

AIR QUALITY MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends provisions relating to air quality.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ modifies the powers and duties of the Air Quality Board;
- ▶ modifies the powers and duties of the director of the Division of Air Quality;
- ▶ modifies provisions relating to asbestos worker certifications;
- ▶ modifies fee provisions;
- ▶ modifies provisions relating to asbestos testing;
- ▶ removes outdated provisions;
- ▶ repeals private sector air quality permitting professionals certification;
- ▶ modifies provisions relating to controlled burning by fire departments;
- ▶ modifies provisions relating to tax exemptions for environmental controls; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

- 29 **19-2-102**, as last amended by Laws of Utah 2014, Chapter 24
- 30 **19-2-103**, as last amended by Laws of Utah 2012, Chapter 360
- 31 **19-2-104**, as last amended by Laws of Utah 2014, Chapter 230
- 32 **19-2-105.3**, as last amended by Laws of Utah 2010, Chapter 236
- 33 **19-2-107**, as last amended by Laws of Utah 2014, Chapter 230
- 34 **19-2-108**, as last amended by Laws of Utah 2012, Chapters 333 and 360
- 35 **19-2-109.1**, as last amended by Laws of Utah 2012, Chapters 360 and 369
- 36 **19-2-109.2**, as last amended by Laws of Utah 2012, Chapter 360
- 37 **19-2-112**, as last amended by Laws of Utah 2012, Chapter 333
- 38 **19-2-113**, as last amended by Laws of Utah 2011, Chapter 297
- 39 **19-2-114**, as last amended by Laws of Utah 1991, Chapter 86
- 40 **19-2-117**, as last amended by Laws of Utah 2012, Chapter 360
- 41 **19-2-119**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 42 **19-2-120**, as last amended by Laws of Utah 2012, Chapter 360
- 43 **19-2-122**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 44 **19-12-102**, as enacted by Laws of Utah 2014, Chapter 24
- 45 **19-12-201**, as enacted by Laws of Utah 2014, Chapter 24

46 REPEALS:

- 47 **19-2-109.5**, as last amended by Laws of Utah 2009, Chapters 183 and 377

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

50 Section 1. Section **19-2-102** is amended to read:

51 **19-2-102. Definitions.**

52 As used in this chapter:

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

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

57 (1) "Air pollutant" means $\hat{H} \rightarrow [\hat{z}$

58 ~~(a) a physical, chemical, biological, or radioactive substance that, if emitted into or~~ ☆

59 ~~☉ otherwise enters the ambient air in high enough concentrations and for long enough duration,~~
 60 ~~causes:~~

61 ~~—— (i) harm, discomfort, disease, or death to humans, animals, or vegetation; or~~

62 ~~—— (ii) damage to materials or property;~~

63 ~~—— (b) a precursor to the formation of a substance described under Subsection (1)(a); or~~

64 ~~—— (e) ←Ĥ a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.~~

65 (2) "Air pollutant source" means private and public sources of emissions of air
 66 pollutants.

67 (3) "Air pollution" means the presence [~~in the ambient air of one or more air~~
 68 ~~contaminants]~~ of an air pollutant in the ambient air in the quantities [~~and~~], for a duration, and
 69 under the conditions and circumstances [~~as is or tends to be]~~ that are injurious to human health
 70 or welfare, animal or plant life, or property, or would unreasonably interfere with the
 71 enjoyment of life or use of property, as determined by the rules adopted by the board.

72 (4) "Ambient air" means [~~the surrounding or outside air]~~ that portion of the
 73 atmosphere, external to buildings, to which the general public has access.

74 (5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite
 75 (crocidolite), cummingtonite-grunerite, anthophyllite, [~~and~~] actinolite-tremolite, and libby
 76 amphibole ~~Ĥ→~~ [~~including asbestiform, winchite, richterite, tremolite, and magnesioriebeckite found~~
 77 ~~in vermiculite products]~~ ←Ĥ .

78 (6) "Asbestos-containing material" means [~~any~~] a material containing more than 1%
 79 asbestos, as determined using the method adopted in 40 [~~CFR~~] C.F.R. Part 61, Subpart M,
 80 National Emission Standard for Asbestos.

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

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

86 (9) "Clean school bus" [~~has~~] means the same [~~meaning~~] as that term is defined in 42
 87 U.S.C. Sec. 16091.

88 (10) "Director" means the director of the Division of Air Quality.

89 (11) "Division" means the Division of Air Quality created in Section 19-1-105.

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

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

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

98 **19-2-103. Members of board -- Appointment -- Terms -- Organization -- Per diem**
99 **and expenses.**

100 (1) The board consists of the following nine members:

101 (a) the following non-voting member, except that the member may vote to break a tie
102 vote between the voting members:

103 (i) the executive director; or

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

105 (b) the following eight voting members, who shall be appointed by the governor with
106 the consent of the Senate:

107 (i) one representative who:

108 (A) is not connected with industry;

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

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

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

113 (iii) one representative from the mining industry;

114 (iv) one representative from the fuels industry;

115 (v) one representative from the manufacturing industry;

116 (vi) one representative from the public who represents:

117 (A) an environmental nongovernmental organization; or

118 (B) a nongovernmental organization that represents community interests and does not
119 represent industry interests; and

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

121 health.

