

1                                   **WASTE FEE AND RELATED AMENDMENTS**

2   2010 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Ronda Rudd Menlove**

5                                   Senate Sponsor: Curtis S. Bramble

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7 **LONG TITLE**

8 **General Description:**

9           This bill addresses various waste fees and the Environmental Quality Restricted  
10 Account.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ addresses provisions related to the Environmental Quality Restricted Account;
- 14           ▶ provides for a supplementary fee to be charged by the Department of  
15 Environmental Quality for certain services;
- 16           ▶ changes the fee amounts related to commercial radioactive waste disposal or  
17 treatment;
- 18           ▶ provides for review of costs by the department;
- 19           ▶ addresses the fee amounts related to hazardous waste and treated hazardous waste  
20 disposal;
- 21           ▶ provides for a special assessment should fee amounts not cover costs related to the  
22 regulation of hazardous waste; and
- 23           ▶ makes technical and conforming amendments.

24 **Monies Appropriated in this Bill:**

25           None

26 **Other Special Clauses:**

27           This bill takes effect on July 1, 2010.

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 19-1-108, as last amended by Laws of Utah 2006, Chapter 251
- 31 19-1-201, as last amended by Laws of Utah 2009, Chapter 183
- 32 19-3-106, as last amended by Laws of Utah 2005, Chapter 10
- 33 19-6-118, as last amended by Laws of Utah 2005, Chapter 10
- 34 19-6-118.5, as last amended by Laws of Utah 2006, Chapter 251

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

37 Section 1. Section 19-1-108 is amended to read:

38 **19-1-108. Creation of Environmental Quality Restricted Account -- Purpose of**  
39 **restricted account -- Sources of funds -- Uses of funds.**

40 (1) There is created the Environmental Quality Restricted Account.

41 (2) The sources of [~~monies~~] money for the restricted account are:

42 (a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4  
43 and other fees collected under Subsection 19-3-104(5);

44 (b) hazardous waste disposal fees collected under Section 19-6-118;

45 (c) PCB waste disposal fees collected under Section 19-6-118.5;

46 (d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and

47 (e) [~~all~~] the investment income derived from money in the [~~restricted account created~~  
48 ~~in this section~~] Environmental Quality Restricted Account.

49 (3) In each fiscal year, the first \$400,000 collected from [~~all~~] the waste disposal fees  
50 listed in Subsection (2), collectively, shall be deposited in the General Fund as free revenue.

51 The balance shall be deposited in the [~~restricted account created in this section~~] Environmental  
52 Quality Restricted Account.

53 (4) The Legislature may annually appropriate [~~monies~~] money from the Environmental  
54 Quality Restricted Account to:

55 (a) the department for the costs of administering radiation control programs;

56 (b) the department for the costs of administering solid and hazardous waste programs;

57 and

58 (c) subject to Subsection (5), the Hazardous Substances Mitigation Fund, up to  
59 \$400,000, [for purposes set forth in Title 19, Chapter 6, Part 3, Hazardous Substances  
60 Mitigation Act.] to provide monies to:

61 (i) meet the state's cost share requirements for cleanup under the Comprehensive  
62 Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et  
63 seq. as amended; and

64 (ii) respond to an emergency as provided in Section 19-6-309.

65 (5) An annual request for money to be appropriated from the Environmental Quality  
66 Restricted Account to the Hazardous Substances Mitigation Fund may be made by the  
67 department only after the executive director's review of the Environmental Quality Restricted  
68 Account's or the Hazardous Substances Mitigation Fund's balance as of the end of the fiscal  
69 year immediately before the general session for which the request is made.

70 [~~(5)~~] (6) In order to stabilize funding for the radiation control program and the solid  
71 and hazardous waste program, the Legislature shall in years of excess revenues reserve in the  
72 [restricted account] Environmental Quality Restricted Account sufficient monies to meet  
73 departmental needs in years of projected shortages.

