

1 **ENVIRONMENTAL QUALITY REGULATION OF**
2 **DISCHARGE INTO GROUNDWATER**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Max W. Young**

6 **This act modifies the Environmental Quality Code by giving the Radiation Control Board**
7 **authority to regulate discharge into groundwater affected by facilities licensed under the**
8 **Radiation Control Act or by the federal Nuclear Regulatory Commission. This act places**
9 **state requirements on holders of state or federal permits regarding radioactive material that**
10 **may result in a discharge into groundwater of the state and limits application regarding**
11 **federal preemption.**

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **19-3-103.5**, as last amended by Chapter 90, Laws of Utah 1995

15 **19-3-104**, as last amended by Chapters 28 and 90, Laws of Utah 1995

16 **19-3-108**, as enacted by Chapter 112, Laws of Utah 1991

17 **19-3-110**, as last amended by Chapter 271, Laws of Utah 1998

18 **19-3-111**, as last amended by Chapter 87 and renumbered and amended by Chapter 112,
19 Laws of Utah 1991

20 **19-5-104**, as last amended by Chapter 282, Laws of Utah 2000

21 ENACTS:

22 **19-3-114**, Utah Code Annotated 1953

23 **19-3-115**, Utah Code Annotated 1953

24 **19-3-116**, Utah Code Annotated 1953

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

26 Section 1. Section **19-3-103.5** is amended to read:

27 **19-3-103.5. Board authority and duties.**



- 28 (1) The board may:
- 29 (a) require submittal of specifications or other information relating to licensing
- 30 applications for radioactive materials or registration of radiation sources for review, approval,
- 31 disapproval, or termination;
- 32 (b) issue orders necessary to enforce the provisions of this part, enforce the orders by
- 33 appropriate administrative and judicial proceedings, and institute judicial proceedings to secure
- 34 compliance with this part;
- 35 (c) hold hearings and compel the attendance of witnesses, the production of documents,
- 36 and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or
- 37 appoint hearing officers and authorize them to exercise the powers under this Subsection (1)(c);
- 38 (d) settle or compromise any administrative or civil action initiated to compel compliance
- 39 with this part or any rules adopted under this part;
- 40 (e) advise, consult, cooperate with, and provide technical assistance to other agencies of
- 41 the state and federal government, other states, interstate agencies, and affected groups, political
- 42 subdivisions, industries, and other persons in carrying out the provisions of this part;
- 43 (f) promote the planning and application of pollution prevention and radioactive waste
- 44 minimization measures to prevent the unnecessary waste and depletion of natural resources;
- 45 (g) cooperate with any persons in studies, research, or demonstration projects regarding
- 46 radioactive waste management or control of radiation sources;
- 47 (h) accept, receive, and administer grants or other funds or gifts from public and private
- 48 agencies, including the federal government, for the purpose of carrying out any of the functions
- 49 of this part;
- 50 (i) exercise all incidental powers necessary to carry out the purposes of this part;
- 51 (j) submit an application to the U.S. Food and Drug Administration for approval as an
- 52 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of
- 53 1992;
- 54 (k) accredit mammography facilities, pursuant to approval as an accrediting body from the
- 55 U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography Quality
- 56 Standards Act of 1992; [~~and~~]
- 57 (l) review the qualifications of and issue certificates of approval to individuals who survey
- 58 mammography equipment and oversee quality assurance practices at mammography facilities[-];

59 and

60 (m) make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the
61 prevention, control, and abatement of new or existing pollution of underground waters of the state
62 that are or may be affected by activities subject to this part or 42 U.S.C. 2011 et seq., as amended,
63 Atomic Energy Act, to the extent the rules are not preempted by the Atomic Energy Act.

64 (2) The board shall:

65 (a) hear appeals of final decisions made by the executive secretary or appoint a hearing
66 officer to hear the appeal and make recommendations to the board;

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

69 (c) impound radioactive material as authorized in Section 19-3-111.

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

73 Section 2. Section **19-3-104** is amended to read:

74 **19-3-104. Registration and licensing of radiation sources by department --**

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

76 (1) The board may require the registration or licensing of radiation sources that constitute
77 a significant health hazard.