122 (2) A member of the board shall:

123 (a) be knowledgeable about air pollution matters, as evidenced by a professional
124 degree, a professional accreditation, or documented experience;

125 (b) be a resident of Utah;

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

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

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

132 (4) A majority of the members of the board may not derive any significant portion of
133 their income from persons subject to permits or orders under this chapter.

134 (5) (a) Members shall be appointed for a term of four years.

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

138 ~~[(c) (i) Notwithstanding Subsection (5)(a), the term of a board member who is
139 appointed before March 1, 2013, shall expire on February 28, 2013.]~~

140 ~~[(ii) On March 1, 2013, the governor shall appoint or reappoint board members in
141 accordance with this section.]~~

142 (6) A member may serve more than one term.

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

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

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

149 (10) (a) The board shall meet at least quarterly.

150 (b) Special meetings may be called by the chair upon the chair's own initiative, upon
151 the request of the director, or upon the request of three members of the board.

152 (c) Three days' notice shall be given to each member of the board before [any] a
153 meeting.

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

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

158 (a) Section 63A-3-106;

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

160 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
161 63A-3-107.

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

163 **19-2-104. Powers of board.**

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

166 (a) regarding the control, abatement, and prevention of air pollution from all sources
167 and the establishment of the maximum quantity of air [~~contaminants~~] pollutants that may be
168 emitted by [~~any air contaminant~~] an air pollutant source;

169 (b) establishing air quality standards;

170 (c) requiring persons engaged in operations [~~which~~] that result in air pollution to:

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

172 (ii) file periodic reports containing information relating to the rate, period of emission,
173 and composition of the air [~~contaminant~~] pollutant; and

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

176 (d) (i) implementing:

177 (A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency
178 Response, 15 U.S.C. 2601 et seq.;

179 (B) 40 C.F.R. Part 763, Asbestos; and

180 (C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants,
181 Subpart M, National Emission Standard for Asbestos; and

182 (ii) reviewing and approving asbestos management plans submitted by local education

183 agencies under the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency
184 Response, 15 U.S.C. 2601 et seq.;

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

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

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

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

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

200 (j) to implement the requirements of Section 19-2-107.5.

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

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

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

205 (3) (a) The board may:

206 (i) hold a hearing that is not an adjudicative proceeding relating to any aspect of, or
207 matter in, the administration of this chapter;

208 (ii) [~~order~~] recommend that the director [~~to~~]:

209 (A) issue orders necessary to enforce the provisions of this chapter;

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

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

212 [~~(iii)~~] (D) advise, consult, contract, and cooperate with other agencies of the state, local
213 governments, industries, other states, interstate or interlocal agencies, the federal government,

214 or interested persons or groups[-]; and

215 (iii) establish certification requirements for asbestos project monitors, which shall
216 provide for experience-based certification of a person who:

217 (A) receives relevant asbestos training, as defined by rule; and

218 (B) has acquired a minimum of 1,000 hours of asbestos project monitoring related
219 work experience.

220 (b) The board shall:

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

222 (A) review a settlement negotiated by the director in accordance with Subsection
223 [19-2-107\(2\)\(b\)\(viii\)](#) that requires a civil penalty of \$25,000 or more; and

224 (B) approve or disapprove the settlement;

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

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

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

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

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

237 ~~[(v)]~~ (iv) by rule in accordance with Title 63G, Chapter 3, Utah Administrative
238 Rulemaking Act, establish work practice[-] and certification[-]~~and clearance air sampling]~~
239 requirements for persons who:

240 (A) contract for hire to conduct demolition, renovation, salvage, encapsulation work
241 involving friable asbestos-containing materials, or asbestos inspections if:

242 (I) the contract work is done on a site other than a residential property with four or
243 fewer units; or

244 (II) the contract work is done on a residential property with four or fewer units where a

245 tested sample contained greater than 1% of asbestos;

246 (B) conduct work described in Subsection (3)(b)~~(iv)~~(iv)(A) in areas to which the
247 general public has unrestrained access or in school buildings that are subject to the federal
248 Asbestos Hazard Emergency Response Act of 1986;

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

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

253 ~~[(vi)]~~ (v) establish certification requirements for ~~[persons]~~ a person required under 15
254 U.S.C.~~[A.]~~ 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard
255 Emergency Response, to be accredited as ~~[inspectors, management planners, abatement project~~
256 ~~designers, asbestos abatement contractors and supervisors, or asbestos abatement workers]~~ an
257 inspector, management planner, abatement project designer, asbestos abatement contractor and
258 supervisor, or an asbestos abatement worker ~~↔~~ [, renovator, or dust sampling technician] ~~↔~~ ;

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

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

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

268 ~~[(x)]~~ (vii) establish certification requirements for ~~[persons]~~ a person required under 15
269 U.S.C.~~[A.]~~ 2601 et seq., Toxic Control Act, Subchapter IV -[=] Lead Exposure Reduction, to be
270 accredited as ~~[inspectors, risk assessors, supervisors, project designers, or abatement workers]~~
271 an inspector, risk assessor, supervisor, project designer, abatement worker, renovator, or dust
272 sampling technician; and

273 ~~[(xi)]~~ (viii) assist the State Board of Education in adopting school bus idling reduction
274 standards and implementing an idling reduction program in accordance with Section
275 41-6a-1308.

