in actual compliance with the other requirements of Section 19-6-411.

Section 72. Section **19-6-416.5** is amended to read:

19-6-416.5. Restrictions on underground storage tank installation companies -- Civil penalty.

(1) After July 1, 1994, no individual or underground installation company may install an underground storage tank without having a valid underground storage tank installation company permit.

(2) Any individual or underground storage tank installation company who installs an underground storage tank in violation of Subsection (1) is subject to a civil penalty of $500 per underground storage tank.

(3) The [~~executive secretary~~] director shall issue a notice of agency action assessing a civil penalty of $500 against any underground storage tank installation company or person who installs an underground storage tank in violation of Subsection (1).

Section 73. Section **19-6-417** is amended to read:

19-6-417. Use of fund revenues to investigate certain releases from petroleum storage tank.

If the [~~executive secretary~~] director is notified of or otherwise becomes aware of a release or suspected release of petroleum, he may expend revenues from the fund to investigate the release or suspected release if he has reasonable cause to believe the release is from a tank that is covered by the fund.

Section 74. Section **19-6-418** is amended to read:

19-6-418. Recovery of costs by director.

(1) The [~~executive secretary~~] director may recover:

(a) from a responsible party the proportionate share of costs the party is responsible for

as determined under Section 19-6-424.5;

(b) any amount required to be paid by the owner under this part which the owner has not paid; and

(c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).

(2) The [~~executive secretary~~] director may pursue an action or recover costs from any other person if that person caused or substantially contributed to the release.

(3) All costs recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7.

Section 75. Section **19-6-419** is amended to read:

19-6-419. Costs covered by the fund -- Costs paid by owner or operator -- Payments to third parties -- Apportionment of costs.

(1) If all requirements of this part have been met and a release occurs from a tank that is covered by the fund, the costs per release are covered as provided under this section.

(2) For releases reported before May 11, 2010, the responsible party shall pay:

(a) the first $10,000 of costs; and

(b) (i) all costs over $1,000,000, if the release was from a tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or

(B) with an average monthly facility throughput of more than 10,000 gallons; and

(ii) all costs over $500,000, if the release was from a tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing; and

(B) with an average monthly facility throughput of 10,000 gallons or less.

(3) For releases reported before May 11, 2010, if money is available in the fund and the responsible party has paid costs of $10,000, the [~~executive secretary~~] director shall pay costs from the fund in an amount not to exceed:

(a) $990,000 if the release was from a tank:

(i) located at a facility engaged in petroleum production, refining, or marketing; or

(ii) with an average monthly facility throughput of more than 10,000 gallons; and

(b) $490,000 if the release was from a tank:

(i) not located at a facility engaged in petroleum production, refining, or marketing; and

(ii) with an average monthly facility throughput of 10,000 gallons or less.

(4) For a release reported on or after May 11, 2010, the responsible party shall pay:

(a) the first $10,000 of costs; and

(b) (i) all costs over $2,000,000, if the release was from a tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or

(B) with an average monthly facility throughput of more than 10,000 gallons; and

(ii) all costs over $1,000,000, if the release was from a tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing; and

(B) with an average monthly facility throughput of 10,000 gallons or less.

(5) For a release reported on or after May 11, 2010, if money is available in the fund and the responsible party has paid costs of $10,000, the [~~executive secretary~~] director shall pay costs from the fund in an amount not to exceed:

(a) $1,990,000 if the release was from a tank:

(i) located at a facility engaged in petroleum production, refining, or marketing; or

(ii) with an average monthly facility throughput of more than 10,000 gallons; and

(b) $990,000 if the release was from a tank:

(i) not located at a facility engaged in petroleum production, refining, or marketing; and

(ii) with an average monthly facility throughput of 10,000 gallons or less.

(6) The [~~executive secretary~~] director may pay fund money to a responsible party up to the following amounts in a fiscal year:

(a) $1,990,000 to a responsible party owning or operating less than 100 petroleum storage tanks; or

(b) $3,990,000 to a responsible party owning or operating 100 or more petroleum storage tanks.

(7) (a) In authorizing payments for costs from the fund, the [~~executive secretary~~] director shall apportion money:

(i) first, to the following type of expenses incurred by the state:

(A) legal;

(B) adjusting; and

(C) actuarial;

(ii) second, to costs incurred for:

(A) investigation;

(B) abatement action; and

(C) corrective action; and

(iii) third, to payment of:

(A) judgments;

(B) awards; and

(C) settlements to third parties for bodily injury or property damage.

(b) The board shall make rules governing the apportionment of costs among third party claimants.

Section 76. Section **19-6-420** is amended to read:

19-6-420. Releases -- Abatement actions -- Corrective actions.

(1) If the [~~executive secretary~~] director determines that a release from a petroleum storage tank has occurred, he shall:

(a) identify and name as many of the responsible parties as reasonably possible; and

(b) determine which responsible parties, if any, are covered by the fund regarding the release in question.

(2) Regardless of whether the tank generating the release is covered by the fund, the [~~executive secretary~~] director may:

(a) order the owner or operator to take abatement, investigative, or corrective action, including the submission of a corrective action plan; and

(b) if the owner or operator fails to take any of the abatement, investigative, or corrective action ordered by the [~~executive secretary~~] director, the [~~executive secretary~~] director may take any one or more of the following actions:

(i) subject to the conditions in this part, use money from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;

(ii) commence an enforcement proceeding;

(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or

(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5.

(3) (a) Subject to the limitations established in Section 19-6-419, the [~~executive secretary~~] director shall provide money from the fund for abatement action for a release generated by a tank covered by the fund if:

(i) the owner or operator takes the abatement action ordered by the [~~executive secretary~~] director; and

(ii) the [~~executive secretary~~] director approves the abatement action.

(b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the [~~executive secretary~~] director for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the [~~executive secretary~~] director that the abatement action was reasonable and timely in light of circumstances, the [~~executive secretary~~] director shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.

(c) The owner or operator shall notify the [~~executive secretary~~] director within 24 hours of the abatement action taken.

(4) (a) If the [~~executive secretary~~] director determines corrective action is necessary, the [~~executive secretary~~] 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 [~~executive secretary~~] director shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the [~~executive secretary~~] 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 [~~executive secretary~~] director approves the corrective action plan or develops his own corrective action plan, he 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 [~~executive secretary~~] director may not distribute any money from the fund for corrective action until the owner or operator obtains the [~~executive secretary's~~] director's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the [~~executive secretary~~] 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 [~~executive secretary~~] director within seven days after beginning corrective action; and

(ii) the [~~executive secretary~~] director approves the corrective action plan.

(7) If the [~~executive secretary~~] director disapproves the plan, he shall solicit a new corrective action plan from the owner or operator.

(8) If the [~~executive secretary~~] director disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the [~~executive secretary~~] director may:

(a) develop his own 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 [~~executive secretary~~] 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 [~~executive secretary~~] director determines the corrective action has not been properly performed or completed, he may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.

Section 77. Section **19-6-421** is amended to read:

19-6-421. Third party payment restrictions and requirements.

(1) If there are sufficient revenues in the fund, and subject to the provisions of Sections 19-6-419, 19-6-422, and 19-6-423, the [~~executive secretary~~] director shall authorize payment

from the fund to third parties regarding a release covered by the fund as provided in Subsection (2) if:

(a) (i) he is notified that a final judgment or award has been entered against the responsible party covered by the fund that determines liability for bodily injury or property damage to third parties caused by a release from the tank; or

(ii) approved by the state risk manager, the responsible party has agreed to pay an amount in settlement of a claim arising from the release; and

(b) the responsible party has failed to satisfy the judgment or award, or pay the amount agreed to.

(2) The [~~executive secretary~~] director shall authorize payment to the third parties of the amount of the judgment, award, or amount agreed to subject to the limitations established in Section 19-6-419.

Section 78. Section **19-6-423** is amended to read:

19-6-423. Claim or suit against responsible parties -- Prerequisites for payment from fund to responsible parties or third parties -- Limitations of liability for third party claims.

(1) (a) The [~~executive secretary~~] director may authorize payments from the fund to a responsible party if the responsible party receives actual or constructive notice:

(i) of a release likely to give rise to a claim; or

(ii) that in connection with a release a:

(A) suit has been filed; or

(B) claim has been made against the responsible party for:

(I) bodily injury; or

(II) property damage.

(b) A responsible party described in Subsection (1)(a) shall:

(i) inform the state risk manager immediately of a release, suit, or claim described in Subsection (1)(a);

(ii) allow the state risk manager and the state risk manager's legal counsel to participate with the responsible party and the responsible party's legal counsel in:

(A) the defense of a suit;

(B) determination of legal strategy;

(C) other decisions affecting the defense of a suit; and

(D) settlement negotiations; and

(iii) conduct the defense of a suit or claim in good faith.

(2) The [~~executive secretary~~] director may authorize payment of fund money for a judgment or award to third parties if the state risk manager:

(a) is allowed to participate in the defense of the suit as required under Subsection (1)(b); and

(b) approves the settlement.