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

80 (3) The board may make rules:

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

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

86 (c) to establish:

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

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

90 (4) (a) The department shall assess fees for registration, licensing, and inspection of
91 radiation sources under this section.

92 (b) The department shall comply with the requirements of Section 63-38-3.2 in assessing
93 fees for licensure and registration.

94 (5) The department shall coordinate its activities with the Department of Health rules made
95 under Section 26-21a-203.

96 (6) (a) Except as provided in Subsection (7), the board may not adopt rules, for the purpose
97 of the state assuming responsibilities from the United States Nuclear Regulatory Commission with
98 respect to regulation of sources of ionizing radiation, that are more stringent than the
99 corresponding federal regulations which address the same circumstances.

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

102 (7) (a) The board may adopt rules more stringent than corresponding federal regulations
103 for the purpose described in Subsection (6) only if it makes a written finding after public comment
104 and hearing and based on evidence in the record that corresponding federal regulations are not
105 adequate to protect public health and the environment of the state.

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

109 (8) (a) The board may by rule establish criteria for siting commercial low-level radioactive
110 waste treatment or disposal facilities.

111 (b) Any facility for which a radioactive material license is required by this section shall
112 comply with those criteria.

113 (c) A facility may not receive a radioactive material license until siting criteria have been
114 established by the board. The criteria also apply to facilities that have applied for but not received
115 a radioactive material license.

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

119 (10) The board shall establish rules under Title 63, Chapter 46a, Utah Administrative
120 Rulemaking Act, to establish requirements and standards governing actual or potential discharges

121 into underground waters of the state from operations or activities subject to this part or 42 U.S.C.
122 2011 et seq., as amended, Atomic Energy Act, to the extent the rules are not preempted by the
123 Atomic Energy Act.

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

125 **19-3-108. Powers and duties of executive secretary.**

126 (1) The executive director shall appoint an executive secretary, with the approval of the
127 board, to serve under the direction of the executive director.

128 (2) The executive secretary may:

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

130 (b) advise, consult, and cooperate with other agencies, states, the federal government,
131 political subdivisions, industries, and other groups to further the purposes of this chapter;

132 (c) as authorized by the board:

133 (i) issue licenses, registrations, and certifications;

134 (ii) review and approve plans;

135 (iii) enforce rules through the issuance of orders and assess penalties in accordance with
136 Section 19-3-109;

137 (iv) impound radioactive material under Section 19-3-111; ~~and~~

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

141 (vi) issue permits for discharge into underground waters of the state to persons who have
142 received a license, registration, or certification under this part or 42 U.S.C. 2011 et seq., as
143 amended, Atomic Energy Act, to the extent the issuance of the permits is not preempted by the
144 Atomic Energy Act.

145 Section 4. Section **19-3-110** is amended to read:

146 **19-3-110. Criminal penalties.**

147 (1) Any person who knowingly violates any provision of Sections 19-3-104 through

148 [~~19-3-113~~] 19-3-116 or lawful orders or rules adopted by the department under those sections shall
149 in a criminal proceeding:

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

151 (b) for a subsequent similar violation within two years, be guilty of a third degree felony.

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

154 (3) Conviction under Sections 19-3-104 through [~~19-3-113~~] 19-3-116 does not relieve the
155 person convicted from civil liability for any act which was also a violation of the public health
156 laws.

157 Section 5. Section **19-3-111** is amended to read:

158 **19-3-111. Impounding of radioactive material.**

159 (1) The board may impound the radioactive material of any person if:

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

161 (b) that person is violating:

162 (i) any provision of Sections 19-3-104 through [~~19-3-113~~] 19-3-116;

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

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

166 (2) Before any dispositive action may be taken with regard to impounded radioactive
167 materials, the board shall comply with the procedures and requirements of Title 63, Chapter 46b,
168 Administrative Procedures Act.