74 [~~(6)~~] (7) The Legislature may not appropriate money from the General Fund to the  
75 department as a supplemental appropriation to cover the costs of the radiation control program  
76 and the solid and hazardous waste program in an amount exceeding 25% of the amount of  
77 waste disposal fees collected during the most recent prior fiscal year.

78 [~~(7)~~] The Legislature may annually appropriate not more than \$200,000 from this  
79 account to the Department of Public Safety, created in Section 53-1-103, to be used by that  
80 department solely for hazardous materials:]

81 [(a) ~~management training; and~~]

82 [(b) ~~response preparation and emergency response training.~~]

83 (8) [~~All funds~~] Money appropriated under this part that [are] is not expended at the  
84 end of the fiscal year [lapse] lapses into the [account created in Subsection (1)] Environmental  
85 Quality Restricted Account.

86           (9) (a) The balance in the Environmental Quality Restricted Account may not exceed  
87 \$4,000,000 above the anticipated revenue need for the money in the restricted account for the  
88 fiscal year.

89           (b) Excess funds under Subsection (9)(a) shall be credited on a proportionate basis to  
90 each person who paid monies to the fund in the previous fiscal year.

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

92           **19-1-201. Powers of department.**

93           (1) The department shall:

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

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

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

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

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

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

112           (iv) is reviewed and updated annually.

113           (2) The department may:

- 114 (a) investigate matters affecting the environment;
- 115 (b) investigate and control matters affecting the public health when caused by  
116 environmental hazards;
- 117 (c) prepare, publish, and disseminate information to inform the public concerning  
118 issues involving environmental quality;
- 119 (d) establish and operate programs, as authorized by this title, necessary for protection  
120 of the environment and public health from environmental hazards;
- 121 (e) use local health departments in the delivery of environmental health programs to  
122 the extent provided by law;
- 123 (f) enter into contracts with local health departments or others to meet responsibilities  
124 established under this title;
- 125 (g) acquire real and personal property by purchase, gift, devise, and other lawful  
126 means;
- 127 (h) prepare and submit to the governor a proposed budget to be included in the budget  
128 submitted by the governor to the Legislature;
- 129 (i) (i) establish a schedule of fees that may be assessed for actions and services of the  
130 department according to the procedures and requirements of Section 63J-1-504; and  
131 (ii) in accordance with Section 63J-1-504, all fees shall be reasonable, fair, and reflect  
132 the cost of services provided;
- 133 (j) prescribe by rule reasonable requirements not inconsistent with law relating to  
134 environmental quality for local health departments;
- 135 (k) perform the administrative functions of the boards established by Section  
136 19-1-106, including the acceptance and administration of grants from the federal government  
137 and from other sources, public or private, to carry out the board's functions; ~~and~~
- 138 (l) upon the request of any board or the executive secretary, provide professional,  
139 technical, and clerical staff and field and laboratory services, the extent of which are limited  
140 by the funds available to the department for the staff and services[-]; and
- 141 (m) establish a supplementary fee, not subject to Section 63J-1-504, to provide service

142 that the person paying the fee agrees by contract to be charged for the service in order to  
143 efficiently utilize department resources, protect department permitting processes, address  
144 extraordinary or unanticipated stress on permitting processes, or make use of specialized  
145 expertise.

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

148 Section 3. Section **19-3-106** is amended to read:

149 **19-3-106. Fee for commercial radioactive waste disposal or treatment.**

150 (1) (a) An owner or operator of a commercial radioactive waste treatment or disposal  
151 facility that receives radioactive waste shall pay a fee as provided in Subsection (1)(b).

152 ~~[(b) (i) On and after July 1, 2003 through June 30, 2005, the fee is equal to the sum of~~  
153 ~~the following amounts:]~~

154 ~~[(A) 15 cents per cubic foot, or fraction of a cubic foot, of radioactive waste, other~~  
155 ~~than byproduct material, received at the facility for disposal or treatment; and]~~

156 ~~[(B) \$1 per curie, or fraction of a curie, of radioactive waste, other than byproduct~~  
157 ~~material, received at the facility for disposal or treatment.]~~

158 ~~[(ii) (b) (i) On [and] or after [July 1, 2005] July 1, 2010, but on or before June 30,~~  
159 ~~2011, the fee is equal to the sum of the following amounts:~~

160 (A) ~~[15] 30~~ cents per cubic foot of radioactive waste, other than 11e.(2) byproduct  
161 material, received at the facility for disposal or treatment; and

162 (B) \$1 per curie of radioactive waste, other than 11e.(2) byproduct material, received  
163 at the facility for disposal or treatment.

