



28 Environmental Response and Remediation, to create a risk-based rebate system for  
29 environmental assurance fees;

30       ▶ authorizes the director of the Division of Environmental Response and  
31 Remediation to revoke a certificate of compliance, in certain situations;

32       ▶ authorizes the director of the Division of Environmental Response and Remediation  
33 to order an owner or operator to reimburse the division for the cost of managing and  
34 overseeing the cleanup of a release;

35       ▶ provides a repeal date; and

36       ▶ makes technical changes.

37 **Money Appropriated in this Bill:**

38       None

39 **Other Special Clauses:**

40       This bill provides an effective date.

41 **Utah Code Sections Affected:**

42 AMENDS:

43       **19-6-402**, as last amended by Laws of Utah 2012, Chapters 310 and 360

44       **19-6-404**, as last amended by Laws of Utah 2012, Chapter 360

45       **19-6-405.7**, as last amended by Laws of Utah 2012, Chapter 360

46       **19-6-408**, as last amended by Laws of Utah 2012, Chapter 360

47       **19-6-409**, as last amended by Laws of Utah 2013, Chapter 286

48       **19-6-410.5**, as last amended by Laws of Utah 2013, Chapter 286

49       **19-6-411**, as last amended by Laws of Utah 2012, Chapters 286, 310, 360 and last  
50 amended by Coordination Clause, Laws of Utah 2012, Chapter 310

51       **19-6-414**, as last amended by Laws of Utah 2012, Chapter 360

52       **19-6-420**, as last amended by Laws of Utah 2012, Chapter 360

53       **19-8-119**, as last amended by Laws of Utah 2012, Chapter 360

54 ENACTS:

55       **19-6-405.4**, Utah Code Annotated 1953

56       **63I-2-219**, Utah Code Annotated 1953



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

59 Section 1. Section **19-6-402** is amended to read:

60 **19-6-402. Definitions.**

61 As used in this part:

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

63 (a) a release from an underground storage tank or petroleum storage tank; or

64 (b) the damage caused by that release.

65 (2) "Board" means the Solid and Hazardous Waste Control Board created in Section  
66 [19-1-106](#).

67 (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a  
68 person.

69 (4) "Certificate of compliance" means a certificate issued to a facility by the director:

70 (a) demonstrating that an owner or operator of a facility containing one or more

71 petroleum storage tanks has met the requirements of this part; and

72 (b) listing all tanks at the facility, specifying:

73 (i) which tanks may receive petroleum; and

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

75 (5) "Certificate of registration" means a certificate issued to a facility by the director  
76 demonstrating that an owner or operator of a facility containing one or more underground  
77 storage tanks has:

78 (a) registered the tanks; and

79 (b) paid the annual underground storage tank fee.

80 (6) (a) "Certified underground storage tank consultant" means a person who:

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

84 (A) management;

85 (B) abatement;

86 (C) investigation;

87 (D) corrective action; or

88 (E) evaluation;

89 (ii) has submitted an application to the director;

90 (iii) received a written statement of certification from the director; and  
91 (iv) meets the education and experience standards established by the board under  
92 Subsection 19-6-403(1)(a)(vii).  
93 (b) "Certified underground storage tank consultant" does not include:  
94 (i) (A) an employee of the owner or operator of the underground storage tank; or  
95 (B) an employee of a business operation that has a business relationship with the owner  
96 or operator of the underground storage tank, and markets petroleum products or manages  
97 underground storage tanks; or  
98 (ii) a person licensed to practice law in this state who offers only legal advice on  
99 underground storage tank release:  
100 (A) management;  
101 (B) abatement;  
102 (C) investigation;  
103 (D) corrective action; or  
104 (E) evaluation.  
105 (7) "Closed" means an underground storage tank no longer in use that has been:  
106 (a) emptied and cleaned to remove all liquids and accumulated sludges; and  
107 (b) (i) removed from the ground; or  
108 (ii) filled with an inert solid material.  
109 (8) "Corrective action plan" means a plan for correcting a release from a petroleum  
110 storage tank that includes provisions for any of the following:  
111 (a) cleanup or removal of the release;  
112 (b) containment or isolation of the release;  
113 (c) treatment of the release;  
114 (d) correction of the cause of the release;  
115 (e) monitoring and maintenance of the site of the release;  
116 (f) provision of alternative water supplies to a person whose drinking water has  
117 become contaminated by the release; or  
118 (g) temporary or permanent relocation, whichever is determined by the director to be  
119 more cost-effective, of a person whose dwelling has been determined by the director to be no  
120 longer habitable due to the release.