(3) The [~~executive secretary~~] director may make a payment from the fund to a third party pursuant to Section 19-6-421 or fund a corrective action plan pursuant to Section 19-6-420 if the payment or funding does not impose a liability or make a payment for:

(a) an obligation of a responsible party for:

(i) workers' compensation benefits;

(ii) disability benefits;

(iii) unemployment compensation; or

(iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);

(b) a bodily injury award to:

(i) a responsible party's employee arising from and in the course of the employee's employment; or

(ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of the employee described in Subsection (3)(b)(i);

(c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of an aircraft, motor vehicle, or watercraft;

(d) property damage to a property owned by, occupied by, rented to, loaned to, bailed to, or otherwise in the care, custody, or control of a responsible party except to the extent necessary to complete a corrective action plan;

(e) bodily injury or property damage for which a responsible party is obligated to pay damages by reason of the assumption of liability in a contract or agreement unless the responsible party entered into the contract or agreement to meet the financial responsibility requirements of:

(i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c et

seq., or regulations issued under this act; or

(ii) this part, or rules made under this part;

(f) bodily injury or property damage for which a responsible party is liable to a third party solely on account of personal injury to the third party's spouse;

(g) bodily injury, property damage, or the cost of corrective action caused by releases reported before May 11, 2010 that are covered by the fund if the total amount previously paid by the [~~executive secretary~~] director to compensate third parties and fund corrective action plans for the releases equals:

(i) $990,000 for a single release; and

(ii) for all releases by a responsible party in a fiscal year:

(A) $1,990,000 for a responsible party owning less than 100 petroleum storage tanks; and

(B) $3,990,000 for a responsible party owning 100 or more petroleum storage tanks; and

(h) bodily injury, property damage, or the cost of corrective action caused by releases reported on or after May 11, 2010, covered by the fund if the total amount previously paid by the [~~executive secretary~~] director to compensate third parties and fund corrective action plans for the releases equals:

(i) $1,990,000 for a single release; and

(ii) for all releases by a responsible party in a fiscal year:

(A) $1,990,000 for a responsible party owning less than 100 petroleum storage tanks; and

(B) $3,990,000 for a responsible party owning 100 or more petroleum storage tanks.

Section 79. Section **19-6-424** is amended to read:

19-6-424. Claims not covered by fund.

(1) The [~~executive secretary~~] director may not authorize payments from the fund unless:

(a) the claim was based on a release occurring during a period for which that tank was covered by the fund;

(b) the claim was made:

(i) during a period for which that tank was covered by the fund; or

(ii) (A) within one year after that fund-covered tank is closed; or

(B) within six months after the end of the period during which the tank was covered by the fund; and

(c) there are sufficient revenues in the fund.

(2) The [~~executive secretary~~] director may not authorize payments from the fund for an underground storage tank installation company unless:

(a) the claim was based on a release occurring during the period prior to the issuance of a certificate of compliance;

(b) the claim was made within 12 months after the date the tank is issued a certificate of compliance for that tank; and

(c) there are sufficient revenues in the fund.

(3) The [~~executive secretary~~] director may require the claimant to provide additional information as necessary to demonstrate coverage by the fund at the time of submittal of the claim.

(4) If the Legislature repeals or refuses to reauthorize the program for petroleum storage tanks established in this part, the [~~executive secretary~~] director may authorize payments from the fund as provided in this part for claims made until the end of the time period established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

Section 80. Section **19-6-424.5** is amended to read:

19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies -- Amounts recovered.

(1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the [~~executive secretary~~] director may:

(a) issue written orders determining responsible parties;

(b) issue written orders apportioning liability among responsible parties; and

(c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.

(2) (a) In any apportionment of liability, whether made by the [~~executive secretary~~] director or made in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court, the board, or the [~~executive secretary~~] director shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).

(c) The court, the board, or the [~~executive secretary~~] director may not impose joint and several liability.

(d) Each responsible party is strictly liable for his share of costs.

(3) The failure of the [~~executive secretary~~] director to name all responsible parties is not a defense to an action under this section.

(4) The [~~executive secretary~~] director may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party.

(5) The [~~executive secretary~~] director and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):

(a) have been notified in writing by either the [~~executive secretary~~] director or the responsible party of the proposed agreement; and

(b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.

(6) (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court.

(b) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).

(7) (a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.

(b) (i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.

(ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.

(8) (a) If the [~~executive secretary~~] director obtains less than complete relief from a party who has resolved his liability under this section, the [~~executive secretary~~] director may bring an action against any party who has not resolved his liability as determined in an order.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order.

(9) (a) An agreement or order determining liability under this part may provide that the [~~executive secretary~~] director will pay for costs of actions that the parties have agreed to perform, but which the [~~executive secretary~~] director has agreed to finance, under the terms of the agreement or order.

(b) If the [~~executive secretary~~] director makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.

(c) Any amounts recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.

Section 81. Section **19-6-425** is amended to read:

19-6-425. Violation of part -- Civil penalty -- Suit in district court.

(1) Except as provided in Section 19-6-407, any person who violates any requirement of this part or any order issued or rule made under the authority of this part is subject to a civil penalty of not more than $10,000 per day for each day of violation.

(2) The [~~executive secretary~~] director may enforce any requirement, rule, agreement, or order issued under this part by bringing a suit in the district court in the county where the underground storage tank or petroleum storage tank is located.

(3) The department shall deposit the penalties collected under this part in the

Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

Section 82. 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 existing petroleum storage tanks that were covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and 19-6-411.

(2) Any new petroleum storage tanks that were installed after May 5, 1997, or tanks eligible under Section 19-6-415, may elect to participate in the program by complying with the requirements of this part.

(3) (a) All owners and operators of petroleum storage tanks who elect to not participate in the program, including by the use of an alternative financial assurance mechanism, shall, in order to subsequently participate in the program:

(i) perform a tank tightness test;

(ii) except as provided in Subsection (3)(b), perform a site check, including soil and, when applicable, groundwater samples, to demonstrate that no release of petroleum exists or that there has been adequate remediation of releases as required by board rules;

(iii) provide the required tests and samples to the [~~executive secretary~~] director; and

(iv) comply with the requirements of this part.

(b) A site check under Subsection (3)(a)(ii) is not required if the [~~executive secretary~~] director determines, with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released.

(4) The [~~executive secretary~~] 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 83. Section **19-6-601** is amended to read:

19-6-601. Definitions.

As used in this part[~~, "board"~~]:

(1) "Board" means the Solid and Hazardous Waste Control Board appointed under

Title 19, Chapter 6, Hazardous Substances.

(2) "Director" means the director of the Division of Solid and Hazardous Waste.

Section 84. Section **19-6-606** is amended to read:

19-6-606. Enforcement.

(1) The [~~board~~] director may authorize inspections under Section [~~19-6-104~~] 19-6-107 of any place, building, or premise where lead acid batteries are sold to determine compliance with this part. The [~~board~~] director may authorize inspections under this subsection only as funding is available within the department's current budget.

(2) Local health departments established under Title 26A, Local Health Authorities, may enforce the provisions of this part.

Section 85. Section **19-6-703** is amended to read:

19-6-703. Definitions.

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(2) "Commission" means the State Tax Commission.

(3) "Department" means the Department of Environmental Quality created in Title 19, Chapter 1, General Provisions.

(4) "Director" means the director of the Division of Solid and Hazardous Waste.

[~~(4)~~] (5) "Division" means the Division of Solid and Hazardous Waste [~~as~~], created in [~~Section~~] Subsection 19-1-105(1)(e).

[~~(5)~~] (6) "DIY" means do it yourself.

[~~(6)~~] (7) "DIYer" means a person who generates used oil through household activities, including maintenance of personal vehicles.

[~~(7)~~] (8) "DIYer used oil" means used oil a person generates through household activities, including maintenance of personal vehicles.

[~~(8)~~] (9) "DIYer used oil collection center" means any site or facility that accepts or aggregates and stores used oil collected only from DIYers.

[~~(9) "Executive secretary" means the executive secretary of the board.~~]

(10) "Hazardous waste" means any substance defined as hazardous waste under Title 19, Chapter 6, Hazardous Substances.

(11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce

friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.

(12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil in Utah.

(13) "Manifest" means the form used for identifying the quantity and composition and the origin, routing, and destination of used oil during its transportation from the point of collection to the point of storage, processing, use, or disposal.

(14) "Off-specification used oil" means used oil that exceeds levels of constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.

(15) "On-specification used oil" means used oil that does not exceed levels of constituents and properties as specified by board rule and consistent with 40 CFR 279, Standards for the Management of Used Oil.

(16) (a) "Processing" means chemical or physical operations under Subsection (16)(b) designed to produce from used oil, or to make used oil more amenable for production of:

(i) gasoline, diesel, and other petroleum derived fuels;

(ii) lubricants; or

(iii) other products derived from used oil.

(b) "Processing" includes:

(i) blending used oil with virgin petroleum products;

(ii) blending used oils to meet fuel specifications;

(iii) filtration;

(iv) simple distillation;

(v) chemical or physical separation; and

(vi) rerefining.

(17) "Recycled oil" means oil reused for any purpose following its original use, including:

(a) the purpose for which the oil was originally used; and

(b) used oil processed or burned for energy recovery.

(18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition varies with column operation and feedstock.

(19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities.

(20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons.

(b) A used oil aggregation point may also accept oil from DIYers.

(21) "Used oil burner" means a person who burns used oil for energy recovery.