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

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

282 (6) (a) The board may not require testing for asbestos or related materials on a
283 residential property with four or fewer units, unless:

284 (i) the property's construction was completed before January 1, 1981; or

285 (ii) the testing is for:

286 [~~(A) a sprayed acoustical ceiling;~~]

287 [~~(B) transite siding;~~]

288 [~~(C) vinyl floor tile;~~]

289 (A) a sprayed-on or painted on ceiling treatment that contained or may contain asbestos
290 fiber;

291 (B) asbestos cement siding or roofing materials;

292 (C) resilient flooring products including vinyl asbestos tile, sheet vinyl products,
293 resilient flooring backing material, whether attached or unattached, and mastic;

294 (D) thermal-system insulation or tape on a duct or furnace; or

295 (E) vermiculite type insulation materials.

296 (b) A residential property with four or fewer units is subject to an abatement rule made
297 under Subsection (1) or (3)(b)~~(c)~~(iv) if:

298 (i) a sample from the property is tested for asbestos; and

299 (ii) the sample contains asbestos measuring greater than 1%.

300 (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the
301 following that are subject to the authority granted to the director under Section [19-2-107](#) or
302 [19-2-108](#):

303 (a) a permit;

304 (b) a license;

305 (c) a registration;

306 (d) a certification; or

307 (e) another administrative authorization made by the director.

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

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

312 Section 4. Section **19-2-105.3** is amended to read:

313 **19-2-105.3. Clean fuel requirements for fleets.**

314 (1) As used in this section:

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

316 (b) "Clean fuel" means:

317 (i) propane, compressed natural gas, or electricity;

318 (ii) other fuel the [~~Air Quality Board created in Title 19, Chapter 2, Air Conservation~~
319 ~~Act,]~~ board determines annually on or before July 1 is at least as effective as fuels under
320 Subsection (1)(b)(i) in reducing air pollution; and

321 (iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.

322 (c) "Fleet" means 10 or more vehicles:

323 (i) owned or operated by a single entity as defined by board rule; and

324 (ii) capable of being fueled or that are fueled at a central location.

325 (d) "Fleet" does not include motor vehicles that are:

326 (i) held for lease or rental to the general public;

327 (ii) held for sale or used as demonstration vehicles by motor vehicle dealers;

328 (iii) used by motor vehicle manufacturers for product evaluations or tests;

329 (iv) authorized emergency vehicles as defined in Section [41-6a-102](#);

330 (v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;

331 (vi) special mobile equipment as defined in Section [41-1a-102](#);

332 (vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000 pounds;

333 (viii) regularly used by employees to drive to and from work, parked at the employees'
334 personal residences when they are not at their employment, and not practicably fueled at a
335 central location;

336 (ix) owned, operated, or leased by public transit districts; or

337 (x) exempted by board rule.

338 (2) (a) After evaluation of reasonably available pollution control strategies, and as part
339 of the state implementation plan demonstrating attainment of the national ambient air quality
340 standards, the board may by rule~~[, subject to Subsection (2)(c),]~~ require fleets in specified
341 geographical areas to use clean fuels if the board determines fleet use of clean fuels is:

342 (i) necessary to demonstrate attainment of the national ambient air quality standards in
343 ~~[any]~~ an area where they are required; and

344 (ii) reasonably cost effective when compared to other similarly beneficial control
345 strategies for demonstrating attainment of the national ambient air quality standards.

346 ~~[(b) State implementation plans developed prior to July 1, 1995, may require fleets to
347 use clean fuels no earlier than July 1, 1995, unless the board determines fleet use of clean fuels
348 is necessary prior to July 1, 1995, to demonstrate attainment of the national ambient air quality
349 standards in any area by an attainment date established by federal law.]~~

350 ~~[(c) The board may not require more than 50% of those trucks in a fleet that are heavy
351 duty trucks having a gross vehicle weight rating of more than 8,500 pounds and not more than
352 26,000 pounds to convert to clean fuels under Subsection (2)(b).]~~

353 ~~[(d)]~~ (b) A vehicle retrofit to operate on compressed natural gas in accordance with
354 Section 19-1-406 qualifies as a clean fuel vehicle under this section.

355 (3) ~~[(a)]~~ After evaluation of reasonably available pollution control strategies, and as
356 part of a state implementation plan demonstrating only maintenance of the national ambient air
357 quality standards, the board may by rule~~[, subject to Subsection (3)(b),]~~ require fleets in
358 specified geographical areas to use clean fuels if the board determines fleet use of clean fuels
359 is:

360 ~~[(i)]~~ (a) necessary to demonstrate maintenance of the national ambient air quality
361 standards in ~~[any]~~ an area where they are required; and

362 ~~[(ii)]~~ (b) reasonably cost effective as compared with other similarly beneficial control
363 strategies for demonstrating maintenance of the national ambient air quality standards.