169 Section 6. Section **19-3-114** is enacted to read:

170 **19-3-114. Discharge of pollutants unlawful -- Discharge permit required.**

171 (1) (a) Except as provided in this part or rules made under this part, it is unlawful for any
172 person receiving a license, registration, or certification under this part or under 42 U.S.C. 2011 et
173 seq., as amended, Atomic Energy Act, to:

174 (i) discharge a pollutant into underground waters of the state or to cause pollution from
175 the discharges which constitutes a menace to public health or welfare, or is harmful to wildlife,
176 fish, or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial
177 uses of water; or

178 (ii) place or cause to be placed any wastes in a location where there is probable cause to
179 believe the wastes will cause pollution.

180 (b) For purposes of injunctive relief, any violation of Subsection (1)(a) is a public
181 nuisance.

182 (2) It is unlawful for any person receiving a license, registration, or certification under this

183 part or under 42 U.S.C. 2011 et seq., as amended, Atomic Energy Act, without first securing a
184 permit from the executive secretary, to:

185 (a) make any discharge not authorized under an existing valid discharge permit; or

186 (b) construct, install, modify, or operate any treatment works or part of any treatment

187 works or any extension or addition to any treatment works or construct, install, or operate any

188 establishment or extension or modification of or any addition to any treatment works, the operation

189 of which would probably result in a discharge.

190 (3) This section has application to the extent it is not preempted by 42 U.S.C. 2011 et seq.,

191 as amended, Atomic Energy Act.

192 Section 7. Section **19-3-115** is enacted to read:

193 **19-3-115. Grounds for revocation, modification, or suspension of discharge permit.**

194 (1) Any permit issued under this part may be revoked, modified, or suspended in whole

195 or in part for cause, which may include:

196 (a) violation of any condition or term of the permit;

197 (b) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

198 or

199 (c) a change in any condition that requires either a temporary or permanent reduction or

200 elimination of the discharge allowed by the permit.

201 (2) As used in Subsection (1)(c), "condition" does not include statutory or regulatory

202 effluent limitations enacted or adopted during the permit term other than for toxic pollutants.

203 Section 8. Section **19-3-116** is enacted to read:

204 **19-3-116. Limitations and standards.**

205 In establishing limitations and standards for protection of underground waters of the state

206 under this part, the executive secretary shall use the applicable limits and standards established by:

207 (1) the Water Quality Board under Title 19, Chapter 5, Water Quality Act; and

208 (2) the Environmental Protection Agency under 33 U.S.C. 1251 et seq., Water Pollution

209 Control Act, and 42 U.S.C. 2011 et seq., as amended, Atomic Energy Act.

210 Section 9. Section **19-5-104** is amended to read:

211 **19-5-104. Powers and duties of board.**

212 (1) The board has the following powers and duties, but the board shall give priority to

213 pollution that results in hazards to the public health:

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

216 (b) advise, consult, and cooperate with other agencies of the state, the federal government,
217 other states, and interstate agencies, and with affected groups, political subdivisions, and industries
218 to further the purposes of this chapter;

219 (c) encourage, participate in, or conduct studies, investigations, research, and
220 demonstrations relating to water pollution and causes of water pollution as the board finds
221 necessary to discharge its duties;

222 (d) collect and disseminate information relating to water pollution and the prevention,
223 control, and abatement of water pollution;

224 (e) adopt, modify, or repeal standards of quality of the waters of the state and classify those
225 waters according to their reasonable uses in the interest of the public under conditions the board
226 may prescribe for the prevention, control, and abatement of pollution;

227 (f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
228 Act, taking into account Subsection (2), to:

229 (i) implement the awarding of construction loans to political subdivisions and municipal
230 authorities under Section 11-8-2, including:

231 (A) requirements pertaining to applications for loans;

232 (B) requirements for determination of eligible projects;

233 (C) requirements for determination of the costs upon which loans are based, which costs
234 may include engineering, financial, legal, and administrative expenses necessary for the
235 construction, reconstruction, and improvement of sewage treatment plants, including major
236 interceptors, collection systems, and other facilities appurtenant to the plant;

237 (D) a priority schedule for awarding loans, in which the board may consider in addition
238 to water pollution control needs any financial needs relevant, including per capita cost, in making
239 a determination of priority; and

240 (E) requirements for determination of the amount of the loan;

241 (ii) implement the awarding of loans for nonpoint source projects pursuant to Section
242 73-10c-4.5;