(22) "Used oil collection center" means any site or facility registered with the state to manage used oil and that accepts or aggregates and stores used oil collected from used oil generators, other than DIYers, who are regulated under this part and bring used oil to the collection center in shipments of no more than 55 gallons and under the provisions of this part. Used oil collection centers may accept DIYer used oil also.

(23) "Used oil fuel marketer" means any person who:

(a) directs a shipment of off-specification used oil from its facility to a used oil burner; or

(b) first claims the used oil to be burned for energy recovery meets the used oil fuel specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil is to be burned in accordance with rules for on-site burning in space heaters in accordance with 40 CFR 279.

(24) "Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(25) "Used oil handler" means a person generating used oil, collecting used oil, transporting used oil, operating a transfer facility or aggregation point, processing or rerefining used oil, or marketing used oil.

(26) "Used oil processor or rerefiner" means a facility that processes used oil.

(27) "Used oil transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days.

(28) (a) "Used oil transporter" means the following persons unless they are exempted

under Subsection (28)(b):

(i) any person who transports used oil;

(ii) any person who collects used oil from more than one generator and transports the collected oil;

(iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who transports collected DIYer used oil from used oil generators, collection centers, aggregation points, or other facilities required to be permitted or registered under this part and where household DIYer used oil is collected; and

(iv) owners and operators of used oil transfer facilities.

(b) "Used oil transporter" does not include:

(i) persons who transport oil on site;

(ii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

(iii) generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as allowed under 40 CFR 279.24, Off-site Shipments;

(iv) persons who transport used oil generated by DIYers from the initial generator to a used oil generator, used oil collection center, used oil aggregation point, used oil processor or rerefiner, or used oil burner subject to permitting or registration under this part; or

(v) railroads that transport used oil and are regulated under 49 U.S.C. Subtitle V, Rail Programs, and 49 U.S.C. 5101 et seq., federal Hazardous Materials Transportation Uniform Safety Act.

Section 86. Section **19-6-704** is amended to read:

19-6-704. Powers and duties of the board.

(1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279, Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil under 40 CFR 279. For these purposes the board shall:

[~~(a) (i) receive a proposed dispositive action from an administrative law judge as provided by Section 19-1-301; and~~]

[~~(ii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~

~~action; or~~]

[~~(B) return the proposed dispositive action to the administrative law judge for further action as directed;~~]

[~~(b)~~] (a) establish by rule conditions and procedures for registration and revocation of registration as a used oil collection center, used oil aggregation point, or DIYer used oil collection center;

[~~(c)~~] (b) provide by rule that used oil aggregation points that do not accept DIYer used oil are required to comply with used oil collection standards under this part, but are not required to be permitted or registered;

[~~(d)~~] (c) establish by rule conditions and fees required to obtain permits and operate as used oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil fuel marketers;

[~~(e)~~] (d) establish by rule the amount of liability insurance or other financial responsibility the applicant shall have to qualify for a permit under Subsection (1)[~~(d)~~](c);

[~~(f)~~] (e) establish by rule the form and amount of reclamation surety required for reclamation of any site or facility required to be permitted under this part;

[~~(g) after public notice and opportunity for a public hearing, hear and act on permit issues appealed under Subsection 19-6-712(2);~~]

[~~(h)~~] (f) establish by rule standards for tracking, analysis, and recordkeeping regarding used oil subject to regulation under this part, including:

(i) manifests for handling and transferring used oil;

(ii) analyses necessary to determine if used oil is on-specification or off-specification;

(iii) records documenting date, quantities, and character of used oil transported, processed, transferred, or sold;

(iv) records documenting persons between whom transactions under this subsection occurred; and

(v) exemption of DIYer used oil collection centers from this subsection except as necessary to verify volumes of used oil picked up by a permitted transporter and the transporter's name and federal EPA identification number;

[~~(i)~~] (g) authorize inspections and audits of facilities, centers, and operations subject to regulation under this part;

[~~(j)~~] (h) establish by rule standards for:

(i) used oil generators;

(ii) used oil collection centers;

(iii) DIYer used oil collection centers;

(iv) aggregation points;

(v) curbside used oil collection programs;

(vi) used oil transporters;

(vii) used oil transfer facilities;

(viii) used oil burners;

(ix) used oil processors and rerefiners; and

(x) used oil marketers;

[~~(k)~~] (i) establish by rule standards for determining on-specification and off-specification used oil and specified mixtures of used oil, subject to Section 19-6-707 regarding rebuttable presumptions;

[~~(l)~~] (j) establish by rule standards for closure, remediation, and response to releases involving used oil; and

[~~(m)~~] (k) establish a public education program to promote used oil recycling and use of used oil collection centers.

(2) The board may:

(a) [~~(i)~~] hold a hearing that is not an adjudicative proceeding relating to any aspect of or matter in the administration of this part [~~and compel the attendance of witnesses and the production of documents and other evidence, administer oaths and take testimony, and receive evidence as necessary~~];

[~~(ii) receive a proposed dispositive action from an administrative law judge as provided by Section 19-1-301; and~~]

[~~(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive action; or~~]

[~~(B) return the proposed dispositive action to the administrative law judge for further action as directed;~~]

(b) require retention and submission of records required under this part; [~~and~~] or

(c) require audits of records and recordkeeping procedures required under this part and

rules made under this part, except that audits of records regarding the fee imposed and collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the commission under Section 19-6-716.

Section 87. Section **19-6-705** is amended to read:

19-6-705. Powers and duties of the director

(1) The [~~executive secretary~~] director shall:

(a) administer and enforce the rules and orders of the board;

(b) issue and revoke registration numbers for DIYer used oil collection centers and used oil collection centers;

(c) after public notice and opportunity for a public hearing:

(i) issue or modify a permit under this part;

(ii) deny a permit when the [~~executive secretary~~] director finds the application is not complete; and

(iii) revoke a permit issued under this section upon a finding the permit holder has failed to ensure compliance with this part;

(d) (i) coordinate with federal, state, and local government, and other agencies, including entering into memoranda of understanding, to ensure effective regulation of used oil under this part, minimize duplication of regulation, and encourage responsible recycling of used oil; and

(ii) as the department finds appropriate to the implementation of this part, enter into contracts with local health departments to carry out specified functions under this part and be reimbursed by the department in accordance with the contract;

(e) require forms, analyses, documents, maps, and other records as the [~~executive secretary~~] director finds necessary to permit and inspect an operation regulated under this part;

(f) establish a toll-free telephone line to provide information to the public regarding management of used oil and locations of used oil collection centers; and

(g) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this part.

(2) The [~~executive secretary~~] director may:

(a) authorize any employee of the division to enter any facility regulated under this part

at reasonable times and upon presentation of credentials for the purpose of inspection, audit, or sampling of the used oil site or facility, records, operations, or product;

(b) direct a person whose activities are regulated under this part to take samples for a stated purpose and cause them to be analyzed at that person's expense; and

(c) [~~as authorized by the board under this part,~~] enforce board rules by issuing orders [~~which the board may subsequently amend or revoke~~].

Section 88. Section **19-6-706** is amended to read:

19-6-706. Disposal of used oil -- Prohibitions.

(1) (a) Except as authorized by the board or exempted in this section, a person may not place, discard, or otherwise dispose of used oil:

(i) in any solid waste treatment, storage, or disposal facility operated by a political subdivision or a private entity, except as authorized for the disposal of used oil that is hazardous waste under state law;

(ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water; or

(iii) on the ground.

(b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i) is not guilty of a violation of this section.

(2) (a) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities under Subsection (1)(a)(i) if:

(i) to the extent reasonably possible all oil has been removed from the item or substance; and

(ii) no free flowing oil remains in the item or substance.

(b) (i) A nonterne plated used oil filter complies with this section if it is not mixed with hazardous waste and the oil filter has been gravity hot-drained by one of the following methods:

(A) puncturing the filter antidrain back valve or the filter dome end and gravity hot-draining;

(B) gravity hot-draining and crushing;

(C) dismantling and gravity hot-draining; or

(D) any other equivalent gravity hot-draining method that will remove used oil from

the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

(ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit.

(3) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(a) solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the board under this chapter; or

(b) any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under this part.

(4) (a) This section does not apply to releases to land or water of de minimis quantities of used oil, except:

(i) the release of de minimis quantities of used oil is subject to any regulation or prohibition under the authority of the department; and

(ii) the release of de minimis quantities of used oil is subject to any rule made by the board under this part prohibiting the release of de minimis quantities of used oil to the land or water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

(b) As used in this Subsection (4), "de minimis quantities of used oil:"

(i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations; and

(ii) does not include used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases.

(5) Used oil may not be used for road oiling, dust control, weed abatement, or other similar uses that have the potential to release used oil in the environment, except in compliance with Section 19-6-711 and board rule.

(6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply to the [~~executive secretary~~] director for an extension of time beyond that date to meet the requirements of this section.

(ii) The [~~executive secretary~~] director may grant an extension of time beyond July 1, 1993, upon a finding of need under Subsection (6)(b) or (c).

(iii) The total of all extensions of time granted to one applicant under this Subsection

(6)(a) may not extend beyond January 1, 1995.