364 ~~[(b) Under Subsection (3)(a) the board may require no more than:]~~

365 ~~[(i) 30% of a fleet to use clean fuels before January 1, 1998;]~~

366 ~~[(ii) 50% of a fleet to use clean fuels before January 1, 1999; and]~~

367 ~~[(iii) 70% of a fleet to use clean fuels before January 1, 2000.]~~

368 ~~[(c) The board may not require more than 50% of those trucks in a fleet that are heavy~~

369 ~~duty trucks having a gross vehicle weight rating of more than 8,500 pounds and not more than~~
 370 ~~26,000 pounds to convert to clean fuels under Subsection (3)(b).]~~

371 (4) Rules the board makes under this section may include:

372 (a) dates by which fleets are required to convert to clean fuels under the provisions of
 373 this section;

374 (b) definitions of fleet owners or operators;

375 (c) definitions of vehicles exempted from this section by rule;

376 (d) certification requirements for persons who install clean fuel conversion equipment,
 377 including testing and certification standards regarding installers; and

378 (e) certification fees for installers, established under Section [63J-1-504](#).

379 (5) Implementation of this section and rules made under this section are subject to the
 380 reasonable availability of clean fuel in the local market as determined by the board.

381 Section 5. Section **19-2-107** is amended to read:

382 **19-2-107. Director -- Appointment -- Powers.**

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

385 (2) (a) The director shall:

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

388 (ii) advise, consult, and cooperate with other agencies of the state, the federal
 389 government, other states and interstate agencies, and affected groups, political subdivisions,
 390 and industries in furtherance of the purposes of this chapter;

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

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

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

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

399 (vii) encourage local units of government to handle air pollution within their respective

400 jurisdictions on a cooperative basis and provide technical and consulting assistance to them;

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

403 (ix) monitor the effects of the emission of air [~~contaminants~~] pollutants from motor
404 vehicles on the quality of the outdoor atmosphere in all parts of Utah and take appropriate
405 responsive action;

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

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

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

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

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

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

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

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

420 (b) The director may:

421 (i) employ full-time, temporary, part-time, and contract employees necessary to carry
422 out this chapter;

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

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

431 (iv) collect and disseminate information relating to air pollution and the prevention,
432 control, and abatement of it;

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

435 (vi) subject to Subsection (3), upon request, consult concerning the following with
436 ~~[any]~~ a person proposing to construct, install, or otherwise acquire an air ~~[contaminant]~~
437 pollutant source in Utah:

438 (A) the efficacy of ~~[any]~~ proposed ~~[control device or proposed control system]~~ air
439 pollution control equipment for the source; or

440 (B) the air pollution problem that may be related to the source~~[- device, or system];~~

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

444 (viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise ~~[any]~~ a civil action
445 initiated by the division to compel compliance with this chapter or the rules made under this
446 chapter; or

447 (ix) ~~[as authorized by the board and]~~ subject to the provisions of this chapter, exercise
448 all incidental powers necessary to carry out the purposes of this chapter, including certification
449 to ~~[any]~~ state or federal authorities for tax purposes ~~[the fact of construction, installation, or~~
450 ~~acquisition of any facility, land, building, machinery, or equipment or any part of them, in~~
451 ~~conformity with this chapter]~~ that air pollution control equipment has been certified in
452 conformity with Title 19, Chapter 12, Pollution Control Act.

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

456 Section 6. Section 19-2-108 is amended to read:

457 **19-2-108. Notice of construction or modification of installations required --**
458 **Authority of director to prohibit construction -- Hearings -- Limitations on authority of**
459 **director -- Inspections authorized.**

460 (1) Notice shall be given to the director by ~~[any]~~ a person planning to construct a new
461 installation which will or might reasonably be expected to be a source or indirect source of air

462 pollution or to make modifications to an existing installation which will or might reasonably be
463 expected to increase the amount of or change the character or effect of air [~~contaminants~~
464 pollutants discharged, so that the installation may be expected to be a source or indirect source
465 of air pollution, or by [~~any~~] a person planning to install an air cleaning device or other
466 equipment intended to control emission of air [~~contaminants~~] pollutants.

467 (2) (a) [~~(i)~~] The director may require, as a condition precedent to the construction,
468 modification, installation, or establishment of the air [~~contaminant~~] pollutant source or indirect
469 source, the submission of plans, specifications, and other information as he finds necessary to
470 determine whether the proposed construction, modification, installation, or establishment will
471 be in accord with applicable rules in force under this chapter.

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

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

483 (3) In addition to any other remedies, [~~any~~] a person aggrieved by the issuance of an
484 order either granting or denying a request for the construction of a new installation, and prior to
485 invoking any such other remedies shall, upon request, in accordance with the rules of the
486 department, be entitled to a permit review adjudicative proceeding conducted by an
487 administrative law judge as provided by Section 19-1-301.5.

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

491 (5) This section does not authorize the director to require the use of machinery,
492 devices, or equipment from a particular supplier or produced by a particular manufacturer if the

493 required performance standards may be met by machinery, devices, or equipment otherwise
494 available.

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

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

503 (ii) A person may not obstruct, hamper, or interfere with ~~[any]~~ an inspection.

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

506 Section 7. Section **19-2-109.1** is amended to read:

507 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

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

509 ~~[(a) "EPA" means the federal Environmental Protection Agency.]~~

510 ~~[(b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.]~~

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

512 (b) "EPA" means the federal Environmental Protection Agency.

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

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

517 (e) "Regulated pollutant" ~~[has the same meaning]~~ means the same as that term is
518 defined in Title V of the 1990 Clean Air Act and implementing federal regulations.

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

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

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

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

531 (b) The director may issue, modify, or renew an operating permit only after providing
532 public notice, an opportunity for public comment, and an opportunity for a public hearing.

533 (c) The director shall, in conformity with the 1990 Clean Air Act and implementing
534 federal regulations, revise the conditions of issued operating permits to incorporate applicable
535 federal regulations in conformity with Section 502(b)(9) of the 1990 Clean Air Act, if the
536 remaining period of the permit is three or more years.

537 (d) The director may terminate, modify, revoke, or reissue an operating permit for
538 cause.

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

543 (b) In establishing the fee the board shall comply with the provisions of Section
544 63J-1-504 that require a public hearing and require the established fee to be submitted to the
545 Legislature for its approval as part of the department's annual appropriations request.

546 (c) The fee shall cover all reasonable direct and indirect costs required to develop and
547 administer the program and the small business assistance program established under Section
548 19-2-109.2. The director shall prepare an annual report of the emissions fees collected and the
549 costs covered by those fees under this Subsection (4).

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

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

554 (f) An emissions fee may not be assessed for any amount of a regulated pollutant

555 emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

556 (5) Emissions fees [~~accrued on and after July 1, 1993, but before issuance of an~~
557 ~~operating permit, shall be based on the most recent emissions inventory, unless a source elects~~
558 ~~before July 1, 1992, to base the fee on allowable emissions, if applicable for a regulated~~
559 ~~pollutant. (6) After an operating permit is issued the emissions fee]~~ shall be based on actual
560 emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a
561 permit, to base the fee during the period of the permit on allowable emissions for that regulated
562 pollutant.

563 [~~(7)~~] (6) If the owner or operator of a source subject to this section fails to timely pay
564 an annual emissions fee, the director may:

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

567 (b) revoke the operating permit.

568 [~~(8)~~] (7) The owner or operator of a source subject to this section may contest an
569 emissions fee assessment or associated penalty in an adjudicative hearing under the Title 63G,
570 Chapter 4, Administrative Procedures Act, and Section 19-1-301, as provided in this
571 Subsection [~~(8)~~] (7).

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

575 (b) A request for a hearing under this Subsection [~~(8)~~] (7) shall be made after payment
576 of the emissions fee and within six months after the emissions fee was due.

577 [~~(9)~~] (8) To reinstate an operating permit revoked under Subsection [~~(7)~~] (6) the owner
578 or operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all
579 outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

580 [~~(10)~~] (9) All emissions fees and penalties collected by the department under this
581 section shall be deposited in the General Fund as the Air Pollution Operating Permit Program
582 dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by
583 the department in developing and administering the program and the small business assistance
584 program under Section 19-2-109.2.

585 [~~(11)~~] (10) Failure of the director to act on [~~any~~] an operating permit application or

586 renewal is a final administrative action only for the purpose of obtaining judicial review by any
587 of the following persons to require the director to take action on the permit or its renewal
588 without additional delay:

- 589 (a) the applicant;
- 590 (b) [~~any~~] a person who participated in the public comment process; or
- 591 (c) [~~any other~~] a person who could obtain judicial review of that action under
592 applicable law.

593 Section 8. Section **19-2-109.2** is amended to read:

594 **19-2-109.2. Small business assistance program.**

595 (1) The [~~board~~] division shall establish a small business stationary source technical and
596 environmental compliance assistance program that conforms with Title V of the 1990 Clean
597 Air Act to assist small businesses to comply with state and federal air pollution laws.

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

- 600 (a) two members who are not owners or representatives of owners of small business
601 stationary air pollution sources, selected by the governor to represent the general public;
- 602 (b) four members who are owners or who represent owners of small business stationary
603 sources selected by leadership of the Utah Legislature as follows:
- 604 (i) one member selected by the majority leader of the Senate;
- 605 (ii) one member selected by the minority leader of the Senate;
- 606 (iii) one member selected by the majority leader of the House of Representatives; and
- 607 (iv) one member selected by the minority leader of the House of Representatives; and
- 608 (c) one member selected by the executive director to represent the Division of Air
609 Quality, Department of Environmental Quality.

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

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

617 (4) Members may serve more than one term.

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

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

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

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

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

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

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

630 (a) Section 63A-3-106;

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

632 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
633 63A-3-107.

634 Section 9. Section 19-2-112 is amended to read:

635 **19-2-112. Generalized condition of air pollution creating emergency -- Sources**
636 **causing imminent danger to health -- Powers of executive director -- Declaration of**
637 **emergency.**

638 (1) (a) Title 63G, Chapter 4, Administrative Procedures Act, and any other provision of
639 law to the contrary notwithstanding, if the executive director finds that a generalized condition
640 of air pollution exists and that it creates an emergency requiring immediate action to protect
641 human health or safety, the executive director, with the concurrence of the governor, shall
642 order persons causing or contributing to the air pollution to reduce or discontinue immediately
643 the emission of air ~~contaminants~~ pollutants.

644 (b) The order shall fix a place and time, not later than 24 hours after its issuance, for a
645 hearing to be held before the governor.

646 (c) Not more than 24 hours after the commencement of this hearing, and without
647 adjournment of it, the governor shall affirm, modify, or set aside the order of the executive

648 director.

649 (2) (a) In the absence of a generalized condition of air pollution referred to in
650 Subsection (1), but if the executive director finds that emissions from the operation of one or
651 more air [~~contaminant~~] pollutant sources is causing imminent danger to human health or safety,
652 the executive director may commence adjudicative proceedings under Section 63G-4-502.

653 (b) Notwithstanding Section 19-1-301 or 19-1-301.5, the executive director may
654 conduct the emergency adjudicative proceeding in place of an administrative law judge.

655 (3) Nothing in this section limits any power that the governor or any other officer has
656 to declare an emergency and act on the basis of that declaration.

657 Section 10. Section 19-2-113 is amended to read:

658 **19-2-113. Variances -- Judicial review.**

659 (1) (a) [~~Any~~] A person who owns or is in control of [~~any~~] a plant, building, structure,
660 establishment, process, or equipment may apply to the board for a variance from its rules.

661 (b) The board may grant the requested variance following an announced public
662 meeting, if it finds, after considering the endangerment to human health and safety and other
663 relevant factors, that compliance with the rules from which variance is sought would produce
664 serious hardship without equal or greater benefits to the public.

665 (2) A variance may not be granted under this section until the board has considered the
666 relative interests of the applicant, other owners of property likely to be affected by the
667 discharges, and the general public.

668 (3) [~~Any~~] A variance or renewal of a variance shall be granted within the requirements
669 of Subsection (1) and for time periods and under conditions consistent with the reasons for it,
670 and within the following limitations:

671 (a) if the variance is granted on the grounds that there are no practicable means known
672 or available for the adequate prevention, abatement, or control of the air pollution involved, it
673 shall be only until the necessary means for prevention, abatement, or control become known
674 and available, and subject to the taking of any substitute or alternate measures that the board
675 may prescribe;

676 (b) (i) if the variance is granted on the grounds that compliance with the requirements
677 from which variance is sought will require that measures, because of their extent or cost, must
678 be spread over a long period of time, the variance shall be granted for a reasonable time that, in

679 the view of the board, is required for implementation of the necessary measures; and

680 (ii) a variance granted on this ground shall contain a timetable for the implementation
681 of remedial measures in an expeditious manner and shall be conditioned on adherence to the
682 timetable; or

683 (c) if the variance is granted on the ground that it is necessary to relieve or prevent
684 hardship of a kind other than that provided for in Subsection (3)(a) or (b), it may not be granted
685 for more than one year.

686 (4) (a) [~~Any~~] A variance granted under this section may be renewed on terms and
687 conditions and for periods that would be appropriate for initially granting a variance.

688 (b) If a complaint is made to the board because of the variance, a renewal may not be
689 granted unless, following an announced public meeting, the board finds that renewal is
690 justified.

691 (c) To receive a renewal, an applicant shall submit a request for agency action to the
692 board requesting a renewal.

693 (d) Immediately upon receipt of an application for renewal, the board shall give public
694 notice of the application as required by its rules.

695 (5) (a) A variance or renewal is not a right of the applicant or holder but may be
696 granted at the board's discretion.

697 (b) A person aggrieved by the board's decision may obtain judicial review.

698 (c) Venue for judicial review of informal adjudicative proceedings is in the district
699 court in which the air [~~contaminant~~] pollutant source is situated.

700 (6) (a) The board may review [~~any~~] a variance during the term for which it was granted.

701 (b) The review procedure is the same as that for an original application.

702 (c) The variance may be revoked upon a finding that:

703 (i) the nature or amount of emission has changed or increased; or

704 (ii) if facts existing at the date of the review had existed at the time of the original
705 application, the variance would not have been granted.

706 (7) Nothing in this section and no variance or renewal granted pursuant to it shall be
707 construed to prevent or limit the application of the emergency provisions and procedures of
708 Section 19-2-112 to [~~any~~] a person or property.

709 Section 11. Section 19-2-114 is amended to read:

710 **19-2-114. Activities not in violation of chapter or rules.**711 The following are not a violation of this chapter or of ~~[any rules]~~ a rule made under it:

712 (1) burning incident to horticultural or agricultural operations of:

713 (a) prunings from trees, bushes, and plants; or

714 (b) dead or diseased trees, bushes, and plants, including stubble;

715 (2) burning of weed growth along ditch banks incident to clearing these ditches for
716 irrigation purposes;717 (3) controlled heating of orchards or other crops to lessen the chances of their being
718 frozen so long as the emissions from this heating do not violate minimum standards set by the
719 board; and720 (4) the controlled burning of not more than two structures per year by an organized and
721 operating fire department for the purpose of training fire service personnel when the United
722 States Weather Service clearing index for the area where the burn is to occur is above 500.723 Section 12. Section **19-2-117** is amended to read:724 **19-2-117. Attorney general as legal advisor to board -- Duties of attorney general**
725 **and county attorneys.**726 (1) ~~[The]~~ Except as provided in Section [63G-7-902](#), the attorney general is the legal
727 advisor to the board and the director and shall defend them or any of them in all actions or
728 proceedings brought against them or any of them.729 (2) The county attorney in the county in which a cause of action arises may, upon
730 request of the board or the director, bring ~~[any]~~ an action, civil or criminal, to abate a condition
731 which exists in violation of, or to prosecute for the violation of or to enforce, this chapter or the
732 standards, orders, or rules of the board or the director issued under this chapter.733 (3) The director may bring ~~[any]~~ an action and be represented by the attorney general.734 (4) In the event ~~[any]~~ a person fails to comply with a cease and desist order of the
735 board or the director that is not subject to a stay pending administrative or judicial review, the
736 director may initiate an action for, and is entitled to, injunctive relief to prevent any further or
737 continued violation of the order.738 Section 13. Section **19-2-119** is amended to read:739 **19-2-119. Civil or criminal remedies not excluded -- Actionable rights under**
740 **chapter -- No liability for acts of God or other catastrophes.**

741 (1) Existing civil or criminal remedies for ~~[any]~~ a wrongful action ~~[which]~~ that is a
742 violation of ~~[any part of]~~ the law are not excluded by this chapter.

743 (2) ~~[Persons]~~ Except as provided in Sections 19-1-301 and 19-1-301.5, and rules
744 implementing those provisions, persons other than the state or the board do not acquire
745 actionable rights by virtue of this chapter.

746 (3) The liabilities imposed for violation of this chapter are not imposed for ~~[any]~~ a
747 violation caused by an act of God, war, strike, riot, or other catastrophe.

748 Section 14. Section **19-2-120** is amended to read:

749 **19-2-120. Information required of owners or operators of air pollutant sources.**

750 The owner or operator of ~~[any]~~ a stationary air ~~[contaminant]~~ pollutant source in the
751 state shall furnish to the director the reports required by rules made in accordance with Section
752 19-2-104 and any other information the director finds necessary to determine whether the
753 source is in compliance with state and federal regulations and standards. The information shall
754 be correlated with applicable emission standards or limitations and shall be available to the
755 public during normal business hours at the office of the division.

756 Section 15. Section **19-2-122** is amended to read:

757 **19-2-122. Cooperative agreements between political subdivisions and**
758 **department.**

759 (1) ~~[Any]~~ A political subdivision of the state may enter into and perform, with other
760 political subdivisions of the state or with the department, contracts and agreements as they find
761 proper for establishing, planning, operating, and financing air pollution programs.

762 (2) The agreements may provide for an agency to:

763 (a) supervise and operate an air pollution program;

764 (b) prescribe ~~[, subject to the approval of the board,]~~ the agency's powers and duties;

765 and

766 (c) fix the compensation of the agency's members and employees.

767 Section 16. Section **19-12-102** is amended to read:

768 **19-12-102. Definitions.**

769 As used in this chapter:

770 (1) "Air ~~[contaminant]~~ is as pollutant" means the same as that term is defined in

771 Section 19-2-102.

772 (2) "Air [~~contaminant~~] pollutant source" [~~is as~~] means the same as that term is defined
773 in Section 19-2-102.

774 (3) "Air pollution" [~~is as~~] means the same as that term is defined in Section 19-2-102.

775 (4) "Director" means:

776 (a) for purposes of an application or certification under this chapter related to air
777 pollution, the director of the Division of Air Quality; or

778 (b) for purposes of an application or certification under this chapter related to water
779 pollution, the director of the Division of Water Quality.

780 (5) (a) "Freestanding pollution control property" means tangible personal property
781 located in the state, regardless of whether a purchaser purchases the tangible personal property
782 voluntarily or to comply with a requirement of a governmental entity, if:

783 (i) the primary purpose of the tangible personal property is the prevention, control, or
784 reduction of air or water pollution by:

785 (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of
786 treatment works for industrial waste; or

787 (B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air
788 [~~contaminants~~] pollutants, air pollution, or air contamination sources, and the use of one or
789 more air cleaning devices; and

790 (ii) the tangible personal property is not used at, in the construction of, or incorporated
791 into a pollution control facility.

792 (b) "Freestanding pollution control property" does not include:

793 (i) a consumable:

794 (A) chemical that is not reusable;

795 (B) cleaning material that is not reusable; or

796 (C) supply that is not reusable;

797 (ii) the following used for human waste:

798 (A) a septic tank; or

799 (B) other property;

800 (iii) property installed, constructed, or used for the moving of sewage to a collection
801 facility of a public or quasi-public sewerage system;

802 (iv) the following used for the comfort of personnel:

- 803 (A) an air conditioner;
- 804 (B) a fan; or
- 805 (C) an item similar to Subsection (5)(b)(iv)(A) or (B); or
- 806 (v) office equipment or an office supply if the primary purpose of the office equipment
807 or office supply is not the prevention, control, or reduction of air or water pollution by:
- 808 (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of
809 treatment works for industrial waste; or
- 810 (B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air
811 [~~contaminants~~] pollutants, air pollution, or air contamination sources, and the use of one or
812 more air cleaning devices.
- 813 (6) (a) "Pollution control facility" means real property in the state, regardless of
814 whether a purchaser purchases the real property voluntarily or to comply with a requirement of
815 a governmental entity, if the primary purpose of the real property is the prevention, control, or
816 reduction of air pollution or water pollution by:
- 817 (i) the disposal or elimination of, or redesign to eliminate:
- 818 (A) waste; and
- 819 (B) the use of treatment works for industrial waste; or
- 820 (ii) (A) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air
821 [~~contaminants~~] pollutants, air pollution, or air contamination sources; and
822 (B) the use of one or more air cleaning devices.
- 823 (b) "Pollution control facility" includes:
- 824 (i) an addition to real property described in Subsection (6)(a);
- 825 (ii) the reconstruction of real property described in Subsection (6)(a); or
- 826 (iii) an improvement to real property described in Subsection (6)(a).
- 827 (c) "Pollution control facility" does not include:
- 828 (i) a consumable:
- 829 (A) chemical that is not reusable;
- 830 (B) cleaning material that is not reusable; or
- 831 (C) supply that is not reusable;
- 832 (ii) the following used for human waste:
- 833 (A) a septic tank; or

- 834 (B) another facility;
- 835 (iii) property installed, constructed, or used for the moving of sewage to a collection
- 836 facility of a public or quasi-public sewerage system;
- 837 (iv) the following used for the comfort of personnel:
- 838 (A) an air conditioner;
- 839 (B) a fan; or
- 840 (C) an item similar to Subsection (6)(c)(iv)(A) or (B); or
- 841 (v) office equipment or an office supply if the primary purpose of the office equipment
- 842 or office supply is not the prevention, control, or reduction of air or water pollution by:
- 843 (A) the disposal or elimination of, or redesign to eliminate waste, and the use of
- 844 treatment works for industrial waste; or
- 845 (B) the disposal, elimination, or reduction of, or redesign to eliminate[;] or reduce, air
- 846 [~~contaminants~~] pollutants, air pollution, or air contamination sources, and the use of one or
- 847 more air cleaning devices.
- 848 (7) "Treatment works" [~~is as~~] means the same as that term is defined in Section
- 849 19-5-102.
- 850 (8) "Waste" [~~is as~~] means the same as that term is defined in Section 19-5-102.
- 851 (9) "Water pollution" has the same meaning as "pollution" under Section 19-5-102.
- 852 Section 17. Section **19-12-201** is amended to read:
- 853 **19-12-201. Sales and use tax exemption for certain purchases or leases related to**
- 854 **pollution control.**
- 855 (1) Except as provided in Subsection (2), a purchase or lease of the following is
- 856 exempt from a tax imposed under Title 59, Chapter 12, Sales and Use Tax Act:
- 857 (a) freestanding pollution control property;
- 858 (b) tangible personal property if the tangible personal property is:
- 859 (i) incorporated into freestanding pollution control property; or
- 860 (ii) used at, used in the construction of, or incorporated into a pollution control facility;
- 861 (c) a part, if the part is used in the repair or replacement of property described in
- 862 Subsection (1)(a) or (b);
- 863 (d) a product transferred electronically, if the property transferred electronically is:
- 864 (i) incorporated into freestanding pollution control property; or

865 (ii) used at, used in the construction of, or incorporated into a pollution control facility;

866 or

867 (e) a service, if the service is performed on:

868 (i) freestanding pollution control property;

869 (ii) a pollution control facility; or

870 (iii) property described in Subsection (1)(b), a part described in Subsection (1)(c), or a
871 product described in Subsection (1)(d).

872 (2) A purchase or lease of the following is not exempt under this section:

873 (a) a consumable chemical that is not reusable;

874 (b) a consumable cleaning material that is not reusable; or

875 (c) a consumable supply that is not reusable.

876 (3) A purchase or lease of office equipment or an office supply is not exempt under this
877 section if the primary purpose of the office equipment or office supply is not the prevention,
878 control, or reduction of air or water pollution by:

879 (a) the disposal or elimination of, or redesign to eliminate, waste, and the use of
880 treatment works for industrial waste; or

881 (b) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air
882 [~~contaminants~~] pollutants, air pollution, or air [~~contamination~~] pollution sources, and the use of
883 one or more air cleaning devices.

884 Section 18. **Repealer.**

885 This bill repeals:

886 Section **19-2-109.5, Private sector air quality permitting professionals certification**
887 **program.**

Legislative Review Note
as of 1-30-15 7:22 AM

Office of Legislative Research and General Counsel