164 (ii) On or after July 1, 2011, the fee shall be established by the department in  
165 accordance with Section 63J-1-504.

166 (iii) In the development of a fee schedule prepared under Subsection (1)(b)(ii), the  
167 department may conduct by no later than July 1, 2011, a review of the program costs and  
168 indirect costs of regulating radioactive waste in the state.

169 (iv) In addition to the process required by Section 63J-1-504, the department shall

170 establish a fee that:

171 (A) is a flat fee, not based on the amount of waste treated or disposed of;

172 (B) provides for reasonable and timely oversight by the department; and

173 (C) adequately meets the needs of industry and the department, including allowing for  
174 the department to employ qualified personnel to appropriately oversee industry regulation.

175 (2) (a) The portion of the fee required under Subsection (1)(b)~~(ii)~~(i)(A) shall be  
176 calculated by multiplying the total cubic feet of waste, computed to the first decimal place,  
177 received during the calendar month by ~~15~~ 30 cents.

178 (b) The portion of the fee required in Subsection (1)(b)~~(ii)~~(i)(B) shall be calculated  
179 by multiplying the total curies of waste, computed to the first decimal place, received during  
180 the calendar month by \$1.

181 (3) (a) The owner or operator shall remit the fees imposed under this section to the  
182 department on or before the 15th day of the month following the month in which the fee  
183 accrued.

184 (b) The department shall deposit ~~all~~ the fees received under this section into the  
185 Environmental Quality Restricted Account created in Section 19-1-108.

186 (c) The owner or operator shall submit to the department with the payment of the fee  
187 under this Subsection (3) a completed form as prescribed by the department that provides  
188 information the department requires to verify the amount of waste received and the fee amount  
189 for which the owner or operator is liable.

190 (4) The Legislature shall appropriate to the department ~~funds~~ money to cover the  
191 cost of radioactive waste disposal supervision.

192 (5) Radioactive waste that is subject to a fee under this section is not subject to a fee  
193 under Section 19-6-119.

194 Section 4. Section **19-6-118** is amended to read:

195 **19-6-118. Hazardous waste and treated hazardous waste disposal fees.**

196 (1) (a) An owner or operator of any commercial hazardous waste or mixed waste  
197 disposal or treatment facility that primarily receives hazardous or mixed wastes generated by

198 off-site sources not owned, controlled, or operated by the facility or site owner or operator, and  
199 that is subject to the requirements of Section 19-6-108, shall pay the fee under Subsection (2).

200 (b) The owner or operator of each cement kiln, aggregate kiln, boiler, blender, or  
201 industrial furnace that receives for burning hazardous waste generated by off-site sources not  
202 owned, controlled, or operated by the owner or operator shall pay the fee under Subsection (2).

203 (2) (a) Through June 30, 2005, the owner or operator of each facility under Subsection  
204 (1) shall collect from the generators of hazardous waste and mixed waste a fee of \$28 per ton  
205 or fraction of a ton on all hazardous waste and mixed waste received at the facility or site for  
206 disposal, treatment, or both.

207 (b) On and after July 1, 2005, the owner or operator of each facility under Subsection  
208 (1) shall pay a fee of \$28 per ton on all hazardous waste and mixed waste received at the  
209 facility for disposal, treatment, or both.

210 (c) The fee required under Subsection (2)(b) shall be calculated by multiplying the  
211 total tonnage of waste, computed to the first decimal place, received during the calendar  
212 month by \$28.

213 (d) When hazardous waste or mixed waste is received at a facility for treatment or  
214 disposal and the fee required under this Subsection (2) is paid for that treatment or disposal,  
215 any subsequent treatment or disposal of the waste is not subject to additional fees under this  
216 Subsection (2).

217 (e) (i) On and after July 1, 1997 through June 30, 2003, and on and after April 1, 2004  
218 through June 30, 2005, hazardous waste received at a land disposal facility is subject to a fee  
219 of \$14 per ton or fraction of a ton, rather than the \$28 fee under Subsection (2)(a), if the waste  
220 is treated so that it:

221 (A) meets the state treatment standards required for land disposal at the facility; or

222 (B) is no longer a hazardous waste at the time of disposal at that facility.

223 (ii) On and after July 1, 2003, through March 31, 2004, hazardous waste received at a  
224 land disposal facility for treatment and disposal is subject to the \$28 fee imposed under  
225 Subsection (2)(a).

226 (f) (i) On and after July 1, 2005, hazardous waste received at a land disposal facility is  
227 subject to a fee of \$14 per ton if the waste is treated so that it:

228 (A) meets the state treatment standards required for land disposal at the facility; or

229 (B) is no longer a hazardous waste at the time of disposal at that facility.

230 (ii) The fee required under Subsection (2)(f)(i) shall be calculated by multiplying the  
231 tonnage of waste, computed to the first decimal place, received during the calendar month by  
232 \$14.

233 (3) (a) On or after July 1, 2010, remediation waste received at a hazardous waste land  
234 disposal or treatment facility from a remediation project is subject to a fee in the following  
235 amounts:

<u>Amount of Remediation Waste Received</u>	<u>Fee Amount</u>
<u>from a Remediation Project</u>	
<u>More than 0, but less than 1,000 tons</u>	<u>\$28 per ton</u>
<u>Equal to or greater than 1,000 tons, but less than 12,500 tons</u>	<u>\$10 per ton for all waste</u>
<u>Equal to or greater than 12,500 tons, but less than 25,000 tons</u>	<u>\$5 per ton for all waste</u>
<u>Equal to or greater than 25,000 tons</u>	<u>\$2.50 per ton for all waste</u>

242 (b) On and after July 1, 2010, emission control dust/sludge from the primary  
243 production of steel in electric furnaces (K061, as defined in 40 CFR 261.32) received at a  
244 hazardous waste land disposal or treatment facility is subject to a fee of \$5 per ton in lieu of  
245 the fee established in Subsection (2).

246 (c) On and after July 1, 2010, nerve, military, and chemical agents and wastes/residues  
247 from demilitarization, treatment, testing and disposal of nerve, military, and chemical agents  
248 CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, and VX received at a hazardous  
249 waste treatment, storage, or disposal facility are subject to a fee of \$5 per ton in addition to the  
250 fee established in Subsection (2).

251 (d) (i) On or after July 1, 2010, but on or before June 30, 2011, the department may in  
252 accordance with this Subsection (3)(d) assess a person required to pay a fee under this section  
253 a special assessment if the department determines that the aggregate of the following fees is

254 insufficient to cover the department's costs of administering its hazardous waste program:

255 (A) a fee imposed under this section; and

256 (B) a fee imposed under Section 19-6-118.5.

257 (ii) In determining the amount of a special assessment under this Subsection (3)(d),

258 the department shall calculate the amount of the insufficiency and assess each person subject

259 to the special assessment a proportion of the insufficiency equal to the proportion of fees paid

260 by that person.

261 (iii) The department shall deposit a special assessment collected under this Subsection

262 (3)(d) into the Environmental Quality Restricted Account created in Section 19-1-108.

263 (e) The department shall annually review the fee established in Subsection (3)(a) and

264 make recommendations to the Legislature's Natural Resources, Agriculture, and Environment

265 Interim Committee concerning the amount of the fee.

266 ~~[(g)(i)]~~ (4) (a) The department shall allocate at least 10% of the fees received from a

267 facility under this section to the county in which the facility is located, ~~not including a special~~

268 assessment.