(b) The [~~executive secretary~~] director upon receipt of a request for an extension of time may request from the facility any information the [~~executive secretary~~] director finds reasonably necessary to evaluate the need for an extension. This information may include:

(i) why the facility is unable to comply with the requirements of this section on or before July 1, 1993;

(ii) the processes or functions which prevent compliance on or before July 1, 1993;

(iii) measures the facility has taken and will take to achieve compliance; and

(iv) a proposed compliance schedule, including a proposed date for being in compliance with this section.

(c) Additional extensions of time may be granted by the [~~executive secretary~~] director upon application by the facility and a showing by the facility that:

(i) the additional extension is reasonably necessary; and

(ii) the facility has made a diligent and good faith effort to comply with this section within the time frame of the prior extension.

Section 89. Section **19-6-710** is amended to read:

19-6-710. Registration and permitting of used oil handlers.

(1) (a) A person may not operate a DIYer used oil collection center or used oil collection center without holding a registration number issued by the [~~executive secretary~~] director.

(b) The application for registration shall include the following information regarding the DIYer used oil collection center or used oil collection center:

(i) the name and address of the operator;

(ii) the location of the center;

(iii) whether the center will accept DIYer used oil;

(iv) the type of containment or storage to be used;

(v) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vi) emergency spill containment plan;

(vii) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in collecting or storing the used

oil, unless waived by the board; and

(viii) any other information the [~~executive secretary~~] director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the center shall notify the [~~executive secretary~~] director in writing of any changes in the information submitted to apply for registration within 20 days of the change.

(d) To be reimbursed under Section 19-6-717 for collected DIYer used oil, the operator of the DIYer used oil collection center shall maintain and submit to the [~~executive secretary~~] director records of volumes of DIYer used oil picked up by a permitted used oil transporter, the dates of pickup, and the name and federal EPA identification number of the transporter.

(2) (a) A person may not act as a used oil transporter or operate a transfer facility without holding a permit issued by the [~~executive secretary~~] director.

(b) The application for a permit shall include the following information regarding acting as a transporter or operating a transfer facility:

(i) the name and address of the operator;

(ii) the location of the transporter's base of operations or the location of the transfer facility;

(iii) maps of all transfer facilities;

(iv) the methods to be used for collecting, storing, and delivering used oil;

(v) the methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(vi) the type of containment or storage to be used;

(vii) the methods of disposing of the waste by-products;

(viii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local government entities;

(ix) emergency spill containment plan;

(x) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in collecting, transporting, or storing the used oil;

(xi) proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and

(xii) any other information the [~~executive secretary~~] director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the [~~executive secretary~~] director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(3) (a) A person may not operate a used oil processing or rerefining facility without holding a permit issued by the [~~executive secretary~~] director.

(b) The application for a permit shall include the following information regarding the used oil processing or rerefining facility:

(i) the name and address of the operator;

(ii) the location of the facility;

(iii) a map of the facility;

(iv) methods to be used to determine if used oil is on-specification or off-specification;

(v) the type of containment or storage to be used;

(vi) the grades of oil to be produced;

(vii) the methods of disposing of the waste by-products;

(viii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(ix) emergency spill containment plan;

(x) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in processing or rerefining used oil;

(xi) proof of form and amount of reclamation surety; and

(xii) any other information the [~~executive secretary~~] director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the [~~executive secretary~~] director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(4) (a) A person may not act as a used oil fuel marketer without holding a registration number issued by the [~~executive secretary~~] director.

(b) The application for a registration number shall include the following information

regarding acting as a used oil fuel marketer:

(i) the name and address of the marketer;

(ii) the location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits under this part;

(iii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including any registrations or permits required under this part to collect, process, transport, or store used oil; and

(iv) any other information the [~~executive secretary~~] director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the [~~executive secretary~~] director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(5) (a) Unless exempted under Subsection 19-6-708(2), a person may not burn used oil for energy recovery without holding a permit issued by the [~~executive secretary~~] director or an authorization from the department.

(b) The application for a permit shall include the following information regarding the used oil burning facility:

(i) the name and address of the operator;

(ii) the location of the facility;

(iii) methods to be used to determine if used oil is on-specification or off-specification;

(iv) the type of containment or storage to be used;

(v) the type of burner to be used;

(vi) the methods of disposing of the waste by-products;

(vii) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(viii) emergency spill containment plan;

(ix) proof of liability insurance or other means of financial responsibility in an amount determined by board rule for any liability that may be incurred in processing or rerefining used oil;

(x) proof of form and amount of reclamation surety for any facility receiving and burning used oil; and

(xi) any other information the [~~executive secretary~~] director finds necessary to ensure the safe handling of used oil.

(c) The owner or operator of the facility shall notify the [~~executive secretary~~] director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

Section 90. Section **19-6-711** is amended to read:

19-6-711. Application of used oil to the land -- Limitations.

(1) A person may not apply used oil to the land as a dust or weed suppressant or for other similar applications to the land unless the person has obtained:

(a) written authorization as required under this chapter; and

(b) a permit from the [~~executive secretary~~] director.

(2) The applicant for a permit under this section shall demonstrate:

(a) the used oil is not mixed with any hazardous waste;

(b) the used oil does not exhibit any hazardous characteristic other than ignitability; and

(c) how the applicant will minimize the impact on the environment of the use of used oil as a dust or weed suppressant or for other similar applications to the land.

(3) Prior to acting on the application, the [~~executive secretary~~] director shall provide public notice of the application and shall provide opportunity for public comment under Section 19-6-712.

Section 91. Section **19-6-712** is amended to read:

19-6-712. Issuance of permits -- Public comments and hearing.

(1) In considering permit applications under this part, the [~~executive secretary~~] director shall:

(a) ensure the application is complete prior to acting on it;

(b) (i) publish notice of the permit application and the opportunity for public comment in:

(A) a newspaper of general circulation in the state; and

(B) a newspaper of general circulation in the county where the operation for which the application is submitted is located; and

(ii) as required in Section 45-1-101;

(c) allow the public to submit written comments to the [~~executive secretary~~] director within 15 days after date of publication;

(d) consider timely submitted public comments and the criteria established in this part and by rule in determining whether to grant the permit; and

(e) send a written copy of the decision to the applicant and to persons submitting timely comments under Subsection (1)(c).

(2) The [~~executive secretary's~~] director's decision under this section may be appealed to the board only within the 30 days after the day the decision is mailed to the applicant.

Section 92. Section **19-6-717** is amended to read:

19-6-717. Used oil collection incentive payment.

(1) (a) The division shall pay a recycling incentive to registered DIYer used oil collection centers and curbside collection programs approved by the [~~executive secretary~~] director for each gallon of used oil collected from DIYer used oil generators on and after July 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor, rerefiner, burner, or to another disposal method authorized by board rule.

(b) Payment of the incentive is subject to Section 19-6-720 regarding priorities.

(2) The board shall by rule establish the amount of the payment, which shall be $.16 per gallon unless the board determines the incentive should be:

(a) reduced to ensure adequate funds to meet priorities set in Section 19-6-720 and to reimburse all qualified operations under this section; or

(b) increased to promote collection of used oil under this part and the funds are available in the account created under Section 19-6-719 after meeting the priorities set in Section 19-6-720.

Section 93. Section **19-6-718** is amended to read:

19-6-718. Limitations on liability of operator of collection center.

(1) Subject to Subsection (2), a person may not recover from the owner, operator, or lessor of a DIYer used oil collection center any costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if the owner, operator, or lessor:

(a) operates the DIYer used oil collection center in compliance with this part and rules made under this part and the [~~executive secretary~~] director upon inspection finds the center is in

compliance with this part and rules made under this part;

(b) does not mix any used oil collected with any hazardous waste or PCBs or with any material that would render the resulting mixture as a hazardous waste;

(c) does not knowingly accept any used oil containing hazardous waste or PCBs;

(d) ensures the used oil is transported from the center by a permitted used oil transporter; and

(e) complies with Section 114(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(2) (a) This section applies only to that portion of a used oil collection center used for the collection of DIYer used oil under this part.

(b) This section does not apply to willful or grossly negligent activities of the owner, operator, or lessor in operating the DIYer used oil collection center.

(c) This section does not affect or modify in any way the obligations or liability of any person other than the owner, operator, or lessor under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous waste.

(d) For the purposes of this section, the owner, operator, or lessor of a DIYer used oil collection center may presume a quantity of not more than five gallons, except under Subsection (2)(e), of used oil accepted from a member of the public is not mixed with a hazardous waste or PCBs if:

(i) the oil is accepted in accordance with the inspection and identification procedures required by board rule; and

(ii) the owner, operator, or lessor operates the DIYer used oil collection center in good faith and in compliance with this part and rules made under this part.

(e) The owner, operator, or lessor of a DIYer used oil collection center may claim the presumption under Subsection (2)(d) for a quantity of more than five gallons but not more than 55 gallons, if the quantity received is:

(i) from a farmer exempted under Subsection 19-6-708(1)(b);

(ii) generated by farming equipment; and

(iii) handled in accordance with all requirements of this section.

(f) This section does not affect or modify the obligations or liability of any owner,

operator, or lessor of a DIYer used oil collection center regarding that person's services or functions other than accepting DIYer used oil under this part.