243 (iii) set effluent limitations and standards subject to Section 19-5-116;

244 (iv) implement or effectuate the powers and duties of the board; and

- 245 (v) protect the public health for the design, construction, operation, and maintenance of
246 individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit
247 privies;
- 248 (g) issue, modify, or revoke orders:
- 249 (i) prohibiting or abating discharges;
- 250 (ii) requiring the construction of new treatment works or any parts of them, or requiring
251 the modification, extension, or alteration of existing treatment works as specified by board rule or
252 any parts of them, or the adoption of other remedial measures to prevent, control, or abate
253 pollution;
- 254 (iii) setting standards of water quality, classifying waters or evidencing any other
255 determination by the board under this chapter; and
- 256 (iv) requiring compliance with this chapter and with rules made under this chapter;
- 257 (h) review plans, specifications, or other data relative to disposal systems or any part of
258 disposal systems, and issue construction permits for the installation or modification of treatment
259 works or any parts of them;
- 260 (i) after public notice and opportunity for a public hearing, issue, continue in effect,
261 revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe
262 to control the management of sewage sludge or to prevent or control the discharge of pollutants,
263 including effluent limitations for the discharge of wastes into the waters of the state;
- 264 (j) give reasonable consideration in the exercise of its powers and duties to the economic
265 impact of water pollution control on industry and agriculture;
- 266 (k) exercise all incidental powers necessary to carry out the purposes of this chapter,
267 including delegation to the department of its duties as appropriate to improve administrative
268 efficiency;
- 269 (l) meet the requirements of federal law related to water pollution;
- 270 (m) establish and conduct a continuing planning process for control of water pollution
271 including the specification and implementation of maximum daily loads of pollutants;
- 272 (n) make rules governing inspection, monitoring, recordkeeping, and reporting
273 requirements for underground injections and require permits for them, to protect drinking water
274 sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil,
275 recognizing that underground injection endangers drinking water sources if:

276 (i) injection may result in the presence of any contaminant in underground water which
277 supplies or can reasonably be expected to supply any public water system, as defined in Section
278 19-4-102; and

279 (ii) the presence of the contaminant may result in the public water system not complying
280 with any national primary drinking water standards or may otherwise adversely affect the health
281 of persons;

282 (o) make rules governing sewage sludge management, including permitting, inspecting,
283 monitoring, recordkeeping, and reporting requirements;

284 (p) adopt and enforce rules and establish fees to cover the costs of testing for certification
285 of operators of treatment works and sewerage systems operated by political subdivisions; and

286 (q) notwithstanding the provisions of Section 19-4-112, make rules governing design and
287 construction of irrigation systems which convey sewage treatment facility effluent of human origin
288 in pipelines under pressure, unless contained in surface pipes wholly on private property and for
289 agricultural purposes, and which are constructed after May 4, 1998.

290 (2) In determining eligible project costs and in establishing priorities pursuant to
291 Subsection (1)(f)(i), the board shall take into consideration the availability of federal grants.

292 (3) In establishing certification rules under Subsection (1)(p), the board shall:

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

295 (b) allow operators until three years after the date of adoption of the rules to obtain initial
296 certification;

297 (c) allow new operators one year from the date they are hired by a treatment plant or
298 sewerage system or three years after the date of adoption of the rules, whichever occurs later, to
299 obtain certification;

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

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

305 (i) is in charge of and responsible for the treatment works or sewerage system on March
306 16, 1991;

307 (ii) has been employed at least ten years in the operation of that treatment works or
308 sewerage system prior to March 16, 1991; and

309 (iii) demonstrates to the board his capability to operate the treatment works or sewerage
310 system at which he is currently employed by providing employment history and references as
311 required by the board.

312 (4) The board shall regulate the discharge of contaminants into underground waters of the
313 state by persons who have received a license, registration, or certification under Title 19, Chapter
314 3, Radiation Control Act, or 42 U.S.C. 2011 et seq., as amended, Atomic Energy Act, to the extent
315 the regulation is not preempted by the Atomic Energy Act.

Legislative Review Note
as of 2-9-01 10:02 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel