

STANDARDS FOR ILLEGAL DRUG LAB

DECONTAMINATION

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: A. Lamont Tyler

This act modifies the Environmental Quality Code to create the Illegal Drug Manufacturing and Storage Site Decontamination Act. Under this new act, the local health authorities will oversee the identification and decontamination of controlled substances manufacturing sites.

This act provides for notification to the local health department by a law enforcement agency when a drug lab site is found. The Utah Solid and Hazardous Waste Control Board will have rulemaking authority to set standards and license inspectors and contractors to decontaminate sites. This act creates a new surcharge on ephedrine products for the purpose of funding the clean up of property contaminated by illegal drug manufacturing activity.

This act takes effect on January 1, 2003.

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

AMENDS:

26A-1-114, as last amended by Chapter 345, Laws of Utah 1998

ENACTS:

19-6-901, Utah Code Annotated 1953

19-6-902, Utah Code Annotated 1953

19-6-903, Utah Code Annotated 1953

19-6-904, Utah Code Annotated 1953

19-6-905, Utah Code Annotated 1953

19-6-906, Utah Code Annotated 1953

19-6-907, Utah Code Annotated 1953

19-6-908, Utah Code Annotated 1953

19-6-909, Utah Code Annotated 1953



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

29 Section 1. Section **19-6-901** is enacted to read:

30 **Part 9. Illegal Drug Manufacturing and Storage Site Decontamination Act**

31 **19-6-901. Title.**

32 This part is known as the "Illegal Drug Manufacturing and Storage Site Decontamination
33 Act."

34 Section 2. Section **19-6-902** is enacted to read:

35 **19-6-902. Definitions.**

36 As used in this part:

37 (1) "Authorized contractor" means a person or firm who decontaminates, demolishes, or
38 disposes of contaminated property as required by this part and who is certified by the Utah Solid
39 and Hazardous Waste Control Board as provided in Section 19-6-906.

40 (2) "Board" means a local board of health as established under Section 26A-1-109.

41 (3) "Certified inspector" means a person who is certified by the Utah Solid and Hazardous
42 Waste Control Board to perform inspections in accordance with Section 19-6-906.

43 (4) "Commission" means the Utah State Tax Commission.

44 (5) "Contaminated" or "contamination" means polluted by hazardous materials so that the
45 property is unfit for human habitation or use due to immediate or long-term health hazards.

46 Property that at one time was contaminated but has been satisfactorily decontaminated according
47 to procedures and standards established by the Utah Solid and Hazardous Waste Control Board

48 is not "contaminated."

49 (6) "Decontamination fund" means the Illegal Drug Manufacturing and Storage Site
50 Decontamination Account created by Section 19-6-908.

51 (7) "Dose" means 30 milligrams of ephedrine products.

52 (8) "Ephedrine products" means ephedrine, pseudoephedrine, and norpseudoephedrine.
53 "Ephedrine products" does not include the naturally occurring product referred to as ephedra.

54 (9) "Hazardous materials" has the same meaning as "hazardous or dangerous materials"
55 as that term is defined in Section 58-37d-3. For purposes of this part, "hazardous materials" shall
56 include illegally manufactured controlled substances.

57 (10) "Health officer" means a local health officer authorized under Title 26A, Local Health
58 Authorities.

59 (11) "Property" means any property, site, structure, part of a structure, or the grounds
60 surrounding the structure which is involved in the illegal manufacture or storage of hazardous
61 materials. This includes but is not limited to single-family residences, out buildings, garages, units
62 of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor
63 vehicles, trailers, manufactured housing, or any shop, or booth.

64 (12) "Retailer" has the same definition as found in Section 59-12-102.

65 Section 3. Section **19-6-903** is enacted to read:

66 **19-6-903. Local health authority regulations -- Exception.**

67 (1) Local health departments may establish regulations in accordance with Title 26A,
68 Local Health Authorities, concerning the posting of notices, securing structures, notification of
69 property owners, hearings, and appeals.

70 (2) Local health departments regulations shall require that those who inspect or
71 decontaminate property shall be certified under the provisions of Section 19-6-906, however, an
72 exception shall be made for an owner of record who indicates his intention to decontaminate his
73 property personally.

74 (3) Local health department regulations pertaining to owners who decontaminate their own
75 property shall require that the owner comply with local health department regulations governing
76 safety, decontamination standards, and disposal of contaminated debris.

77 Section 4. Section **19-6-904** is enacted to read:

78 **19-6-904. Reporting -- Notice -- Duties of local health officer.**

79 (1) Whenever a law enforcement agency has lawfully entered property and has reason to
80 believe that property has been contaminated by hazardous materials related to the illegal
81 manufacturing or consumption of controlled substances, the agency shall report the suspected
82 contamination to the local health officer within 24 hours.

83 (2) The local health officer shall:

84 (a) proceed under regulations established by the local health department pertaining to the
85 posting of notices, securing structures, notification of property owners, hearings, and appeals;

86 (b) report property determined to be contaminated to the Utah Solid and Hazardous Waste
87 Control Board; and

88 (c) provide information to the property owner concerning requirements for inspection,
89 decontamination, and disposal of contaminated debris.

90 (3) The Utah Solid and Hazardous Waste Control Board shall keep a list of contaminated
91 properties and make the list available upon request. The list shall be promptly updated to remove
92 those properties which have been decontaminated according to standards established under Section
93 19-6-907.

94 Section 5. Section **19-6-905** is enacted to read:

95 **19-6-905. Municipality or county options.**

96 (1) If the local health officer does not receive a timely response from the owner of
97 contaminated property or the owner notifies him that he intends to abandon the property, the local
98 health officer shall notify the municipality, or county for unincorporated areas, in which the
99 contaminated property is located. For the purposes of this section, "timely" means a period of not
100 less than 14 days, but may be longer in accordance with local health department regulations.

101 (2) The municipality or county may take action to:

102 (a) bring an action in public nuisance against the property in accordance with the law;

103 (b) decontaminate the property under the provisions of this chapter; or

104 (c) demolish the property under existing county or municipal ordinance.

105 (3) The municipality or county shall notify all persons whose interest in the property is
106 recorded in the records of the recorder's office of the county in which the property is located of its
107 intent to take action with regard to the property.

108 (4) A municipality or county may not bring an action in public nuisance, decontaminate,
109 or demolish property pursuant to this section until all procedures granting the right of notice and
110 the opportunity to appeal have been exhausted.

111 (5) The municipality or county shall use a certified contractor if property is
112 decontaminated, demolished, or removed under this section.

113 Section 6. Section **19-6-906** is enacted to read:

114 **19-6-906. Certification of contractors and inspectors -- Denial, suspension, or**
115 **revocation of certificate -- Duties of Department of Health and Utah Solid and Hazardous**
116 **Waste Control Board.**

117 (1) After July 1, 2002, an inspector or a contractor may not perform inspections,
118 decontamination, demolition, or disposal work at a property determined to be contaminated under
119 this part unless issued a certificate by the Utah Solid and Hazardous Waste Control Board.

120 (2) The Utah Solid and Hazardous Waste Control Board in consultation with the Utah

121 Department of Health shall establish performance and certification standards for inspectors and
122 contractors by rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
123 Act.

124 (3) The Utah Solid and Hazardous Waste Control Board in consultation with the
125 Department of Health shall train and test, or may approve courses to train and test, inspectors and
126 contractors and their employees on the essential elements in assessing and inspecting property used
127 as an illegal drug manufacturing or storage site to determine:

128 (a) hazard reduction measures needed;

129 (b) techniques for adequately reducing contaminants;

130 (c) use of personal protective equipment;

131 (d) methods for proper demolition, removal, and disposal of contaminated property,

132 including preparation of work plans for decontamination; and

133 (e) relevant federal and state regulations.

134 (4) Upon successful completion of the training and testing, the inspector, contractor, or
135 their employees shall be certified.

136 (5) The Utah Solid and Hazardous Waste Control Board in consultation with the
137 Department of Health may require the successful completion of annual refresher courses provided
138 or approved by the Utah Solid and Hazardous Waste Control Board for the continued certification
139 of inspectors and contractors.

140 (6) (a) The Utah Solid and Hazardous Waste Control Board shall provide for reciprocal
141 certification of any individual trained to engage in decontamination, demolition, or disposal work
142 in another state when the prior training is shown to be substantially similar to the training required
143 by the Utah Solid and Hazardous Waste Control Board.

144 (b) The Utah Solid and Hazardous Waste Control Board may require individuals to take
145 an examination or refresher course before certification.

146 (7) The Utah Solid and Hazardous Waste Control Board may deny, suspend, or revoke a
147 certificate for failure to comply with the requirements of this part or any rule adopted pursuant to
148 this part. A certificate may be denied, suspended, or revoked on any of the following grounds:

149 (a) failure to perform decontamination, demolition, or disposal work under the supervision
150 of trained and certified personnel;

151 (b) failure to perform work that meets the requirements of the Utah Solid and Hazardous

152 Waste Control Board:

153 (c) failure to properly dispose of contaminated materials; or

154 (d) the certificate was obtained by error, misrepresentation, or fraud.

155 (8) Any contractor or inspector who violates any provision of this part, or any rule, order,
156 certificate, or other requirement issued or adopted under this part, is subject in a civil proceeding
157 to the penalties found in Subsection 19-6-113(2).

158 (9) The Utah Solid and Hazardous Waste Control Board shall set fees in accordance with
159 Section 63-38-3.2 for the issuance and renewal of certificates, the administration of examinations,
160 and for the review of training courses.

161 (10) Fees collected under Subsection (9) shall be deposited in the General Fund as
162 dedicated credits for the administration of this section.

163 Section 7. Section **19-6-907** is enacted to read:

164 **19-6-907. Rules and standards -- Authority to develop.**

165 (1) The Utah Solid and Hazardous Waste Control Board, in accordance with Title 63,
166 Chapter 46a, Utah Administrative Rulemaking Act, shall make rules in consultation with the
167 Department of Health and local health officers:

168 (a) to carry out the provisions of Sections 19-6-906;

169 (b) providing standards and best management practices for the inspection and
170 decontamination of property, and disposal of contaminated debris under this part;

171 (c) determining appropriate methods for the testing of ground water, surface water, soil,
172 and septic tanks; and

173 (d) to determine when testing of ground water, surface water, soil, and septic tanks may
174 be required.

175 (2) The Departments of Health and Environmental Quality shall provide technical
176 assistance to local health boards and officers to carry out their duties under this part.

177 (3) All rules developed under this part shall be consistent with other state and federal
178 environmental requirements and shall balance the interests of the public and private property
179 owners.

180 Section 8. Section **19-6-908** is enacted to read:

181 **19-6-908. Illegal Drug Manufacturing and Storage Site Decontamination Fund --**
182 **Creation.**

183 (1) There is created within the General Fund a restricted account known as the Illegal Drug
184 Manufacturing and Storage Site Decontamination Account.

185 (2) Funds which shall be deposited in this account include:

186 (a) surcharges collected under the provisions of Section 19-6-909;

187 (b) direct appropriations by the Legislature; and

188 (c) repayments and interest on loans from the account to property owners to help with
189 environmental decontamination under the provisions of this part.

190 (3) Moneys in the account may only be spent after appropriation for costs incurred by the
191 Department of Health in the administration and enforcement of this part.

192 Section 9. Section **19-6-909** is enacted to read:

193 **19-6-909. Payment of surcharge.**

194 (1) Beginning on January 1, 2003, there is imposed a surcharge on ephedrine products as
195 provided in this section.

196 (2) The surcharge shall be equal to .50 of \$.01 per tablet containing ephedrine products
197 purchased or used within this state.

198 (3) The surcharge is imposed upon each purchase or use of a product in tablet form
199 containing ephedrine equal to or exceeding the dosage in Subsection 19-6-902(7). The surcharge
200 shall not apply to products which may only be obtained by prescription from a qualified health care
201 provider, or provided to a patient in a health care facility, as defined in Section 26-21-2, pursuant
202 to a medical order.

203 (4) The surcharge shall be paid by the retailer to the commission:

204 (a) on or before the last day of the next month following the month in which the sale
205 occurs for monthly sales tax filers;

206 (b) on or before the last day of the month following the calendar quarter in which the sale
207 occurs for quarterly sales tax filers; and

208 (c) the last day of January following the end of the calendar year for annual filers.

209 (5) The payment shall be accompanied by a form prescribed by the commission.

210 (6) (a) The proceeds of the fee shall be transferred by the commission to the
211 decontamination fund.

212 (b) The commission may retain an amount not to exceed 2-1/2% of the surcharge collected
213 under this part for the cost to it of rendering its services.

214 (7) (a) The commission shall administer, collect, and enforce the surcharge authorized
215 under this part pursuant to the same procedures used in the administration, collection, and
216 enforcement of the general state sales and use tax under Title 59, Chapter 12, Sales and Use Tax
217 Act, and the provisions of Title 59, Chapter 1, General Taxation Policies. The retailer may retain
218 2-1/2% of the surcharge collected under this part for the cost of collecting the surcharge.

219 (b) The exemptions from the general state sales and use tax provided for in Section
220 59-12-104 do not apply to this part.

221 (8) The commission may make rules under Title 63, Chapter 46a, Utah Administrative
222 Rulemaking Act, to implement and enforce this section.