Section 94. Section **19-6-721** is amended to read:

19-6-721. Violations -- Proceedings -- Orders.

(1) A person who violates any provision of this part or any order, permit, rule, or other requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not more than $10,000 per day for each day of violation, in addition to any fine otherwise imposed for violation of this part.

(2) (a) The [~~board~~] director may bring suit in the name of the state to restrain the person from continuing the violation and to require the person to perform necessary remediation.

(b) Suit under Subsection (2)(a) may be brought in any court in the state having jurisdiction in the county of residence of the person charged or in the county where the violation is alleged to have occurred.

(c) The court may grant prohibitory and mandatory injunctions, including temporary restraining orders.

(3) When the [~~executive secretary~~] director finds a situation exists in violation of this part that presents an immediate threat to the public health or welfare, the [~~executive secretary~~] director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures Act.

(4) All penalties collected under this section shall be deposited in the account created in Section 19-6-719.

Section 95. Section **19-6-803** is amended to read:

19-6-803. Definitions.

As used in this part:

(1) "Abandoned waste tire pile" means a waste tire pile regarding which the local department of health has not been able to:

(a) locate the persons responsible for the tire pile; or

(b) cause the persons responsible for the tire pile to remove it.

(2) (a) "Beneficial use" means the use of chipped tires in a manner that is not recycling, storage, or disposal, but that serves as a replacement for another product or material for specific

purposes.

(b) "Beneficial use" includes the use of chipped tires:

(i) as daily landfill cover;

(ii) for civil engineering purposes;

(iii) as low-density, light-weight aggregate fill; or

(iv) for septic or drain field construction.

(c) "Beneficial use" does not include the use of waste tires or material derived from waste tires:

(i) in the construction of fences; or

(ii) as fill, other than low-density, light-weight aggregate fill.

(3) "Board" means the Solid and Hazardous Waste Control Board created under Section 19-1-106.

(4) "Chip" or "chipped tire" means a two inch square or smaller piece of a waste tire.

(5) "Commission" means the Utah State Tax Commission.

(6) (a) "Consumer" means a person who purchases a new tire to satisfy a direct need, rather than for resale.

(b) "Consumer" includes a person who purchases a new tire for a motor vehicle to be rented or leased.

(7) "Crumb rubber" means waste tires that have been ground, shredded, or otherwise reduced in size such that the particles are less than or equal to 3/8 inch in diameter and are 98% wire free by weight.

(8) "Director" means the director of the Division of Solid and Hazardous Waste.

[~~(8)~~] (9) "Disposal" means the deposit, dumping, or permanent placement of any waste tire in or on any land or in any water in the state.

[~~(9)~~] (10) "Dispose of" means to deposit, dump, or permanently place any waste tire in or on any land or in any water in the state.

[~~(10)~~] (11) "Division" means the Division of Solid and Hazardous Waste, created in [~~Section 19-1-105, within the Department of Environmental Quality~~] Subsection 19-1-105(1)(e).

[~~(11) "Executive secretary" means the executive secretary of the Solid and Hazardous Waste Control Board created in Section 19-1-106.~~]

(12) "Fund" means the Waste Tire Recycling Fund created in Section 19-6-807.

(13) "Landfill waste tire pile" means a waste tire pile:

(a) located within the permitted boundary of a landfill operated by a governmental entity; and

(b) consisting solely of waste tires brought to a landfill for disposal and diverted from the landfill waste stream to the waste tire pile.

(14) "Local health department" means the local health department, as defined in Section 26A-1-102, with jurisdiction over the recycler.

(15) "Materials derived from waste tires" means tire sections, tire chips, tire shreddings, rubber, steel, fabric, or other similar materials derived from waste tires.

(16) "Mobile facility" means a mobile facility capable of cutting waste tires on site so the waste tires may be effectively disposed of by burial, such as in a landfill.

(17) "New motor vehicle" means a motor vehicle which has never been titled or registered.

(18) "Passenger tire equivalent" means a measure of mixed sizes of tires where each 25 pounds of whole tires or material derived from waste tires is equal to one waste tire.

(19) "Proceeds of the fee" means the money collected by the commission from payment of the recycling fee including interest and penalties on delinquent payments.

(20) "Recycler" means a person who:

(a) annually uses, or can reasonably be expected within the next year to use, a minimum of 100,000 waste tires generated in the state or 1,000 tons of waste tires generated in the state to recover energy or produce energy, crumb rubber, chipped tires, or an ultimate product; and

(b) is registered as a recycler in accordance with Section 19-6-806.

(21) "Recycling fee" means the fee provided for in Section 19-6-805.

(22) "Shredded waste tires" means waste tires or material derived from waste tires that has been reduced to a six inch square or smaller.

(23) (a) "Storage" means the placement of waste tires in a manner that does not constitute disposal of the waste tires.

(b) "Storage" does not include:

(i) the use of waste tires as ballast to maintain covers on agricultural materials or to

maintain covers at a construction site; or

(ii) the storage for five or fewer days of waste tires or material derived from waste tires that are to be recycled or applied to a beneficial use.

(24) (a) "Store" means to place waste tires in a manner that does not constitute disposal of the waste tires.

(b) "Store" does not include:

(i) to use waste tires as ballast to maintain covers on agricultural materials or to maintain covers at a construction site; or

(ii) to store for five or fewer days waste tires or material derived from waste tires that are to be recycled or applied to a beneficial use.

(25) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a vehicle in which a person or property is or may be transported or drawn upon a highway.

(26) "Tire retailer" means any person engaged in the business of selling new tires either as replacement tires or as part of a new vehicle sale.

(27) (a) "Ultimate product" means a product that has as a component materials derived from waste tires and that the [~~executive secretary~~] director finds has a demonstrated market.

(b) "Ultimate product" includes pyrolized materials derived from:

(i) waste tires; or

(ii) chipped tires.

(c) "Ultimate product" does not include a product regarding which a waste tire remains after the product is disposed of or disassembled.

(28) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

(29) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.

(30) (a) "Waste tire transporter" means a person or entity engaged in picking up or transporting at one time more than 10 whole waste tires, or the equivalent amount of material derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal.

(b) "Waste tire transporter" includes any person engaged in the business of collecting, hauling, or transporting waste tires or who performs these functions for another person, except as provided in Subsection (30)(c).

(c) "Waste tire transporter" does not include:

(i) a person transporting waste tires generated solely by:

(A) that person's personal vehicles;

(B) a commercial vehicle fleet owned or operated by that person or that person's employer;

(C) vehicles sold, leased, or purchased by a motor vehicle dealership owned or operated by that person or that person's employer; or

(D) a retail tire business owned or operated by that person or that person's employer;

(ii) a solid waste collector operating under a license issued by a unit of local government as defined in Section 63M-5-103, or a local health department;

(iii) a recycler of waste tires;

(iv) a person transporting tires by rail as a common carrier subject to federal regulation; or

(v) a person transporting processed or chipped tires.

Section 96. Section **19-6-804** is amended to read:

19-6-804. Restrictions on disposal of tires -- Penalties.

(1) (a) After January 1, 1994, an individual, including a waste tire transporter, may not dispose of more than four whole tires at one time in a landfill or any other location in the state authorized by the [~~executive secretary~~] director to receive waste tires, except for purposes authorized by board rule.

(b) Tires are exempt from this Subsection (1) if the original tire has a rim diameter greater than 24.5 inches.

(c) No person, including a waste tire transporter, may dispose of waste tires or store waste tires in any manner not allowed under this part or rules made under this part.

(2) The operator of the landfill or other authorized location shall direct that the waste tires be disposed in a designated area to facilitate retrieval if a market becomes available for the disposed waste tires or material derived from waste tires.

(3) An individual, including a waste tire transporter, may dispose of shredded waste tires in a landfill in accordance with Section 19-6-812, and may also, without reimbursement, dispose in a landfill materials derived from waste tires that do not qualify for reimbursement under Section 19-6-812, but the landfill shall dispose of the material in accordance with Section 19-6-812.

(4) (a) An individual, including a waste tire transporter, violating this section is subject to enforcement proceedings and a civil penalty of not more than $100 per waste tire or per passenger tire equivalent disposed of in violation of this section. A warning notice may be issued prior to taking further enforcement action under this Subsection (4).

(b) A civil proceeding to enforce this section and collect penalties under this section may be brought in the district court where the violation occurred by the board, the local health department, or the county attorney having jurisdiction over the location where the tires were disposed in violation of this section.

(c) Penalties collected under this section shall be deposited in the fund.

Section 97. Section **19-6-806** is amended to read:

19-6-806. Registration of waste tire transporters and recyclers.

(1) (a) The [~~executive secretary~~] director shall register each applicant for registration to act as a waste tire transporter if the applicant meets the requirements of this section.

(b) An applicant for registration as a waste tire transporter shall:

(i) submit an application in a form prescribed by the [~~executive secretary~~] director;

(ii) pay a fee as determined by the board under Section 63J-1-504;

(iii) provide the name and business address of the operator;

(iv) provide proof of liability insurance or other form of financial responsibility in an amount determined by board rule, but not more than $300,000, for any liability the waste tire transporter may incur in transporting waste tires; and

(v) meet requirements established by board rule.