- 121 (9) "Costs" means money expended for:
- 122 (a) investigation;
- 123 (b) abatement action;
- 124 (c) corrective action;
- 125 (d) judgments, awards, and settlements for bodily injury or property damage to third
- 126 parties;
- 127 (e) legal and claims adjusting costs incurred by the state in connection with judgments,
- 128 awards, or settlements for bodily injury or property damage to third parties; or
- 129 (f) costs incurred by the state risk manager in determining the actuarial soundness of
- 130 the fund.
- 131 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been
- 132 met.
- 133 (11) "Director" means the director of the Division of Environmental Response and
- 134 Remediation.
- 135 (12) "Division" means the Division of Environmental Response and Remediation,
- 136 created in Subsection 19-1-105(1)(c).
- 137 (13) "Dwelling" means a building that is usually occupied by a person lodging there at
- 138 night.
- 139 (14) "Enforcement proceedings" means a civil action or the procedures to enforce
- 140 orders established by Section 19-6-425.
- 141 (15) "Facility" means all underground storage tanks located on a single parcel of
- 142 property or on any property adjacent or contiguous to that parcel.
- 143 (16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section
- 144 19-6-409.
- 145 [~~(17) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section~~
- 146 ~~19-6-405.3.~~]
- 147 [~~(18)~~ (17) "Operator" means a person in control of or who is responsible on a daily
- 148 basis for the maintenance of an underground storage tank that is in use for the storage, use, or
- 149 dispensing of a regulated substance.
- 150 [~~(19)~~ (18) "Owner" means:
- 151 (a) in the case of an underground storage tank in use on or after November 8, 1984, a

152 person who owns an underground storage tank used for the storage, use, or dispensing of a  
153 regulated substance; and

154 (b) in the case of an underground storage tank in use before November 8, 1984, but not  
155 in use on or after November 8, 1984, a person who owned the tank immediately before the  
156 discontinuance of its use for the storage, use, or dispensing of a regulated substance.

157 [~~(20)~~] (19) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:

158 (a) 60 degrees Fahrenheit; and

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

160 [~~(21)~~] (20) "Petroleum storage tank" means a tank that:

161 (a) (i) is underground;

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

164 (iii) contains petroleum; or

165 (b) the owner or operator voluntarily submits for participation in the Petroleum Storage  
166 Tank Trust Fund under Section [19-6-415](#).

167 [~~(22)~~] (21) "Petroleum Storage Tank Restricted Account" means the account created in  
168 Section [19-6-405.5](#).

169 [~~(23)~~] (22) "Program" means the Environmental Assurance Program under Section  
170 [19-6-410.5](#).

171 [~~(24)~~] (23) "Property damage" means physical injury to, destruction of, or loss of use of  
172 tangible property.

173 [~~(25)~~] (24) (a) "Regulated substance" means petroleum and petroleum-based  
174 substances comprised of a complex blend of hydrocarbons derived from crude oil through  
175 processes of separation, conversion, upgrading, and finishing.

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

178 [~~(26)~~] (25) (a) "Release" means spilling, leaking, emitting, discharging, escaping,  
179 leaching, or disposing a regulated substance from an underground storage tank or petroleum  
180 storage tank.

181 (b) A release of a regulated substance from an underground storage tank or petroleum  
182 storage tank is considered a single release from that tank system.

183            [~~(27)~~] (26) (a) "Responsible party" means a person who:

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

185            (ii) owns or has legal or equitable title in a facility or an underground storage tank;

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

187 received or contained at the facility;

188            (iv) operated or otherwise controlled activities at a facility at the time petroleum was

189 received or contained at the facility; or

190            (v) is an underground storage tank installation company.

191            (b) "Responsible party" as defined in Subsections [~~(27)~~] (26)(a)(i), (ii), and (iii) does

192 not include:

193            (i) a person who is not an operator and, without participating in the management of a

194 facility and otherwise not engaged in petroleum production, refining, and marketing, holds

195 indicia of ownership:

196            (A) primarily to protect [~~his~~] the person's security interest in the facility; or

197            (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an

198 employee benefit plan; or

199            (ii) governmental ownership or control of property by involuntary transfers as provided

200 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

201            (c) The exemption created by Subsection [~~(27)~~] (26)(b)(i)(B) does not apply to actions

202 taken by the state or its officials or agencies under this part.

203            (d) The terms and activities "indicia of ownership," "primarily to protect a security

204 interest," "participation in management," and "security interest" under this part are in

205 accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

206            (e) The terms "participate in management" and "indicia of ownership" as defined in 40

207 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to

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

209            [~~(28)~~] (27) "Soil test" means a test, established or approved by board rule, to detect the

210 presence of petroleum in soil.

211            [~~(29)~~] (28) "State cleanup appropriation" means money appropriated by the Legislature

212 to the department to fund the investigation, abatement, and corrective action regarding releases

213 not covered by the fund.

214           ~~[(30)]~~ (29) "Underground storage tank" means a tank regulated under Subtitle I,  
215 Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

- 216           (a) a petroleum storage tank;
- 217           (b) underground pipes and lines connected to a storage tank;
- 218           (c) underground ancillary equipment; ~~[and]~~
- 219           (d) a containment system~~[-]; and~~
- 220           ~~(e) each compartment of a multi-compartment storage tank.~~

221           ~~[(31)]~~ (30) "Underground storage tank installation company" means a person, firm,  
222 partnership, corporation, governmental entity, association, or other organization who installs  
223 underground storage tanks.

224           ~~[(32)]~~ (31) "Underground storage tank installation company permit" means a permit  
225 issued to an underground storage tank installation company by the director.

226           ~~[(33)]~~ (32) "Underground storage tank technician" means a person employed by and  
227 acting under the direct supervision of a certified underground storage tank consultant to assist  
228 in carrying out the functions described in Subsection (6)(a).

229           Section 2. Section **19-6-404** is amended to read:

230           **19-6-404. Powers and duties of director.**

231           (1) The director shall:

- 232           (a) administer the petroleum storage tank program established in this part; and
- 233           (b) as authorized by the board and subject to the provisions of this part, act as  
234 executive secretary of the board under the direction of the chairman of the board.

235           (2) As necessary to meet the requirements or carry out the purposes of this part, the  
236 director may:

- 237           (a) advise, consult, and cooperate with other persons;
- 238           (b) employ persons;
- 239           (c) authorize a certified employee or a certified representative of the department to  
240 conduct facility inspections and reviews of records required to be kept by this part and by rules  
241 made under this part;
- 242           (d) encourage, participate in, or conduct studies, investigation, research, and  
243 demonstrations;
- 244           (e) collect and disseminate information;



245 (f) enforce rules made by the board and any requirement in this part by issuing notices  
246 and orders;

247 (g) review plans, specifications, or other data;

248 (h) under the direction of the executive director, represent the state in all matters  
249 pertaining to interstate underground storage tank management and control, including entering  
250 into interstate compacts and other similar agreements;

251 (i) enter into contracts or agreements with political subdivisions for the performance of  
252 any of the department's responsibilities under this part if:

253 (i) the contract or agreement is not prohibited by state or federal law and will not result  
254 in a loss of federal funding; and

255 (ii) the director determines that:

256 (A) the political subdivision is willing and able to satisfactorily discharge its  
257 responsibilities under the contract or agreement; and

258 (B) the contract or agreement will be practical and effective;

259 (j) take any necessary enforcement action authorized under this part, including filing a  
260 lien against the real property, which is subject to cleanup and is owned by a responsible party,  
261 for the costs of abatement, investigative and corrective actions taken by the agency, if  
262 necessary, and depositing any funds received into the Petroleum Storage Tank Cleanup Fund  
263 created in Section 19-6-405.7;

264 (k) require an owner or operator of an underground storage tank to:

265 (i) furnish information or records relating to the tank, its equipment, and contents;

266 (ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils,  
267 air, or water; or

268 (iii) provide access to the tank at reasonable times;

269 (l) take any abatement, investigative, or corrective action as authorized in this part; or

270 (m) enter into agreements or issue orders to apportion percentages of liability of  
271 responsible parties under Section 19-6-424.5.

272 Section 3. Section 19-6-405.4 is enacted to read:

273 **19-6-405.4. Transfer of balances.**

274 By June 30, 2014, the Department of Environmental Quality shall transfer:

275 (1) the balances in the Petroleum Storage Tank Loan Fund created in Section

276 19-6-405.3 into the Petroleum Storage Tank Trust Fund created in Section 19-6-409; and  
277 (2) any funds remaining from the Circle K settlement in the Petroleum Damage Fund  
278 into the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

279 Section 4. Section **19-6-405.7** is amended to read:

280 **19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.**

281 (1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank  
282 Cleanup Fund," which is referred to in this section as the cleanup fund.

283 (2) The cleanup fund sources of revenue are:

284 (a) any voluntary contributions received by the department for the cleanup of facilities;

285 (b) legislative appropriations made to the cleanup fund; and

286 (c) costs recovered under this part.

287 (3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

288 (4) The director may use the cleanup fund money for administration, investigation,  
289 abatement action, and preparing and implementing a corrective action plan regarding releases  
290 and suspected releases not covered by the Petroleum Storage Tank Trust Fund created in  
291 Section 19-6-409.

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

293 **19-6-408. Underground storage tank registration fee -- Processing fee for tanks**  
294 **not in the program.**

295 (1) The department may assess an annual underground storage tank registration fee  
296 against ~~[owners]~~ an owner or ~~[operators]~~ operator of an underground storage ~~[tanks]~~ tank that  
297 ~~[have]~~ has not been closed. These fees shall be:

298 (a) billed per facility;

299 (b) due on July 1 annually;

300 (c) deposited with the department as dedicated credits;

301 (d) used by the department for the administration of the underground storage tank  
302 program outlined in this part; and

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

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

307           **(b)** In addition to the fee under Subsection (1), an owner or operator who elects to  
308 demonstrate financial assurance through a mechanism other than the Environmental Assurance  
309 Program shall pay a processing fee [~~of: (i) for fiscal year 1997-98, \$1,000 for each financial~~  
310 ~~assurance mechanism document submitted to the division for review; and (ii) on and after July~~  
311 ~~1, 1998, a processing fee]~~ established under Section [63J-1-504](#).

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

315           ~~[(c) As used in this Subsection (2), "financial assurance mechanism document" may be~~  
316 ~~a single document that covers more than one facility through a single financial assurance~~  
317 ~~mechanism.]~~

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

321           **(4)** The director shall provide all owners or operators who pay the annual underground  
322 storage tank registration fee a certificate of registration.

323           **(5) (a)** The director may issue a notice of agency action assessing a civil penalty of  
324 \$1,000 per facility if an owner or operator of an underground storage tank facility fails to pay  
325 the required fee within 60 days after the July 1 due date.

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

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

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

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

335           **19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.**

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

338 (b) The sole sources of revenues for the fund are:  
339 (i) petroleum storage tank fees paid under Section 19-6-411;  
340 (ii) underground storage tank installation company permit fees paid under Section  
341 19-6-411;  
342 (iii) the environmental assurance fee and penalties paid under Section 19-6-410.5;  
343 [and]  
344 (iv) appropriations to the fund;  
345 (v) principal and interest received from the repayment of loans made by the director  
346 under Subsection (5); and  
347 [~~(iv)~~] (vi) interest accrued on revenues listed in this Subsection (1)(b).  
348 (c) Interest earned on fund money is deposited into the fund.  
349 (2) The director may expend money from the fund to pay costs:  
350 (a) covered by the fund under Section 19-6-419;  
351 (b) of administering the:  
352 (i) fund; and  
353 (ii) environmental assurance program and fee under Section 19-6-410.5;  
354 (c) incurred by the state for a legal service or claim adjusting service provided in  
355 connection with a claim, judgment, award, or settlement for bodily injury or property damage  
356 to a third party;  
357 (d) incurred by the executive director in determining the actuarial soundness of the  
358 fund;  
359 (e) incurred by a third party claiming injury or damages from a release reported on or  
360 after May 11, 2010, for hiring a certified underground storage tank consultant:  
361 (i) to review an investigation or corrective action by a responsible party; and  
362 (ii) in accordance with Subsection (4);  
363 (f) incurred by the department to implement the study described in Subsection  
364 19-6-410.5(8), including a one-time cost of up to \$200,000 for the actuarial study described in  
365 Subsection 19-6-410.5(8)(a)(ii); and  
366 (g) allowed under this part that are not listed under this Subsection (2).  
367 (3) Costs for the administration of the fund and the environmental assurance fee shall  
368 be appropriated by the Legislature.

- 369 (4) The director shall:
- 370 (a) in paying costs under Subsection (2)(e):
- 371 (i) determine a reasonable limit on costs paid based on the:
- 372 (A) extent of the release;
- 373 (B) impact of the release; and
- 374 (C) services provided by the certified underground storage tank consultant;
- 375 (ii) pay, per release, costs for one certified underground storage tank consultant agreed
- 376 to by all third parties claiming damages or injury;
- 377 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and
- 378 (iv) not pay legal costs of third parties;
- 379 (b) review and give careful consideration to reports and recommendations provided by
- 380 a certified underground storage tank consultant hired by a third party; and
- 381 (c) make reports and recommendations provided under Subsection (4)(b) available on
- 382 the Division of Environmental Response and Remediation's website.
- 383 (5) The director may loan, in accordance with this section, money available in the fund
- 384 to a person to be used for:
- 385 (a) upgrading an underground storage tank;
- 386 (b) replacing an underground storage tank; or
- 387 (c) permanently closing an underground storage tank.
- 388 (6) A person may apply to the director for a loan under Subsection (5) if all tanks
- 389 owned or operated by that person are in substantial compliance with all state and federal
- 390 requirements or will be brought into substantial compliance using money from the fund.
- 391 (7) The director shall consider loan applications under Subsection (6) to meet the
- 392 following objectives:
- 393 (a) support availability of gasoline in rural parts of the state;
- 394 (b) support small businesses; and
- 395 (c) reduce the threat of a petroleum release endangering the environment.
- 396 (8) (a) A loan made under this section may not be for more than:
- 397 (i) \$150,000 for all tanks at any one facility;
- 398 (ii) \$50,000 per tank; and
- 399 (iii) 80% of the total cost of:

- 400 (A) upgrading an underground storage tank;  
401 (B) replacing an underground storage tank; or  
402 (C) permanently closing an underground storage tank.  
403 (b) A loan made under this section shall:  
404 (i) have a fixed annual interest rate of 1.5%;  
405 (ii) have a term no longer than 10 years;  
406 (iii) be made on the condition the loan applicant obtains adequate security for the loan  
407 as established by board rule under Subsection (8); and  
408 (iv) comply with rules made by the board under Subsection (8).  
409 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
410 board shall make rules establishing:  
411 (a) form, content, and procedure for a loan application;  
412 (b) criteria and procedures for prioritizing a loan application;  
413 (c) requirements and procedures for securing a loan;  
414 (d) procedures for making a loan;  
415 (e) procedures for administering and ensuring repayment of a loan, including late  
416 payment penalties;  
417 (f) procedures for recovering on a defaulted loan; and  
418 (g) the maximum amount of the fund that may be used for loans.  
419 (9) A decision by the director to loan money from the fund and otherwise administer  
420 the fund is not subject to Title 63G, Chapter 4, Administrative Procedures Act.  
421 (10) The Legislature shall appropriate money from the fund to the department for the  
422 administration costs associated with making loans under this section.  
423 (11) The director may enter into an agreement with a public entity or private  
424 organization to perform a task associated with administration of loans made under this section.  
425 Section 7. Section **19-6-410.5** is amended to read:  
426 **19-6-410.5. Environmental Assurance Program -- Participant fee -- State Tax**  
427 **Commission administration, collection, and enforcement of tax.**  
428 (1) As used in this section:  
429 (a) "Cash balance" means cash plus investments and current accounts receivable minus  
430 current accounts payable, excluding the liabilities estimated by the executive director.

431 (b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.

432 (2) (a) There is created an Environmental Assurance Program.

433 (b) The program shall provide to a participating owner or operator, upon payment of  
434 the fee imposed under Subsection (4), assistance with satisfying the financial responsibility  
435 requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum  
436 Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions  
437 of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.

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

439 (b) An owner or operator seeking to satisfy financial responsibility requirements  
440 through the program shall use the program for all petroleum underground storage tanks that the  
441 owner or operator owns or operates.

442 (4) (a) There is assessed an environmental assurance fee of [~~1~~/~~2~~] 13/20 cent per gallon  
443 on the first sale or use of petroleum products in the state.

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

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

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

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

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

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

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

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

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

462           (d) The commission shall, by rule and in consultation with the division, create a  
463 risk-based rebate system of the environmental assurance fee described in Subsection (4)  
464 collected from an owner or operator that participates in the program.

465           (e) The rebate described in Subsection (5)(d) may not exceed 40% of the actual fee  
466 collected from an owner or operator of a low-risk underground storage tank.

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

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

470                 (ii) pay the fee to the commission.

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

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

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

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

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

482           (b) The commission shall determine the cash balance of the fund each year as of June  
483 30.

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

486           (8) The department shall:

487                 (a) (i) study the adverse selection of participants in the program and the actuarial  
488 deficit of the fund;

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

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



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

496 (v) identify and study other adverse impacts to the program and the fund; and

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

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

502 (a) the information obtained and developed under Subsection (8)(a); and

503 (b) the recommendation prepared under Subsection (8)(b).

504 Section 8. Section **19-6-411** is amended to read:

505 **19-6-411. Petroleum storage tank fee for program participants.**

506 (1) In addition to the underground storage tank registration fee paid in Section  
 507 [19-6-408](#), the owner or operator of a petroleum storage tank who elects to participate in the  
 508 environmental assurance program under Section [19-6-410.5](#) shall also pay an annual petroleum  
 509 storage tank fee to the department for each facility as follows:

510 (a) an annual fee of:

511 (i) \$450 for each tank in a facility with an annual facility throughput rate of 70,000  
 512 gallons or less;

513 ~~[(i) \$50]~~ (ii) \$150 for each tank in a facility with an annual facility throughput rate of  
 514 ~~[400,000] greater than 70,000 gallons [or less]; and~~

515 ~~[(ii) \$150 for each tank in a facility with an annual facility throughput rate of more~~  
 516 ~~than 400,000 gallons; and]~~

517 (iii) ~~[\$150]~~ \$450 for each tank in a facility regarding which:

518 (A) the facility's throughput rate is not reported to the department within 30 days after  
 519 the date this throughput information is requested by the department; or

520 (B) the owner or operator elects to pay the fee under this Subsection (1)(a)(iii), rather  
 521 than report under Subsection (1)(a)(i) or (ii); and

522 (b) for any new tank:

523 (i) that is installed to replace an existing tank at an existing facility, any annual

524 petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to  
525 the new tank; and

526 (ii) installed at a new facility or at an existing facility, which is not a replacement for  
527 another existing tank, the fees are as provided in Subsection (1)(a) [~~of this section~~].

528 (2) (a) As a condition of receiving a permit and being eligible for benefits under  
529 Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank  
530 installation company shall pay to the department the following fees to be deposited in the fund:

531 (i) an annual fee of:

532 (A) \$2,000 per underground storage tank installation company if the installation  
533 company has installed 15 or fewer underground storage tanks within the 12 months preceding  
534 the fee due date; or

535 (B) \$4,000 per underground storage tank installation company if the installation  
536 company has installed 16 or more underground storage tanks within the 12 months preceding  
537 the fee due date; and

538 (ii) \$200 for each underground storage tank installed in the state, to be paid prior to  
539 completion of installation.

540 (b) The board shall make rules specifying which portions of an underground storage  
541 tank installation shall be subject to the permitting fees when less than a full underground  
542 storage tank system is installed.

543 (3) (a) Fees under Subsection (1) are due on or before July 1 annually.

544 (b) If the department does not receive the fee on or before July 1, the department shall  
545 impose a late penalty of \$60 per facility.

546 (c) (i) The fee and the late penalty accrue interest at 12% per annum.

547 (ii) If the fee, the late penalty, and all accrued interest are not received by the  
548 department within 60 days after July 1, the eligibility of the owner or operator to receive  
549 payments for claims against the fund lapses on the 61st day after July 1.

550 (iii) In order for the owner or operator to reinstate eligibility to receive payments for  
551 claims against the fund, the owner or operator shall meet the requirements of Subsection  
552 19-6-428(3).

553 (4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the  
554 department does not receive the fees on or before July 1, the department shall impose a late

555 penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per  
556 annum.

557 (ii) If the fee, late penalty, and all accrued interest due are not received by the  
558 department within 60 days after July 1, the underground storage tank installation company's  
559 permit and eligibility to receive payments for claims against the fund lapse on the 61st day after  
560 July 1.

561 (b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If  
562 the department does not receive the fees prior to completion of installation, the department  
563 shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at  
564 12% per annum.

565 (ii) If the fee, late penalty, and all accrued interest are not received by the department  
566 within 60 days after the underground storage tank installation is completed, eligibility to  
567 receive payments for claims against the fund for that tank lapse on the 61st day after the tank  
568 installation is completed.

569 (c) The director may not reissue the underground storage tank installation company  
570 permit until the fee, late penalty, and all accrued interest are received by the department.

571 (5) If the executive director determines that the fees established in Subsections (1) and  
572 (2) and the environmental assurance fee established in Section 19-6-410.5 are insufficient to  
573 maintain the fund on an actuarially sound basis, the executive director may petition the  
574 Legislature to increase the petroleum storage tank and underground storage tank installation  
575 company permit fees, and the environmental assurance fee to a level that will sustain the fund  
576 on an actuarially sound basis.

577 (6) The director may waive all or part of the fees required to be paid on or before May  
578 5, 1997, for a petroleum storage tank under this section if no fuel has been dispensed from the  
579 tank on or after July 1, 1991.

580 (7) (a) The director shall issue a certificate of compliance to the owner or operator of a  
581 petroleum storage tank or underground storage tank, for which payment of fees has been made  
582 and other requirements have been met to qualify for a certificate of compliance under this part.

583 (b) The board shall make rules providing for the identification, through a tag or other  
584 readily identifiable method, of a petroleum storage tank or underground storage tank under  
585 Subsection (7)(a) that does not qualify for a certificate of compliance under this part.

586 Section 9. Section **19-6-414** is amended to read:

587 **19-6-414. Grounds for revocation of certificate of compliance and ineligibility for**  
588 **payment of costs from fund.**

589 (1) If the director determines that any of the requirements of Subsection **19-6-412**(2)  
590 [~~and~~], Section **19-6-413**, or Subsection **19-6-420**(2) have not been met, the director shall notify  
591 the owner or operator by certified mail that:

592 (a) [~~his~~] the owner or operator's certificate of compliance may be revoked;

593 (b) if [~~he~~] the owner or operator is participating in the program, [~~he~~] the owner or  
594 operator is violating the eligibility requirements for the fund; and

595 (c) [~~he~~] the owner or operator shall demonstrate [~~his~~] the owner or operator's  
596 compliance with this part within 60 days after receipt of the notification or [~~his~~] the certificate  
597 of compliance will be revoked and if participating in the program [~~he~~] the owner or operator  
598 will be ineligible to receive payment for claims against the fund.

599 (2) If the director determines the owner's or operator's compliance problems have not  
600 been resolved within 60 days after receipt of the notification in Subsection (1), the director  
601 shall send written notice to the owner or operator that the owner's or operator's certificate of  
602 compliance is revoked and he is no longer eligible for payment of costs from the fund.

603 (3) Revocation of certificates of compliance may be appealed to the executive director.

604 Section 10. Section **19-6-420** is amended to read:

605 **19-6-420. Releases -- Abatement actions -- Corrective actions.**

606 (1) If the director determines that a release from a petroleum storage tank has occurred,  
607 [~~he~~] the director shall:

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

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

611 (2) Regardless of whether the tank generating the release is covered by the fund, the  
612 director may:

613 (a) order the owner or operator to:

614 (i) take abatement, or investigative[;] or corrective action, including the submission of  
615 a corrective action plan; and

616 (ii) reimburse the division for the cost of managing and overseeing the abatement, or

617 investigative or corrective action of the release; and

618 (b) if the owner or operator fails to [~~take any of the abatement, investigative, or~~  
619 ~~corrective~~] comply with the action ordered by the director under Subsection (2)(a), the director  
620 may take [~~any~~] one or more of the following actions:

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

625 (ii) commence an enforcement proceeding;

626 (iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; [~~or~~]

627 (iv) recover costs from responsible parties equal to their proportionate share of liability  
628 as determined by Section 19-6-424.5[~~;~~]; or

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

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

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

635 (ii) the director approves the abatement action.

636 (b) If a release presents the possibility of imminent and substantial danger to the public  
637 health or the environment, the owner or operator may take immediate abatement action and  
638 petition the director for reimbursement from the fund for the costs of the abatement action. If  
639 the owner or operator can demonstrate to the satisfaction of the director that the abatement  
640 action was reasonable and timely in light of circumstances, the director shall reimburse the  
641 petitioner for costs associated with immediate abatement action, subject to the limitations  
642 established in Section 19-6-419.

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

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

647 (b) If the owner or operator submits a corrective action plan, the director shall review

648 the corrective action plan and approve or disapprove the plan.

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

650 (i) the threat to public health;

651 (ii) the threat to the environment; and

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

653 (5) If the director approves the corrective action plan or develops his own corrective  
654 action plan, ~~he~~ the director shall:

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

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

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

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

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

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

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

668 (ii) the director approves the corrective action plan.

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

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

673 (a) develop ~~his own~~ an alternative corrective action plan; and

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

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

678 (b) If the director determines the corrective action has not been properly performed or

679 completed, [he] the director may issue an order requiring the owner or operator to complete the  
680 corrective action within the time specified in the order.

681 Section 11. Section **19-8-119** is amended to read:

682 **19-8-119. Apportionment or contribution.**

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

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

690 Section 12. Section **63I-2-219** is enacted to read:

691 **63I-2-219. Repeal dates -- Title 19.**

692 (1) Section [19-6-405.3](#) is repealed July 1, 2014.

693 (2) Section [19-6-405.4](#) is repealed July 1, 2014.

694 Section 13. **Effective date.**

695 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 13,  
696 2014.

697 (2) The amendments to Section [19-6-409](#) take effect on July 1, 2014.

698 (3) The amendments to Section [19-6-420](#) take effect on July 1, 2015.

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**Legislative Review Note**  
as of 2-13-14 6:19 PM

**Office of Legislative Research and General Counsel**