223 Section 10. Section **26A-1-114** is amended to read:

224 **26A-1-114. Powers and duties of departments.**

225 (1) A local health department may:

226 (a) enforce state laws, local ordinances, department rules, and local health department
227 standards and regulations relating to public health and sanitation, including the plumbing code
228 adopted by the Division of Occupational and Professional Licensing under Section 58-56-4 and
229 under Title 26, Chapter 15a, Food Safety Manager Certification Act;

230 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical control
231 over property and over individuals as the local health department finds necessary for the protection
232 of the public health;

233 (c) establish and maintain medical, environmental, occupational, and other laboratory
234 services considered necessary or proper for the protection of the public health;

235 (d) establish and operate reasonable health programs or measures not in conflict with state
236 law that:

237 (i) are necessary or desirable for the promotion or protection of the public health and the
238 control of disease; or

239 (ii) may be necessary to ameliorate the major risk factors associated with the major causes
240 of injury, sickness, death, and disability in the state;

241 (e) close theaters, schools, and other public places and prohibit gatherings of people when
242 necessary to protect the public health;

243 (f) abate nuisances or eliminate sources of filth ~~[and]~~, infectious and communicable
244 diseases, and chemical contamination affecting the public health and bill the owner or other person

245 in charge of the premises upon which this nuisance occurs for the cost of abatement;

246 (g) make necessary sanitary and health investigations and inspections on its own initiative
247 or in cooperation with the Department of Health or Environmental Quality, or both, as to any
248 matters affecting the public health;

249 (h) (i) establish and collect appropriate fees;

250 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
251 property, services, or materials for public health purposes; and

252 (iii) make agreements not in conflict with state law that are conditional to receiving a
253 donation or grant;

254 (i) prepare, publish, and disseminate information necessary to inform and advise the public
255 concerning:

256 (i) the health and wellness of the population, specific hazards, and risk factors that may
257 adversely affect the health and wellness of the population; and

258 (ii) specific activities individuals and institutions can engage in to promote and protect the
259 health and wellness of the population;

260 (j) investigate the causes of morbidity and mortality;

261 (k) issue notices and orders necessary to carry out this part;

262 (l) conduct studies to identify injury problems, establish injury control systems, develop
263 standards for the correction and prevention of future occurrences, and provide public information
264 and instruction to special high risk groups;

265 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within
266 the jurisdiction of the boards; and

267 (n) cooperate with the state health department, the Department of Corrections, the
268 Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims
269 Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any
270 victims of a sexual offense.

271 (2) The local health department shall:

272 (a) establish programs or measures to promote and protect the health and general wellness
273 of the people within the boundaries of the local health department;

274 (b) investigate infectious and other diseases of public health importance and implement
275 measures to control the causes of epidemic and communicable diseases and other conditions

276 significantly affecting the public health which may include involuntary testing of convicted sexual
277 offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of
278 sexual offenses for HIV infection pursuant to Section 76-5-503;

279 (c) cooperate with the department in matters pertaining to the public health and in the
280 administration of state health laws; and

281 (d) coordinate implementation of environmental programs to maximize efficient use of
282 resources by developing with the Department of Environmental Quality a Comprehensive
283 Environmental Service Delivery Plan that:

284 (i) recognizes that the Department of Environmental Quality and local health departments
285 are the foundation for providing environmental health programs in the state;

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

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

292 (iv) is reviewed and updated annually.

293 (3) The local health department has the following duties regarding public and private
294 schools within its boundaries:

295 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
296 persons attending public and private schools;

297 (b) exclude from school attendance any person, including teachers, who is suffering from
298 any communicable or infectious disease, whether acute or chronic, if the person is likely to convey
299 the disease to those in attendance;

300 (c) (i) make regular inspections of the health-related condition of all school buildings and
301 premises;

302 (ii) report the inspections on forms furnished by the department to those responsible for
303 the condition and provide instructions for correction of any conditions that impair or endanger the
304 health or life of those attending the schools; and

305 (iii) provide a copy of the report to the department at the time the report is made.

306 (4) If those responsible for the health-related condition of the school buildings and

307 premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c),
308 the local health board shall cause the conditions to be corrected at the expense of the persons
309 responsible.

310 (5) The local health department may exercise incidental authority as necessary to carry out
311 the provisions and purposes of this part.

312 Section 11. **Effective date.**

313 This act takes effect on January 1, 2003.

Legislative Review Note
as of 2-5-02 10:32 AM

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

Office of Legislative Research and General Counsel