(c) The holder of a registration under this section shall advise the [~~executive secretary~~] director in writing of any changes in application information provided to the [~~executive secretary~~] director within 20 days of the change.

(d) If the [~~executive secretary~~] director has reason to believe a waste tire transporter has disposed of tires other than as allowed under this part, the [~~executive secretary~~] director shall conduct an investigation and, after complying with the procedural requirements of Title 63G, Chapter 4, Administrative Procedures Act, may revoke the registration.

(2) (a) The [~~executive secretary~~] director shall register each applicant for registration to act as a waste tire recycler if the applicant meets the requirements of this section.

(b) An applicant for registration as a waste tire recycler shall:

(i) submit an application in a form prescribed by the [~~executive secretary~~] director;

(ii) pay a fee as determined by the board under Section 63J-1-504;

(iii) provide the name and business address of the operator of the recycling business;

(iv) provide proof of liability insurance or other form of financial responsibility in an amount determined by board rule, but not more than $300,000, for any liability the waste tire recycler may incur in storing and recycling waste tires;

(v) engage in activities as described under the definition of recycler in Section 19-6-803; and

(vi) meet requirements established by board rule.

(c) The holder of a registration under this section shall advise the [~~executive secretary~~] director in writing of any changes in application information provided to the [~~executive secretary~~] director within 20 days of the change.

(d) If the [~~executive secretary~~] director has reason to believe a waste tire recycler has falsified any information provided in an application for partial reimbursement under this section, the [~~executive secretary~~] director shall, after complying with the procedural requirements of Title 63G, Chapter 4, Administrative Procedures Act, revoke the registration.

(3) The board shall establish a uniform fee for registration which shall be imposed by any unit of local government or local health department that requires a registration fee as part of the registration of waste tire transporters or waste tire recyclers.

Section 98. Section **19-6-811** is amended to read:

19-6-811. Funding for management of certain landfill or abandoned waste tire piles -- Limitations.

(1) (a) A county or municipality may apply to the [~~executive secretary~~] director for payment from the fund for costs of a waste tire transporter or recycler to remove waste tires from an abandoned waste tire pile or a landfill waste tire pile operated by a state or local governmental entity and deliver the waste tires to a recycler.

(b) The [~~executive secretary~~] director may authorize a maximum reimbursement of:

(i) 100% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the waste tires to a recycler, if no waste tires have been added to the abandoned waste tire pile or landfill waste tire pile on or after July 1, 2001; or

(ii) 60% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the waste tires to a recycler, if waste tires have been added to the abandoned waste tire pile or landfill waste tire pile on or after July 1, 2001.

(c) The [~~executive secretary~~] director may deny an application for payment of waste tire pile removal and delivery costs, if the [~~executive secretary~~] director determines that payment of the costs will result in there not being sufficient money in the fund to pay expected reimbursements for recycling or beneficial use under Section 19-6-809 during the next quarter.

(2) (a) The maximum number of miles for which the [~~executive secretary~~] director may reimburse for transportation costs incurred by a waste tire transporter under this section, is the number of miles, one way, between the location of the waste tire pile and the State Capitol Building, in Salt Lake City, Utah, or to the recycler, whichever is less.

(b) This maximum number of miles available for reimbursement applies regardless of the location of the recycler to which the waste tires are transported under this section.

(c) The [~~executive secretary~~] director shall, upon request, advise any person preparing a bid under this section of the maximum number of miles available for reimbursement under this Subsection (2).

(d) The cost under this Subsection (2) shall be calculated based on the cost to transport one ton of waste tires one mile.

(3) (a) The county or municipality shall through a competitive bidding process make a good faith attempt to obtain a bid for the removal of the landfill or abandoned waste tire pile and transport to a recycler.

(b) The county or municipality shall submit to the [~~executive secretary~~] director:

(i) (A) (I) a statement from the local health department stating the landfill waste tire pile is operated by a state or local governmental entity and consists solely of waste tires diverted from the landfill waste stream;

(II) a description of the size and location of the landfill waste tire pile; and

(III) landfill records showing the origin of the waste tires; or

(B) a statement from the local health department that the waste tire pile is abandoned; and

(ii) (A) the bid selected by the county or municipality; or

(B) if no bids were received, a statement to that fact.

(4) (a) If a bid is submitted, the [~~executive secretary~~] director shall determine if the bid is reasonable, taking into consideration:

(i) the location and size of the landfill or abandoned waste tire pile;

(ii) the number and size of any other landfill or abandoned waste tire piles in the area; and

(iii) the current market for waste tires of the type in the landfill or abandoned waste tire pile.

(b) The [~~executive secretary~~] director shall advise the county or municipality within 30 days of receipt of the bid whether or not the bid is determined to be reasonable.

(5) (a) If the bid is found to be reasonable, the county or municipality may proceed to have the landfill or abandoned waste tire pile removed pursuant to the bid.

(b) The county or municipality shall advise the [~~executive secretary~~] director that the landfill or abandoned waste tire pile has been removed.

(6) The recycler or waste tire transporter that removed the landfill or abandoned waste tires pursuant to the bid shall submit to the [~~executive secretary~~] director a copy of the manifest, which shall state:

(a) the number or tons of waste tires transported;

(b) the location from which they were removed;

(c) the recycler to which the waste tires were delivered; and

(d) the amount charged by the transporter or recycler.

(7) Upon receipt of the information required under Subsection (6), and determination that the information is complete, the [~~executive secretary~~] director shall, within 30 days after receipt authorize the Division of Finance to reimburse the waste tire transporter or recycler the amount established under this section.

Section 99. Section **19-6-817** is amended to read:

19-6-817. Administrative fees to local health departments -- Reporting by local health departments.

(1) (a) The Division of Finance shall pay quarterly to the local health departments from the fund $5 per ton of tires for which a partial reimbursement is made under this part.

(b) The payment under Subsection (1)(a) shall be allocated among the local health

departments in accordance with recommendations of the Utah Association of Local Health Officers.

(c) The recommendation shall be based on the efforts expended and the costs incurred by the local health departments in enforcing this part and rules made under this part.

(2) (a) Each local health department shall track all waste tires removed from abandoned waste tire piles within its jurisdiction, to determine the amount of waste tires removed and the recycler to which they are transported.

(b) The local health department shall report this information quarterly to the [~~executive secretary~~] director.

Section 100. Section **19-6-819** is amended to read:

19-6-819. Powers and duties of the board.

(1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part. For these purposes the board shall establish by rule:

(a) conditions and procedures for acting to issue or revoke a registration as a waste tire recycler or transporter under Section 19-6-806;

(b) the amount of liability insurance or other financial responsibility the applicant is required to have to qualify for registration under Section 19-6-806, which amount may not be more than $300,000 for any liability the waste tire transporter or recycler may incur in recycling or transporting waste tires;

(c) the form and amount of financial assurance required for a site or facility used to store waste tires, which amount shall be sufficient to ensure the cleanup or removal of waste tires from that site or facility;

(d) standards and required documentation for tracking and record keeping of waste tires subject to regulation under this part, including:

(i) manifests for handling and transferring waste tires;

(ii) records documenting date, quantities, and size or type of waste tires transported, processed, transferred, or sold;

(iii) records documenting persons between whom transactions under this Subsection (1)(d) occurred and the amounts of waste tires involved in those transactions; and

(iv) requiring that documentation under this Subsection (1)(d) be submitted on a

quarterly basis, and that this documentation be made available for public inspection;

(e) authorize inspections and audits of waste tire recycling, transportation, or storage facilities and operations subject to this part;

(f) standards for payments authorized under Sections 19-6-809, 19-6-810, 19-6-811, and 19-6-812;

(g) regarding applications to the [~~executive secretary~~] director for reimbursements under Section 19-6-811, the content of the reimbursement application form and the procedure to apply for reimbursement;

(h) requirements for the storage of waste tires, including permits for storage;

(i) the types of energy recovery or other appropriate environmentally compatible uses eligible for reimbursement, which:

(i) shall include pyrolization, but not retreading; and

(ii) shall apply to all waste tire recycling and beneficial use reimbursements within the state;

(j) the applications of waste tires that are not eligible for reimbursement;

(k) the applications of waste tires that are considered to be the storage or disposal of waste tires; and

(l) provisions governing the storage or disposal of waste tires, including the process for issuing permits for waste tire storage sites.

(2) The board may:

(a) require retention and submission of the records required under this part;

(b) require audits of the records and record keeping procedures required under this part and rules made under this part, except that audits of records regarding the fee imposed and collected by the commission under Sections 19-6-805 and 19-6-808 are the responsibility of the commission; and

(c) as necessary, make rules requiring additional information as the board determines necessary to effectively administer Section 19-6-812, which rules may not place an undue burden on the operation of landfills.

Section 101. Section **19-6-820** is amended to read:

19-6-820. Powers and duties of the director.

(1) The [~~executive secretary~~] director shall:

(a) administer and enforce the rules and orders of the board;

(b) issue and revoke registrations for waste tire recyclers and transporters; and

(c) require forms, analyses, documents, maps, and other records as the [~~executive secretary~~] director finds necessary to:

(i) issue recycler and transporter registrations;

(ii) authorize reimbursements under Section 19-6-811;

(iii) inspect a site, facility, or activity regulated under this part; and

(iv) issue permits for and inspect waste tire storage sites.