269 ~~[(i)]~~ (b) The county may use fees allocated under ~~[Subsections (2)(e) and (f)]~~

270 Subsection (3) to carry out its hazardous waste monitoring and response programs.

271 ~~[(h)]~~ (5) The department shall deposit the state portion of the fees received under this

272 section into the ~~[restricted account]~~ Environmental Quality Restricted Account created in

273 Section 19-1-108.

274 ~~[(3)(a) The]~~ (6) (a) (i) Except as provided in Subsection (6)(a)(ii), the owner or

275 operator shall pay the fees imposed under this section to the department on or before the 15th

276 day of the month following the month in which the fee accrued.

277 (ii) For a fee to be paid on remediation waste, the fee shall be paid in accordance with

278 a schedule determined by the department:

279 (A) made in consultation with the person paying the fee; and

280 (B) considering any contractual schedule for payment between the person paying the

281 fee and another person with whom the person paying the fee has contracted.

282 (b) With the monthly fee, the owner or operator shall submit a completed form, as  
283 prescribed by the department, specifying information required by the department to verify the  
284 amount of waste received and the fee amount for which the owner or operator is liable.

285 ~~[(4)]~~ (7) (a) The department shall oversee and monitor hazardous waste treatment,  
286 disposal, and incineration facilities, including federal government facilities located within the  
287 state.

288 (b) The department may determine facility oversight priorities.

289 ~~[(5)]~~ (8) (a) The department, in preparing its budget for the governor and the  
290 Legislature, shall separately indicate the amount necessary to administer the hazardous waste  
291 program established by this part.

292 (b) The Legislature shall appropriate the costs of administering this program.

293 ~~[(6)]~~ (9) The Office of Legislative Fiscal Analyst shall monitor the fees collected under  
294 this part.

295 ~~[(7)]~~ (10) Mixed waste subject to a fee under this section is not subject to a fee under  
296 Section 19-3-106.

297 (11) As used in this section:

298 (a) "Remediation project" means:

299 (i) a Superfund cleanup project;

300 (ii) a Resource Conservation and Recovery Act Corrective Action Site; or

301 (iii) a voluntary cleanup of:

302 (A) hazardous debris; or

303 (B) hazardous waste subject to regulation solely because of removal or remedial action  
304 taken in response to environmental contamination.

305 (b) "Remediation waste" means waste from a remediation project.

306 Section 5. Section **19-6-118.5** is amended to read:

307 **19-6-118.5. PCB disposal fee.**

308 (1) ~~[The]~~ (a) On or after July 1, 2010, but on or before June 30, 2011, the owner or  
309 operator of a waste facility shall pay a fee of \$4.75 per ton on all wastes containing

310 polychlorinated biphenyls (PCBs) that are:

311 ~~[(a)]~~ (i) regulated under 15 U.S.C. Sec. 2605; and

312 ~~[(b)]~~ (ii) received at ~~[the]~~ a facility for disposal or treatment.

313 (b) On and after July 1, 2011, the department shall establish a fee for disposal or  
314 treatment of wastes containing polychlorinated biphenyls in accordance with Section  
315 63J-1-504.

316 (2) The owner or operator of a facility receiving PCBs for disposal or treatment shall:

317 (a) calculate the fees imposed under Subsection (1)~~(a)~~ by multiplying the total tonnage  
318 of waste received during the calendar month, computed to the first decimal place, by the  
319 required fee rate of \$4.75 per ton;

320 (b) pay the fees imposed by this section to the department by the 15th day of the  
321 month following the month in which the fees accrued; and

322 (c) with the fees required under this section, submit to the department, on a form  
323 prescribed by the department, information that verifies the amount of waste received and the  
324 fees that the owner or operator is required to pay.

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

327 (4) The owner or operator of a waste facility that is subject to a fee under this section  
328 is not subject to a fee for the same waste under Section 19-3-106, even if the waste contains  
329 radioactive materials.

330 **Section 6. Effective date.**

331 This bill takes effect on July 1, 2010.