(2) The [~~executive secretary~~] director may:

(a) authorize any division employee to enter any site or facility regulated under this part at reasonable times and upon presentation of credentials, for the purpose of inspection, audit, or sampling:

(i) at the site or facility; or

(ii) of the records, operations, or products;

(b) as authorized by the board, enforce board rules by issuing orders which are subsequently subject to the board's amendment or revocation; and

(c) coordinate with federal, state, and local governments, and other agencies, including entering into memoranda of understanding, to:

(i) ensure effective regulation of waste tires under this part;

(ii) minimize duplication of regulation; and

(iii) encourage responsible recycling of waste tires.

Section 102. Section **19-6-821** is amended to read:

19-6-821. Violations -- Civil proceedings and penalties -- Orders.

(1) A person who violates any provision of this part or any order, permit, plan approval, or rule issued or adopted under this part is subject to a civil penalty of not more than $10,000 per day for each day of violation as determined in a civil hearing under Title 63G, Chapter 4, Administrative Procedures Act, except:

(a) any violation of Subsection 19-6-804(1) or (3), regarding landfills, is subject to the penalty under Subsection 19-6-804(4) rather than the penalties under this section; and

(b) any violation of Subsection 19-6-808(1), (2), or (3) regarding payment of the recycling fee by the tire retailer is subject to penalties as provided in Subsection 19-6-808(4)

rather than the penalties under this section.

(2) The [~~board~~] director may bring an action in the name of the state to restrain a person from continuing a violation of this part and to require the person to perform necessary remediation regarding a violation of this part.

(3) When the [~~executive secretary~~] director finds a situation exists in violation of this part that presents an immediate threat to the public health or welfare, the [~~executive secretary~~] director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures Act.

(4) The [~~executive secretary~~] director may revoke the registration of a waste tire recycler or transporter who violates any provision of this part or any order, plan approval, permit, or rule issued or adopted under this part.

(5) The [~~executive secretary~~] director may revoke the tire storage permit for a storage facility that is in violation of any provision of this part or any order, plan approval, permit, or rule issued or adopted under this part.

(6) If a person has been convicted of violating a provision of this part prior to a finding by the [~~executive secretary~~] director of a violation of the same provision in an administrative hearing, the [~~executive secretary~~] director may not assess a civil monetary penalty under this section for the same offense for which the conviction was obtained.

(7) All penalties collected under this section shall be deposited in the fund.

Section 103. Section **19-6-1002** is amended to read:

19-6-1002. Definitions.

(1) "Board" means the Solid and Hazardous Waste Control Board created in Section [~~19-6-103~~] 19-1-106.

[~~(2) "Executive secretary" means the executive secretary of the Solid and Hazardous Waste Control Board appointed under Section 19-6-107.~~]

(2) "Director" means the director of the Division of Solid and Hazardous Waste.

(3) "Division" means the Division of Solid and Hazardous Waste, created in Subsection 19-1-105(1)(e).

[~~(3)~~] (4) "Manufacturer" means the last person in the production or assembly process of a vehicle.

[~~(4)~~] (5) "Mercury switch" means a mercury-containing capsule that is part of a

convenience light switch assembly installed in a vehicle's hood or trunk.

[~~(5)~~] (6) "Person" means an individual, a firm, an association, a partnership, a corporation, the state, or a local government.

[~~(6)~~] (7) "Plan" means a plan for removing and collecting mercury switches from vehicles.

[~~(7)~~] (8) "Vehicle" means any passenger automobile or car, station wagon, truck, van, or sport utility vehicle that may contain one or more mercury switches.

Section 104. Section **19-6-1003** is amended to read:

19-6-1003. Board and director powers.

(1) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules:

(a) governing administrative proceedings under this part;

(b) specifying the terms and conditions under which the [~~executive secretary~~] director shall approve, disapprove, revoke, or review a plan submitted by a manufacturer; and

(c) governing reports and educational materials required by this part.

(2) These rules shall include:

(a) time requirements for plan submission, review, approval, and implementation;

(b) a public notice and comment period for a proposed plan; and

(c) safety standards for the collection, packaging, transportation, storage, recycling, and disposal of mercury switches.

[~~(3) The board may request the attorney general to bring an action for injunctive relief and enforcement of this part, including, without limitation, imposition of the penalty provided in Section 19-6-1006.~~]

[~~(4) As authorized by the board, the executive secretary may:~~]

(3) The director may:

(a) review and approve or disapprove plans, specifications, or other data related to mercury switch removal;

(b) enforce a rule by issuing a notice, an order, or both[~~, which may be subsequently amended or revoked by the board; and~~];

(c) initiate an administrative action to compel compliance with this part and any rules adopted under this part[~~.~~]; or

(d) request the attorney general to bring an action for injunctive relief and enforcement of this part, including imposition of the penalty described in Section 19-6-1006.

(5) The [~~executive secretary~~] director shall establish a fee to cover the costs of a plan's review by following the procedures and requirements of Section 63J-1-504.

Section 105. Section **19-6-1004** is amended to read:

19-6-1004. Mercury switch collection plan -- Reimbursement for mercury switch removal.

(1) (a) Each manufacturer of any vehicle sold within this state, individually or in cooperation with other manufacturers, shall submit a plan, accompanied by a fee, to the [~~executive secretary~~] director.

(b) If the [~~executive secretary~~] director disapproves a plan, the manufacturer shall submit an amended plan within 90 days.

(c) A manufacturer shall submit an updated plan within 90 days of any change in the information required by Subsection (2).

(d) The [~~executive secretary~~] director may require the manufacturer to modify the plan at any time upon finding that an approved plan as implemented has failed to meet the requirements of this part.

(e) If the manufacturer does not know or is uncertain about whether or not a switch contains mercury, the plan shall presume that the switch contains mercury.

(2) The plan shall include:

(a) the make, model, and year of any vehicle, including current and anticipated future production models, sold by the manufacturer that may contain one or more mercury switches;

(b) the description and location of each mercury switch for each make, model, and year of vehicle;

(c) education materials that include:

(i) safe and environmentally sound methods for mercury switch removal; and

(ii) information about hazards related to mercury and the proper handling of mercury;

(d) a method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to an authorized recycling, storage, or disposal facility;

(e) a procedure for the transfer of information among persons involved with the plan to comply with reporting requirements; and

(f) a method to implement and finance the plan, which shall include the prompt reimbursement by the manufacturer of costs incurred by a person removing and collecting mercury switches.

(3) In order to ensure that the costs of removal and collection of mercury switches are not borne by any other person, the manufacturers of vehicles sold in the state shall pay:

(a) a minimum of $5 for each mercury switch removed by a person as partial compensation for the labor and other costs incurred in removing the mercury switch;

(b) the cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities;

(c) the cost of shipping mercury switches to recycling, storage, or disposal facilities;

(d) the cost of recycling, storage, or disposal of mercury switches;

(e) the cost of the preparation and distribution of educational materials; and

(f) the cost of maintaining all appropriate record-keeping systems.

(4) Manufacturers of vehicles sold within this state shall reimburse a person for each mercury switch removed and collected without regard to the date on which the mercury switch is removed and collected.

(5) The manufacturer shall ensure that plan implementation occurs by July 1, 2007.

Section 106. Section **19-6-1005** is amended to read:

19-6-1005. Reporting requirements.

(1) Each manufacturer that is required to implement a plan shall submit, either individually or in cooperation with other manufacturers, an annual report on the plan's implementation to the [~~executive secretary~~] director within 90 days after the anniversary of the date on which the manufacturer is required to begin plan implementation.

(2) The report shall include:

(a) the number of mercury switches collected;

(b) the number of mercury switches for which the manufacturer has provided reimbursement;

(c) a description of the successes and failures of the plan; and

(d) a statement that details the costs required to implement the plan.

Section 107. Section **19-6-1102** is amended to read:

19-6-1102. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board created under Section 19-1-106.

[~~(2) "Executive secretary" means the executive secretary of the board.~~]

(2) "Director" means the director of the Division of Solid and Hazardous Waste.

(3) "Division" means the Division of Solid and Hazardous Waste, created in Subsection 19-1-105(1)(e).

[~~(3)~~] (4) (a) "Industrial byproduct" means an industrial residual, including:

(i) inert construction debris;

(ii) fly ash;

(iii) bottom ash;

(iv) slag;

(v) flue gas emission control residuals generated primarily from the combustion of coal or other fossil fuel;

(vi) residual from the extraction, beneficiation, and processing of an ore or mineral;

(vii) cement kiln dust; or

(viii) contaminated soil extracted as a result of a corrective action subject to an operation plan under Part 1, Solid and Hazardous Waste Act.

(b) "Industrial byproduct" does not include material that:

(i) causes a public nuisance or public health hazard; or

(ii) is a hazardous waste under Part 1, Solid and Hazardous Waste Act.

[~~(4)~~] (5) "Public project" means a project of the Department of Transportation to construct:

(a) a highway or road;

(b) a curb;

(c) a gutter;

(d) a walkway;

(e) a parking facility;

(f) a public transportation facility; or

(g) a facility, infrastructure, or transportation improvement that benefits the public.

[~~(5)~~] (6) "Reuse" means to use an industrial byproduct in place of a raw material.

Section 108. Section **19-6-1104** is amended to read:

19-6-1104. Applications for industrial byproduct reuse -- Approval by the director.

(1) A person may submit to the [~~executive secretary~~] director an application for reuse of an industrial byproduct from an inactive industrial site, as defined in Section 17C-1-102.

(2) The [~~executive secretary~~] director shall respond to an application submitted under Subsection (1) within 60 days of the day on which the [~~executive secretary~~] director determines the application is complete.

(3) The [~~executive secretary~~] director shall approve an application submitted under Subsection (1) if the applicant shows:

(a) the industrial byproduct meets the applicable health risk standard;

(b) the industrial byproduct satisfies the applicable toxicity characteristic leaching procedure; and

(c) the proposed method of installation and type of reuse meet the applicable health risk standard.

Section 109. Section **19-8-106** is amended to read:

19-8-106. Rejection of application -- Notice to applicant -- Resubmission procedure.

(1) The executive director may in his sole discretion reject an application prior to accepting the application fee, and return the application fee to the applicant if:

(a) the executive director has reason to believe that a working relationship with the applicant cannot be achieved; or

(b) the application site is not eligible under Section 19-8-105.

(2) (a) The executive director may reject an application after processing the application if [~~the executive secretary determines~~]:

(i) the application is not complete or is not accurate; or

(ii) the applicant has not demonstrated financial capability to perform the voluntary cleanup.

(b) The applicant is not entitled to refund of an application fee for an application rejected under this Subsection (2).

(3) An application rejected under Subsection (1) or (2) shall be promptly returned to

the applicant with a letter of explanation.

(4) (a) If the executive director rejects an application because it is incomplete or inaccurate, the executive director shall, not later than 60 days after receipt of the application, provide to the applicant a list in writing of all information needed to make the application complete or accurate, as appropriate.

(b) The applicant may submit for a second time an application rejected due to inaccuracy or incompleteness without submitting an additional application fee.

Section 110. 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 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)~~] 19-6-402(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).

Section 111. Section **41-6a-1644** is amended to read:

41-6a-1644. Diesel emissions program -- Implementation -- Monitoring -- Exemptions.

(1) The legislative body of each county required by the comprehensive plan for air pollution control developed by the [~~Air Quality Board under Subsection 19-2-104(3)(c)~~] director of the Division of Air Quality in accordance with Subsection 19-2-107(2)(a)(i) to use an emissions opacity inspection and maintenance program for diesel-powered motor vehicles shall:

(a) make regulations or ordinances to implement and enforce the requirement established by the Air Quality Board;

(b) collect information about and monitor the program; and

(c) by August 1 of each year, supply written information to the Department of Environmental Quality to identify program status.

(2) The following vehicles are exempt from an emissions opacity inspection and maintenance program for diesel-powered motor vehicles established by a legislative body of a

county under Subsection (1):

(a) an implement of husbandry; and

(b) a motor vehicle that:

(i) meets the definition of a farm truck under Section 41-1a-102; and

(ii) has a gross vehicle weight rating of 12,001 pounds or more.

(3) (a) The legislative body of a county identified in Subsection (1) shall exempt a pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or less from the emissions opacity inspection and maintenance program requirements of this section, if the registered owner of the pickup truck provides a signed statement to the legislative body stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as land in agricultural use under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, and floricultural and horticultural products; and

(B) for the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits a signed statement under this section a certificate of exemption from emissions opacity inspection and maintenance program requirements for purposes of registering the exempt vehicle.

Section 112. Section **59-1-403** is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

(i) a tax commissioner;

(ii) an agent, clerk, or other officer or employee of the commission; or

(iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or

proceeding in any court, except:

(i) in accordance with judicial order;

(ii) on behalf of the commission in any action or proceeding under:

(A) this title; or

(B) other law under which persons are required to file returns with the commission;

(iii) on behalf of the commission in any action or proceeding to which the commission is a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and

other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the [~~Solid and Hazardous Waste Control Board executive secretary~~] director of the division of Solid and Hazardous Waste, as defined in Section 19-6-102, as requested by the [~~executive secretary~~] director of the division of Solid and Hazardous Waste, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

(i) Chapter 13, Part 2, Motor Fuel; or

(ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

(h) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request, provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (1), the commission shall make the directory required by Section 59-14-603 available for public inspection.

(k) Notwithstanding Subsection (1), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

(l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of Recovery Services within the Department of Human Services any relevant information obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.

(ii) The information described in Subsection (3)(l)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing that support obligation.

(m) (i) Notwithstanding Subsection (1), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and Social Security number on resident returns filed under Chapter 10, Individual Income Tax Act.

(ii) The state court administrator may use the information described in Subsection (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

(n) Notwithstanding Subsection (1), the commission shall at the request of a committee, commission, or task force of the Legislature provide to the committee, commission,

or task force of the Legislature any information relating to a tax imposed under Chapter 9, Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

(o) (i) As used in this Subsection (3)(o), "office" means the:

(A) Office of the Legislative Fiscal Analyst; or

(B) Office of Legislative Research and General Counsel.

(ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii), the commission shall at the request of an office provide to the office all information:

(A) gained by the commission; and

(B) required to be attached to or included in returns filed with the commission.

(iii) (A) An office may not request and the commission may not provide to an office a person's:

(I) address;

(II) name;

(III) Social Security number; or

(IV) taxpayer identification number.

(B) The commission shall in all instances protect the privacy of a person as required by Subsection (3)(o)(iii)(A).

(iv) An office may provide information received from the commission in accordance with this Subsection (3)(o) only:

(A) as:

(I) a fiscal estimate;

(II) fiscal note information; or

(III) statistical information; and

(B) if the information is classified to prevent the identification of a particular return.

(v) (A) A person may not request information from an office under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if that office received the information from the commission in accordance with this Subsection (3)(o).

(B) An office may not provide to a person that requests information in accordance with Subsection (3)(o)(v)(A) any information other than the information the office provides in accordance with Subsection (3)(o)(iv).

(p) Notwithstanding Subsection (1), the commission may provide to the governing

board of the agreement or a taxing official of another state, the District of Columbia, the United States, or a territory of the United States:

(i) the following relating to an agreement sales and use tax:

(A) information contained in a return filed with the commission;

(B) information contained in a report filed with the commission;

(C) a schedule related to Subsection (3)(p)(i)(A) or (B); or

(D) a document filed with the commission; or

(ii) a report of an audit or investigation made with respect to an agreement sales and use tax.

(q) Notwithstanding Subsection (1), the commission may provide information concerning a taxpayer's state income tax return or state income tax withholding information to the Driver License Division if the Driver License Division:

(i) requests the information; and

(ii) provides the commission with a signed release form from the taxpayer allowing the Driver License Division access to the information.

(r) Notwithstanding Subsection (1), the commission shall provide to the Utah 911 Committee the information requested by the Utah 911 Committee under Subsection 53-10-602(3).

(s) Notwithstanding Subsection (1), the commission shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.

(t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the Department of Health or its designee with the adjusted gross income of an individual if:

(i) an eligibility worker with the Department of Health or its designee requests the information from the commission; and

(ii) the eligibility worker has complied with the identity verification and consent provisions of Sections 26-18-2.5 and 26-40-105.

(u) Notwithstanding Subsection (1), the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in

accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

(4) (a) Each report and return shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with Subsection (3)(o)(v):

(i) is not guilty of a class A misdemeanor; and

(ii) is not subject to:

(A) dismissal from office in accordance with Subsection (5)(b); or

(B) disqualification from holding public office in accordance with Subsection (5)(b).

(6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 113. Section **72-6-106.5** is amended to read:

72-6-106.5. Reuse of industrial byproducts.

(1) As used in this section:

(a) [~~"Executive secretary" has the same meaning~~] "Director" is as defined in Section 19-6-1102.

(b) "Industrial byproduct" has the same meaning as defined in Section 19-6-1102.

(c) "Public project" has the same meaning as defined in Section 19-6-1102.

(d) "Reuse" has the same meaning as defined in Section 19-6-1102.

(2) Consistent with the protection of public health and the environment and generally accepted engineering practices, the department shall, to the maximum extent possible considering budgetary factors:

(a) allow and encourage the reuse of an industrial byproduct in:

(i) a plan, specification, and estimate for a public project; and

(ii) advertising for a bid for a public project;

(b) allow for the reuse of an industrial byproduct in, among other uses:

(i) landscaping;

(ii) a general geotechnical fill;

(iii) a structural fill;

(iv) concrete or asphalt;

(v) a base or subbase; and

(vi) geotechnical drainage materials; and

(c) promulgate and apply public project specifications that allow reuse of an industrial byproduct based upon:

(i) cost;

(ii) performance; and

(iii) engineered equivalency in lifespan, durability, and maintenance.

(3) After the [~~executive secretary~~] director issues an approval under Section 19-6-1104 and the department uses the industrial byproduct in compliance with the [~~executive secretary's~~] director's approval:

(a) the department is not responsible for further management of the industrial byproduct; and

(b) the generator or originator of the industrial byproduct is not responsible for the industrial byproduct under Title 19, Environmental Quality Code.

Section 114. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

(2) The amendments to Sections 19-5-102 (Effective 07/01/12) and 19-5-104 (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