Chapter 1
General Provisions

Part 1
Organization

19-1-101 Short title.

This title is known as the "Environmental Quality Code."

Enacted by Chapter 112, 1991 General Session

19-1-102 Purposes.

The purpose of this title is to:

(1) clarify the powers and duties of the Department of Environmental Quality in relationship to local health departments;

(2) provide effective, coordinated management of state environmental concerns;

(3) safeguard public health and quality of life by protecting and improving environmental quality while considering the benefits to public health, the impacts on economic development, property, wildlife, tourism, business, agriculture, forests, and other interests, and the costs to the public and to industry; and

(4)

(a) strengthen local health departments' environmental programs;

(b) build consensus among the public, industry, and local governments in developing environmental protection goals; and

(c) appropriately balance the need for environmental protection with the need for economic and industrial development.

Enacted by Chapter 112, 1991 General Session

19-1-103 Definitions.

As used in this title:

(1) "Department" means the Department of Environmental Quality.

(2) "Executive director" means the executive director of the department appointed pursuant to Section 19-1-104.

(3) "Local health department" means a local health department as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act.

(4) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

Enacted by Chapter 112, 1991 General Session

19-1-104 Creation of department -- Appointment of executive director.

(1) There is created within state government the Department of Environmental Quality. The department shall be administered by an executive director.

(2) The executive director shall be appointed by the governor with the advice and consent of the Senate and shall serve at the pleasure of the governor.

(3) The executive director shall have demonstrated the necessary administrative and professional ability through education and experience to efficiently and effectively manage the department's affairs.
(4) The Legislature shall fix the compensation of the executive director in accordance with Title 67, Chapter 22, State Officer Compensation.

Amended by Chapter 352, 2020 General Session

19-1-105 Divisions of department -- Control by division directors.
(1) The following divisions are created within the department:
(a) the Division of Air Quality, to administer Title 19, Chapter 2, Air Conservation Act;
(b) the Division of Drinking Water, to administer Title 19, Chapter 4, Safe Drinking Water Act;
(c) the Division of Environmental Response and Remediation, to administer:
(i) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; and
(ii) Title 19, Chapter 6, Part 4, Underground Storage Tank Act;
(d) the Division of Waste Management and Radiation Control, to administer:
(i) Title 19, Chapter 3, Radiation Control Act;
(ii) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;
(iii) Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;
(iv) Title 19, Chapter 6, Part 5, Solid Waste Management Act;
(v) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal;
(vi) Title 19, Chapter 6, Part 7, Used Oil Management Act;
(vii) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act;
(viii) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act;
(ix) Title 19, Chapter 6, Part 11, Industrial Byproduct Reuse; and
(x) Title 19, Chapter 6, Part 12, Disposal of Electronic Waste Program; and
(e) the Division of Water Quality, to administer Title 19, Chapter 5, Water Quality Act.
(2) Each division is under the immediate direction and control of a division director appointed by the executive director.
(3)
(a) A division director shall possess the administrative skills and training necessary to perform the duties of division director.
(b) A division director shall hold one of the following degrees from an accredited college or university:
(i) a four-year degree in physical or biological science or engineering;
(ii) a related degree; or
(iii) a degree in law.
(4) The executive director may remove a division director at will.
(5) A division director shall serve as the executive secretary to the policymaking board, created in Section 19-1-106, that has rulemaking authority over the division director's division.

Amended by Chapter 451, 2015 General Session

19-1-106 Boards within department.
(1) The following policymaking boards are created within the department:
(a) the Air Quality Board, appointed under Section 19-2-103;
(b) the Drinking Water Board, appointed under Section 19-4-103;
(c) the Water Quality Board, appointed under Section 19-5-103; and

(d) the Waste Management and Radiation Control Board, appointed under Section 19-6-103.
(2) The authority of the boards created in Subsection (1) is limited to the specific authority granted them under this title.
(3) A vacancy that occurs during an expired term in a board described in Subsection (1) shall be filled in accordance with Title 63G, Chapter 24, Part 2, Vacancies.

Amended by Chapter 256, 2020 General Session
Amended by Chapter 373, 2020 General Session

19-1-108 Environmental Quality Restricted Account.
(1) There is created the Environmental Quality Restricted Account.
(2) The sources of money for the Environmental Quality Restricted Account are:
(a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4 and other fees collected under Subsection 19-3-104(5) or 19-3-104(6);
(b) hazardous waste disposal fees collected under Section 19-6-118;
(c) PCB waste disposal fees collected under Section 19-6-118.5;
(d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and
(e) the investment income derived from money in the Environmental Quality Restricted Account.
(3) In each fiscal year the balance of the money collected from the waste disposal fees listed in Subsection (2), collectively, shall be deposited into the Environmental Quality Restricted Account.
(4) The Legislature may annually appropriate money from the Environmental Quality Restricted Account to the department for the costs of administering:
(a) radiation control programs; and
(b) solid and hazardous waste programs.
(5) Each fiscal year beginning on or after July 1, 2018, and ending on or before June 30, 2022, the Division of Finance shall transfer $200,000 from the Environmental Quality Restricted Account to the Hazardous Substances Mitigation Fund, to provide money to:
(a) meet the state's cost share requirements for cleanup under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq. as amended; and
(b) respond to an emergency as provided in Section 19-6-309.
(6) After the requirements of Subsection (3) are met, sources of money for the Environmental Quality Restricted Account described in Subsection (2)(a) may only be used for the purpose described in Subsection (4)(a).
(7) To stabilize funding for the radiation control programs and the solid and hazardous waste programs, the Legislature shall in years of excess revenues reserve in the Environmental Quality Restricted Account sufficient money to meet departmental needs in years of projected shortages.
(8) The Legislature may not appropriate money from the General Fund to the department as a supplemental appropriation to cover the costs of the radiation control programs and the solid and hazardous waste programs in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year.
(9) Money appropriated under this part that is not expended at the end of the fiscal year lapses into the Environmental Quality Restricted Account.
(10)

(a) The balance in the Environmental Quality Restricted Account may not exceed $4,000,000 above the anticipated revenue need for the money in the Environmental Quality Restricted Account for the fiscal year.
(b) Excess funds under Subsection (10)(a) shall be credited on a proportionate basis to each person who paid money to the Environmental Quality Restricted Account in the previous fiscal year.

Amended by Chapter 336, 2022 General Session

19-1-109 Clean Air Support Restricted Account.
(1) There is created in the General Fund a restricted account known as the "Clean Air Support Restricted Account."
(2) The account shall be funded by:
(a) contributions deposited into the account in accordance with Section 41-1a-422;
(b) private contributions; and
(c) donations or grants from public or private entities.
(3)
(a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.
(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the account.
(4) Subject to appropriation, the department shall distribute the money in the account to one or more organizations that:
(a) are tax exempt under Section 501(c)(3), Internal Revenue Code; and
(b) have as part of the organization's mission:
(i) to encourage and educate the public about simple changes to improve air quality in the state;
(ii) to provide grants to organizations or individuals with innovative ideas to reduce emissions; and
(iii) to partner with other organizations to strengthen efforts to improve air quality.
(5) The department may also expend funds in the account to pay the costs of issuing or reordering Clean Air Support special group license plate decals.
(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing procedures for an organization to apply to receive money under this section.

Enacted by Chapter 322, 2020 General Session

19-1-110 Department discussions with the Federalism Commission.
(1) As used in this section, "commission" means the Federalism Commission created in Section 63C-4a-302.
(2) The department shall meet with the commission as scheduled by the chairs of the commission and consistent with the usual schedule of the commission.
(3) The commission may discuss with the department:
(a) needs of industries that are subject to regulation under this title;
(b) needs of the department;
(c) policy and rulemaking changes or implementation;
(d) United States Environmental Protection Agency regulations and other federal regulations that affect industries regulated under this title or the department; and

(e) any other issue that is related to the environment or the functioning of the department.

Enacted by Chapter 190, 2024 General Session

Part 2
Powers

19-1-201 Powers and duties of department -- Rulemaking authority -- Committee -- Monitoring environmental impacts of inland port.

(1) The department shall:

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

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

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

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

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

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

(iv) is reviewed and updated annually;

(d) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as follows:

(i) for a board created in Section 19-1-106, rules regarding:

(A) board meeting attendance; and

(B) conflicts of interest procedures; and

(ii) procedural rules that govern:

(A) an adjudicative proceeding, consistent with Section 19-1-301; and

(B) a special adjudicative proceeding, consistent with Section 19-1-301.5;

(e) ensure that training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

(i) under this title;

(ii) by the department; or

(iii) by an agency or division within the department; and

(f) subject to Subsection (2), establish annual fees that conform with Title V of the Clean Air Act for each regulated pollutant as defined in Section 19-2-109.1, applicable to a source subject to the Title V program.

(2)
(a) A fee established under Subsection (1)(f) is in addition to a fee assessed under Subsection (6)(i) for issuance of an approval order.
(b) In establishing a fee under Subsection (1)(f), the department shall comply with Section 63J-1-504 that requires a public hearing and requires the established fee to be submitted to the Legislature for the Legislature's approval as part of the department's annual appropriations request.
(c) A fee established under this section shall cover the reasonable direct and indirect costs required to develop and administer the Title V program and the small business assistance program established under Section 19-2-109.2.
(d) A fee established under Subsection (1)(f) shall be established for all sources subject to the Title V program and for all regulated pollutants.
(e) An emission fee may not be assessed for a regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.
(f) An emission fee may not be assessed for any amount of a regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.
(g) An emission fee shall be based on actual emissions for a regulated pollutant unless a source elects, before the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.
(h) The fees collected by the department under Subsection (1)(f) and penalties collected under Subsection 19-2-109.1(4) shall be deposited into the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section 19-2-109.2.
(3) The department shall establish a committee that consists of:
(a) the executive director or the executive director's designee;
(b) two representatives of the department appointed by the executive director; and
(c) three representatives of local health departments appointed by a group of all the local health departments in the state.
(4)
(a) The committee established in Subsection (3) shall:
(i) review the allocation of environmental quality resources between the department and the local health departments, including whether funds allocated by contract were allocated in accordance with the formula described in Section 26A-1-116;
(ii) evaluate rules and department policies that affect local health departments in accordance with Subsection (4)(b);
(iii) consider policy changes proposed by the department or by local health departments;
(iv) coordinate the implementation of environmental quality programs to maximize environmental quality resources; and
(v) review each department application for any grant from the federal government that affects a local health department before the department submits the application.
(b) When evaluating a policy or rule that affects a local health department, the committee shall:
(i) compute an estimate of the cost a local health department will bear to comply with the policy or rule;
(ii) specify whether there is any funding provided to a local health department to implement the policy or rule; and
(iii) advise whether the policy or rule is still needed.

(c) Before November 1 of each year, the department shall provide a report to the Rules Review and General Oversight Committee regarding the determinations made under Subsection (4)(b).

(5) The committee shall create bylaws to govern the committee's operations.

(6) The department may:

(a) investigate matters affecting the environment;

(b) investigate and control matters affecting the public health when caused by environmental hazards;

(c) prepare, publish, and disseminate information to inform the public concerning issues involving environmental quality;

(d) establish and operate programs, as authorized by this title, necessary for protection of the environment and public health from environmental hazards;

(e) use local health departments in the delivery of environmental health programs to the extent provided by law;

(f) enter into contracts with local health departments or others to meet responsibilities established under this title;

(g) acquire real and personal property by purchase, gift, devise, and other lawful means;

(h) prepare and submit to the governor a proposed budget to be included in the budget submitted by the governor to the Legislature;

(i) in accordance with Section 63J-1-504, establish a schedule of fees that may be assessed for actions and services of the department that are reasonable, fair, and reflect the cost of services provided;

(j) for an owner or operator of a source subject to a fee established by Subsection (6)(i) who fails to timely pay that fee, assess a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually;

(k) prescribe by rule reasonable requirements not inconsistent with law relating to environmental quality for local health departments;

(l) perform the administrative functions of the boards established by Section 19-1-106, including the acceptance and administration of grants from the federal government and from other sources, public or private, to carry out the board's functions;

(m) upon the request of a board or a division director, provide professional, technical, and clerical staff and field and laboratory services, the extent of which are limited by the money available to the department for the staff and services; and

(n) establish a supplementary fee, not subject to Section 63J-1-504, to provide service that the person paying the fee agrees by contract to be charged for the service to efficiently use department resources, protect department permitting processes, address extraordinary or unanticipated stress on permitting processes, or make use of specialized expertise.

(7) In providing service under Subsection (6)(n), the department may not provide service in a manner that impairs another person's service from the department.

(8)

(a) As used in this Subsection (8):

(i) "Environmental impacts" means:

(A) impacts on air quality, including impacts associated with air emissions; and

(B) impacts on water quality, including impacts associated with storm water runoff.

(ii) "Inland port" means the same as that term is defined in Section 11-58-102.

(iii) "Inland port area" means the area in and around the inland port that bears the environmental impacts of destruction, construction, development, and operational activities within the inland port.

(iv) "Monitoring facilities" means:
(A) for monitoring air quality, a sensor system consisting of monitors to measure levels of research-grade particulate matter, ozone, and oxides of nitrogen, and data logging equipment with internal data storage that are interconnected at all times to capture air quality readings and store data; and
(B) for monitoring water quality, facilities to collect groundwater samples, including in existing conveyances and outfalls, to evaluate sediment, metals, organics, and nutrients due to storm water.
(b) The department shall:
(i) develop and implement a sampling and analysis plan to:
(A) characterize the environmental baseline for air quality and water quality in the inland port area;
(B) characterize the environmental baseline for only air quality for the Salt Lake International Airport; and
(C) define the frequency, parameters, and locations for monitoring;
(ii) establish and maintain monitoring facilities to measure the environmental impacts in the inland port area arising from destruction, construction, development, and operational activities within the inland port;
(iii) publish the monitoring data on the department's website; and
(iv) provide at least annually before November 30 a written report summarizing the monitoring data to:
(A) the Utah Inland Port Authority board, established under Title 11, Chapter 58, Part 3, Port Authority Board; and
(B) the Legislative Management Committee.

Amended by Chapter 178, 2024 General Session

19-1-202 Duties and powers of the executive director.
(1) The executive director shall:
(a) administer and supervise the department;
(b) coordinate policies and program activities conducted through boards, divisions, and offices of the department;
(c) approve the proposed budget of each board, division, and office within the department;
(d) approve all applications for federal grants or assistance in support of any department program;
(e) with the governor's specific, prior approval, expend funds appropriated by the Legislature necessary for participation by the state in any fund, property, or service provided by the federal government; and
(f) in accordance with Section 19-1-301, appoint one or more administrative law judges to hear an adjudicative proceeding within the department.
(2) The executive director may:
(a) issue orders to enforce state laws and rules established by the department except where the enforcement power is given to a board created under Section 19-1-106, unless the executive director finds that a condition exists that creates a clear and present hazard to the public health or the environment and requires immediate action, and if the enforcement power is vested with a board created under Section 19-1-106, the executive director may with the concurrence of the governor order any person causing or contributing to the condition to reduce, mitigate, or eliminate the condition;

(b) with the approval of the governor, participate in the distribution, disbursement, or administration of any fund or service, advanced, offered, or contributed by the federal government for purposes consistent with the powers and duties of the department;
(c) accept and receive funds and gifts available from private and public groups for the purposes of promoting and protecting the public health and the environment and expend the funds as appropriated by the Legislature;
(d) make policies not inconsistent with law for the internal administration and government of the department, the conduct of its employees, and the custody, use, and preservation of the records, papers, books, documents, and property of the department;
(e) create advisory committees as necessary to assist in carrying out the provisions of this title;
(f) appoint division directors who may be removed at the will of the executive director and who shall be compensated in an amount fixed by the executive director;
(g) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, affected groups, political subdivisions, and industries in carrying out the purposes of this title;
(h) consistent with Title 63A, Chapter 17, Utah State Personnel Management Act, employ employees necessary to meet the requirements of this title;
(i) authorize any employee or representative of the division to conduct inspections as permitted in this title;
(j) encourage, participate in, or conduct any studies, investigations, research, and demonstrations relating to hazardous materials or substances releases necessary to meet the requirements of this title;
(k) collect and disseminate information about hazardous materials or substances releases;
(l) review plans, specifications, or other data relating to hazardous substances releases as provided in this title;
(m) maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions for the protection of the public health and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, or under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous calendar year, and those that the department plans to address in the upcoming year pursuant to this title, including if upon completion of the response action the site:
  (i) will be suitable for unrestricted use; or
  (ii) will be suitable only for restricted use, stating the institutional controls identified in the remedy to which use of the site is subject; and
(n) for purposes of implementing environmental mitigation and response actions:
  (i) accept and receive environmental mitigation and response funds from private and public groups, including as a condition of a consent decree, settlement agreement, stipulated agreement, or court order; and
  (ii) administer the implementation of environmental mitigation and response actions in accordance with the terms and conditions in which funds were received, including:
    (A) disbursing funds to private or public entities, governmental units, state agencies, or Native American tribes;
    (B) expending funds to implement environmental mitigation and response actions; and
    (C) returning unused funds to the original source of the funds as a condition of receipt of the funds, if applicable.

Amended by Chapter 345, 2021 General Session

19-1-203 Representatives of department authorized to enter regulated premises.

(1) Authorized representatives of the department, upon presentation of appropriate credentials, may enter at reasonable times upon the premises of properties regulated under this title to perform inspections to insure compliance with rules made by the department.

(2) The inspection authority provided in this section does not apply to chapters in this title which provide for specific inspection procedures and authority.

Enacted by Chapter 112, 1991 General Session

19-1-204 Legal advice and representation for department.

(1) The attorney general is the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them.

(2) The attorney general or the county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil or criminal action requested by the executive director or any board created in Section 19-1-106 to abate a condition which exists in violation of, or to prosecute for the violation of or for the enforcement of, the laws or standards, orders, and rules of the department.

Enacted by Chapter 112, 1991 General Session

19-1-205 Assumption of responsibilities.

The department assumes all the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities of the Division of Environmental Health, the Air Conservation Committee, the Solid and Hazardous Waste Committee, the Utah Safe Drinking Water Committee, and the Water Pollution Control Committee previously vested in the Department of Health and Human Services and its executive director:

(1) including programs for individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies; but

(2) excluding all other sanitation programs, which shall be administered by the Department of Health and Human Services.

Amended by Chapter 327, 2023 General Session

Effective until 7/1/2024

19-1-206 Contracting powers of department -- Health insurance coverage.

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

(c) "Employee" means, as defined in Section 34A-2-104, an "employee," "worker," or "operative" who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means:

(i) the same as that term is defined in Section 31A-1-301; or

(ii) an employee welfare benefit plan:

(A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;
(B) for an employer with 100 or more employees; and
(C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.
(e) "Qualified health coverage" means the same as that term is defined in Section 26B-3-909.
(f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
(g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.
(2) Except as provided in Subsection (3), the requirements of this section apply to:
(a) a contractor of a design or construction contract entered into by, or delegated to, the department, or a division or board of the department, on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than $2,000,000; and
(b) a subcontractor of a contractor of a design or construction contract entered into by, or delegated to, the department, or a division or board of the department, on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than $1,000,000.
(3) This section does not apply to contracts entered into by the department or a division or board of the department if:
(a) the application of this section jeopardizes the receipt of federal funds;
(b) the contract or agreement is between:
(i) the department or a division or board of the department; and
(ii)
(A) another agency of the state;
(B) the federal government;
(C) another state;
(D) an interstate agency;
(E) a political subdivision of this state; or
(F) a political subdivision of another state;
(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or
(d) the contract is:
(i) a sole source contract; or
(ii) an emergency procurement.
(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.
(5)
(a) A contractor subject to the requirements of this section shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the executive director a written statement that:
(i) the contractor offers qualified health coverage that complies with Section 26B-3-909;
(ii) is from:
(A) an actuary selected by the contractor or the contractor's insurer;
(B) an underwriter who is responsible for developing the employer group's premium rates; or
(C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and
(iii) was created within one year before the day on which the statement is submitted.

(b)
(i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.
(ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:
(A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and
(B) the department.
(c) A contractor that is subject to the requirements of this section shall:
(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and
(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:
(A) the subcontractor offers qualified health coverage that complies with Section 26B-3-909;
(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an underwriter who is responsible for developing the employer group's premium rates, or if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and
(C) was created within one year before the day on which the contractor obtains the statement.
(d)
(i)
(A) A contractor that fails to maintain an offer of qualified health coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).
(ii)
(A) A subcontractor that fails to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage described in Subsection (5)(a).
(6) The department shall adopt administrative rules:
(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(b) in coordination with:
(i) a public transit district in accordance with Section 17B-2a-818.5;
(ii) the Department of Natural Resources in accordance with Section 79-2-404;
(iii) the Division of Facilities Construction and Management in accordance with Section 63A-5b-607;
(iv) the State Capitol Preservation Board in accordance with Section 63O-2-403;
(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Rules Review and General Oversight Committee created in Section 36-35-102; and

(c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health coverage during the duration of the contract; and

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by the Department of Health and Human Services, in accordance with Subsection 26B-3-909(2).

(7)

(a)

(i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the employee for health care costs that would have been covered by qualified health coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26B-1-309.

(9) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(10) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):

(a) subject to Subsection (10)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;

(b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and

(c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Amended by Chapter 178, 2024 General Session
Amended by Chapter 425, 2024 General Session

Effective 7/1/2024

19-1-206 Contracting powers of department -- Health insurance coverage.

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

(c) "Employee" means, as defined in Section 34A-2-104, an "employee," "worker," or "operative" who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means:

(i) the same as that term is defined in Section 31A-1-301; or

(ii) an employee welfare benefit plan:

(A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;

(B) for an employer with 100 or more employees; and

(C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.

(e) "Qualified health coverage" means the same as that term is defined in Section 26B-3-909.

(f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

(g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by, or delegated to, the department, or a division or board of the department, on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than $2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by, or delegated to, the department, or a division or board of the department, on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than $1,000,000.

(3) This section does not apply to contracts entered into by the department or a division or board of the department if:
(a) the application of this section jeopardizes the receipt of federal funds;
(b) the contract or agreement is between:
(i) the department or a division or board of the department; and
(ii)
(A) another agency of the state;
(B) the federal government;
(C) another state;
(D) an interstate agency;
(E) a political subdivision of this state; or
(F) a political subdivision of another state;
(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or
(d) the contract is:
(i) a sole source contract; or
(ii) an emergency procurement.
(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.
(5)
(a) A contractor subject to the requirements of this section shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the executive director a written statement that:
(i) the contractor offers qualified health coverage that complies with Section 26B-3-909;
(ii) is from:
(A) an actuary selected by the contractor or the contractor's insurer;
(B) an underwriter who is responsible for developing the employer group's premium rates; or
(C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and
(iii) was created within one year before the day on which the statement is submitted.
(b)
(i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.
(ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:
(A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and
(B) the department.
(c) A contractor that is subject to the requirements of this section shall:
(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified

health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health coverage that complies with Section 26B-3-909;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an underwriter who is responsible for developing the employer group's premium rates, or if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and

(C) was created within one year before the day on which the contractor obtains the statement.

(d)

(i)

(A) A contractor that fails to maintain an offer of qualified health coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

(ii)

(A) A subcontractor that fails to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) a public transit district in accordance with Section 17B-2a-818.5;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the Division of Facilities Construction and Management in accordance with Section 63A-5b-607;

(iv) the State Capitol Preservation Board in accordance with Section 63O-2-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Rules Review and General Oversight Committee created in Section 36-35-102; and

(c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;
(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health coverage during the duration of the contract; and
(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by the Department of Health and Human Services, in accordance with Subsection 26B-3-909(2).

(7)
(a)
(i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the employee for health care costs that would have been covered by qualified health coverage.
(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:
(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or
(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).
(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Growth Reduction and Budget Stabilization Account created in Section 63J-1-315.

(9) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:
(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:
(i) Section 63G-6a-1602; or
(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(10) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):
(a) subject to Subsection (10)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;
(b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and
(c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Amended by Chapter 439, 2024 General Session

19-1-207 Regulatory certainty to support economic recovery.

(1) On or before June 30, 2021, the Air Quality Board or the Water Quality Board may not make, amend, or repeal a rule related to air or water quality pursuant to this title, if formal rulemaking was not initiated on or before July 1, 2020, unless the rule constitutes:
  (a) a state rule related to a federally-delegated program;
  (b) a rule mandated by statute to be made, amended, or repealed on or before July 1, 2020; or
  (c) subject to Subsection (2), a rule that is necessary because failure to make, amend, or repeal the rule will:
    (i) cause an imminent peril to the public health, safety, or welfare;
    (ii) cause an imminent budget reduction because of budget restraints or federal requirements;
    (iii) place the agency in violation of federal or state law; or
    (iv) fail to provide regulatory relief.
(2) In addition to complying with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall report to the Rules Review and General Oversight Committee as to whether the need to act meets the requirements of Subsection (1)(c).
(3) On or after August 31, 2020, but on or before June 30, 2021, the Air Quality Board, Division of Air Quality, Water Quality Board, or Division of Water Quality may not impose a new fee or increase a fee related to air or water quality pursuant to this title or rules made under this title.
(4) Only the Legislature may extend the time limitations of this section.
(5) Notwithstanding the other provisions of this section, this section does not apply to a rule, fee, or fee increase to the extent that the rule, fee, or fee increase applies to an activity in a county of the first or second class.
(6) Notwithstanding the other provisions of this section, the agencies may engage with stakeholders in the process of discussing, developing, and drafting a rule, fee, or fee increase on or after July 1, 2020, but on or before June 30, 2021.

Amended by Chapter 178, 2024 General Session

19-1-208 License by endorsement.
(1) As used in this section, "license" means an authorization that permits the holder to engage in the practice of a profession regulated under this title.
(2) Subject to Subsections (4) through (7), the department shall issue a license to an applicant who has been licensed in another state, district, or territory of the United States if:
  (a) the department determines that the license issued by the other state, district, or territory encompasses a similar scope of practice as the license sought in this state;
  (b) the applicant has at least one year of experience practicing under the license issued in the other state, district, or territory; and
  (c) the applicant's license is in good standing in the other state, district, or territory.
(3) Subject to Subsections (4) through (7), the department may issue a license to an applicant who:
  (a) has been licensed in another state, district, or territory of the United States, or in a jurisdiction outside of the United States, if:
    (i)
      (A) the department determines that the applicant's education, experience, and skills demonstrate competency in the profession for which licensure is sought in this state; and
      (B) the applicant has at least one year of experience practicing under the license issued in the other state, district, territory, or jurisdiction; or
    (ii) the department determines that the licensure requirements of the other state, district, territory, or jurisdiction at the time the license was issued were substantially similar to the requirements for the license sought in this state; or

(b) has never been licensed in a state, district, or territory of the United States, or in a jurisdiction outside of the United States, if:
(i) the applicant was educated in or obtained relevant experience in a state, district, or territory of the United States, or a jurisdiction outside of the United States; and
(ii) the department determines that the education or experience was substantially similar to the education or experience requirements for the license sought in this state.
(4) The department may refuse to issue a license to an applicant under this section if:
(a) the department determines that there is reasonable cause to believe that the applicant is not qualified to receive the license in this state; or
(b) the applicant has a previous or pending disciplinary action related to the applicant's other license.
(5) Before the department issues a license to an applicant under this section, the applicant shall:
(a) pay a fee determined by the department under Section 63J-1-504; and
(b) produce satisfactory evidence of the applicant's identity, qualifications, and good standing in the profession for which licensure is sought in this state.
(6) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, prescribing the administration and requirements of this section.
(7) This section is subject to and may be supplemented or altered by licensure endorsement provisions or multistate licensure compacts in specific chapters of this title.

Enacted by Chapter 222, 2023 General Session

Part 3
Administration

19-1-301 Adjudicative proceedings.
(1) As used in this section, "dispositive action" means a final agency action that:
(a) the executive director takes following an adjudicative proceeding on a request for agency action; and
(b) is subject to judicial review under Section 63G-4-403.
(2) This section governs adjudicative proceedings that are not special adjudicative proceedings as defined in Section 19-1-301.5.
(3)
(a) The department and its boards shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
(b) The procedures for an adjudicative proceeding conducted by an administrative law judge are governed by:
(i) Title 63G, Chapter 4, Administrative Procedures Act;
(ii) this title;
(iii) rules adopted by the department under:
(A) Subsection 63G-4-102(6); or
(B) this title; and
(iv) the Utah Rules of Civil Procedure, in the absence of a procedure established under Subsection (3)(b)(i), (ii), or (iii).
(4) Except as provided in Section 19-2-113, an administrative law judge shall hear a party's request for agency action.

(5) The executive director shall appoint an administrative law judge who:
(a) has a minimum of:
(i) 10 years of experience practicing law; and
(ii) five years of experience practicing in the field of:
(A) environmental compliance;
(B) natural resources;
(C) regulation by an administrative agency; or
(D) a field related to a field listed in Subsections (5)(a)(ii)(A) through (C); and
(b) has a working knowledge of the federal laws and regulations and state statutes and rules applicable to a request for agency action.
(6) In appointing an administrative law judge who meets the qualifications described in Subsection (5), the executive director may:
(a) compile a list of persons who may be engaged as an administrative law judge pro tempore by mutual consent of the parties to an adjudicative proceeding;
(b) appoint an assistant attorney general as an administrative law judge pro tempore; or
(c)
(i) appoint an administrative law judge as an employee of the department; and
(ii) assign the administrative law judge responsibilities in addition to conducting an adjudicative proceeding.
(7)
(a) An administrative law judge:
(i) shall conduct an adjudicative proceeding;
(ii) may take any action that is not a dispositive action; and
(iii) shall submit to the executive director a proposed dispositive action, including:
(A) written findings of fact;
(B) written conclusions of law; and
(C) a recommended order.
(b) The executive director may:
(i) approve, approve with modifications, or disapprove a proposed dispositive action submitted to the executive director under Subsection (7)(a); or
(ii) return the proposed dispositive action to the administrative law judge for further action as directed.
(c) In making a decision regarding a dispositive action, the executive director may seek the advice of, and consult with:
(i) the assistant attorney general assigned to the department; or
(ii) a special master who:
(A) is appointed by the executive director; and
(B) is an expert in the subject matter of the proposed dispositive action.
(d) The executive director shall base a final dispositive action on the record of the proceeding before the administrative law judge.
(8) To conduct an adjudicative proceeding, an administrative law judge may:
(a) compel:
(i) the attendance of a witness; and
(ii) the production of a document or other evidence;
(b) administer an oath;
(c) take testimony; and
(d) receive evidence as necessary.

(9) A party may appear before an administrative law judge in person, through an agent or employee, or as provided by department rule.
(10)
(a) Except as provided in Subsection (10)(b), an administrative law judge or the executive director may not participate in an ex parte communication with a party to an adjudicative proceeding regarding the merits of the adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties.
(b) The executive director may discuss ongoing operational matters that require the involvement of a division director without violating Subsection (10)(a).
(c) Upon receiving an ex parte communication from a party to a proceeding, an administrative law judge or the executive director shall place the communication in the public record of the proceeding and afford all parties to the proceeding with an opportunity to comment on the communication.
(d) If an administrative law judge or the executive director receives an ex parte communication, the person who receives the ex parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information.
(11) Nothing in this section limits a party's right to an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 455, 2023 General Session

19-1-301.5 Permit review adjudicative proceedings.
(1) As used in this section:
(a) "Dispositive action" means a final agency action that:
(i) the executive director takes as part of a special adjudicative proceeding; and
(ii) is subject to judicial review, in accordance with Subsection (16).
(b) "Dispositive motion" means a motion that is equivalent to:
(i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);
(ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule 12(c); or
(iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.
(c) "Financial assurance determination" means a decision on whether a facility, site, plan, party, broker, owner, operator, generator, or permittee has met financial assurance or financial responsibility requirements as determined by the director of the Division of Waste Management and Radiation Control.
(d) "Party" means:
(i) the director who issued the permit order or financial assurance determination that is being challenged in the special adjudicative proceeding under this section;
(ii) the permittee;
(iii) the person who applied for the permit, if the permit was denied;
(iv) the person who is subject to a financial assurance determination; or
(v) a person granted intervention by the administrative law judge.
(e) "Permit" means any of the following issued under this title:
(i) a permit;
(ii) a plan;
(iii) a license;
(iv) an approval order; or
(v) another administrative authorization made by a director.

(f)
(i) "Permit order" means an order issued by a director that:
(A) approves a permit;
(B) renews a permit;
(C) denies a permit;
(D) modifies or amends a permit; or
(E) revokes and reissues a permit.
(ii) "Permit order" does not include an order terminating a permit.
(g) "Special adjudicative proceeding" means a proceeding under this section to resolve a challenge to a:
(i) permit order; or
(ii) financial assurance determination.
(2) This section governs special adjudicative proceedings.
(3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not apply to a special adjudicative proceeding under this section.
(4) If a public comment period was provided during the permit application process or the financial assurance determination process, a person who challenges an order or determination may only raise an issue or argument during the special adjudicative proceeding that:
(a) the person raised during the public comment period; and
(b) was supported with information or documentation that is cited with reasonable specificity and sufficiently enables the director to fully consider the substance and significance of the issue.
(5)
(a) Upon request by a party, the executive director shall issue a notice of appointment appointing an administrative law judge, in accordance with Subsections 19-1-301(5) and (6), to conduct a special adjudicative proceeding under this section.
(b) The executive director shall issue a notice of appointment within 30 days after the day on which a party files a request.
(c) A notice of appointment shall include:
(i) the agency's file number or other reference number assigned to the special adjudicative proceeding;
(ii) the name of the special adjudicative proceeding; and
(iii) the administrative law judge's name, title, mailing address, email address, and telephone number.
(6)
(a) Only the following may file a petition for review of a permit order or financial assurance determination:
(i) a party; or
(ii) a person who is seeking to intervene under Subsection (7).
(b) A person who files a petition for review of a permit order or a financial assurance determination shall file the petition for review within 30 days after the day on which the permit order or the financial assurance determination is issued.
(c) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules allowing the extension of the filing deadline described in Subsection (6)(b).
(d) A petition for review shall:
(i) be served in accordance with department rule;

(ii) include the name and address of each person to whom a copy of the petition for review is sent;
(iii) if known, include the agency's file number or other reference number assigned to the special adjudicative proceeding;
(iv) state the date on which the petition for review is served;
(v) include a statement of the petitioner's position, including, as applicable:
(A) the legal authority under which the petition for review is requested;
(B) the legal authority under which the agency has jurisdiction to review the petition for review;
(C) each of the petitioner's arguments in support of the petitioner's requested relief;
(D) an explanation of how each argument described in Subsection (6)(d)(v)(C) was preserved;
(E) a detailed description of any permit condition to which the petitioner is objecting;
(F) any modification or addition to a permit that the petitioner is requesting;
(G) a demonstration that the agency's permit decision is based on a finding of fact or conclusion of law that is clearly erroneous;
(H) if the agency director addressed a finding of fact or conclusion of law described in Subsection (6)(d)(v)(G) in a response to public comment, a citation to the comment and response that relates to the finding of fact or conclusion of law and an explanation of why the director's response was clearly erroneous or otherwise warrants review; and
(I) a claim for relief.
(e) A person may not raise an issue or argument in a petition for review unless the issue or argument:
(i) was preserved in accordance with Subsection (4); or
(ii) was not reasonably ascertainable before or during the public comment period.
(f) To demonstrate that an issue or argument was preserved in accordance with Subsection (4), a petitioner shall include the following in the petitioner's petition for review:
(i) a citation to where the petitioner raised the issue or argument during the public comment period; and
(ii) for each document upon which the petitioner relies in support of an issue or argument, a description that:
(A) states why the document is part of the administrative record; and
(B) demonstrates that the petitioner cited the document with reasonable specificity in accordance with Subsection (4)(b).

(7)
(a) A person who is not a party may not participate in a special adjudicative proceeding under this section unless the person is granted the right to intervene under this Subsection (7).
(b) A person who seeks to intervene in a special adjudicative proceeding under this section shall, within 30 days after the day on which the permit order or the financial assurance determination being challenged was issued, file:
(i) a petition to intervene that:
(A) meets the requirements of Subsection 63G-4-207(1); and
(B) demonstrates that the person is entitled to intervention under Subsection (7)(d)(ii); and
(ii) a timely petition for review.
(c) In a special adjudicative proceeding to review a permit order, the permittee is a party to the special adjudicative proceeding regardless of who files the petition for review and does not need to file a petition to intervene under Subsection (7)(b).

(d) An administrative law judge shall grant a petition to intervene in a special adjudicative proceeding, if:
(i) the petition to intervene is timely filed; and
(ii) the petitioner:
(A) demonstrates that the petitioner's legal interests may be substantially affected by the special adjudicative proceeding;
(B) demonstrates that the interests of justice and the orderly and prompt conduct of the special adjudicative proceeding will not be materially impaired by allowing the intervention; and
(C) in the petitioner's petition for review, raises issues or arguments that are preserved in accordance with Subsection (4).
(e) An administrative law judge:
(i) shall issue an order granting or denying a petition to intervene in accordance with Subsection 63G-4-207(3)(a); and
(ii) may impose conditions on intervenors as described in Subsections 63G-4-207(3)(b) and (c).
(f) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules allowing the extension of the filing deadline described in Subsection (7)(b).
(8)
(a) Unless the parties otherwise agree, or the administrative law judge otherwise orders, a special adjudicative proceeding shall be conducted as follows:
(i) the director shall file and serve the administrative record within 40 days after the day on which the executive director issues a notice of appointment, unless otherwise ordered by the administrative law judge;
(ii) any dispositive motion shall be filed and served within 15 days after the day on which the administrative record is filed and served;
(iii) the petitioner shall file and serve an opening brief of no more than 30 pages:
(A) within 30 days after the day on which the director files and serves the administrative record; or
(B) if a party files and serves a dispositive motion, within 30 days after the day on which the administrative law judge issues a decision on the dispositive motion, including a decision to defer the motion;
(iv) each responding party shall file and serve a response brief of no more than 30 pages within 15 days after the day on which the petitioner files and serves the opening brief;
(v) the petitioner may file and serve a reply brief of not more than 15 pages within 15 days after the day on which the response brief is filed and served; and
(vi) if the petitioner files and serves a reply brief, each responding party may file and serve a surreply brief of no more than 15 pages within five business days after the day on which the petitioner files and serves the reply brief.
(b)
(i) A reply brief may not raise an issue that was not raised in the response brief.
(ii) A surreply brief may not raise an issue that was not raised in the reply brief.
(9)
(a) An administrative law judge shall conduct a special adjudicative proceeding based only on the administrative record and not as a trial de novo.
(b) To the extent relative to the issues and arguments raised in the petition for review, the administrative record consists of the following items, if they exist:
(i)

(A) for review of a permit order, the permit application, draft permit, and final permit; or
(B) for review of a financial assurance determination, the proposed financial assurance determination from the owner or operator of the facility, the draft financial assurance determination, and the final financial assurance determination;
(ii) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;
(iii) the notice and record of each public comment period;
(iv) the notice and record of each public hearing, including oral comments made during the public hearing;
(v) written comments submitted during the public comment period;
(vi) responses to comments that are designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;
(vii) any information that is:
(A) requested by and submitted to the director; and
(B) designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;
(viii) any additional information specified by rule;
(ix) any additional documents agreed to by the parties; and
(x) information supplementing the record under Subsection (9)(c).
(c)
(i) There is a rebuttable presumption against supplementing the record.
(ii) A party may move to supplement the record described in Subsection (9)(b) with technical or factual information.
(iii) The administrative law judge may grant a motion to supplement the record described in Subsection (9)(b) with technical or factual information if the moving party proves that:
(A) good cause exists for supplementing the record;
(B) supplementing the record is in the interest of justice; and
(C) supplementing the record is necessary for resolution of the issues.
(iv) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules permitting further supplementation of the record.
(10)
(a) Except as otherwise provided by this section, the administrative law judge shall review and respond to a petition for review in accordance with Subsections 63G-4-201(3)(d) and (e), following the relevant procedures for formal adjudicative proceedings.
(b) The administrative law judge shall require the parties to file responsive briefs in accordance with Subsection (8).
(c) If an administrative law judge enters an order of default against a party, the administrative law judge shall enter the order of default in accordance with Section 63G-4-209.
(d) The administrative law judge, in conducting a special adjudicative proceeding:
(i) may not participate in an ex parte communication with a party to the special adjudicative proceeding regarding the merits of the special adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties; and
(ii) shall, upon receiving an ex parte communication, place the communication in the public record of the proceeding and afford all parties an opportunity to comment on the information.

(e) In conducting a special adjudicative proceeding, the administrative law judge may take judicial notice of matters not in the administrative record, in accordance with Utah Rules of Evidence, Rule 201.

(f) An administrative law judge may take any action in a special adjudicative proceeding that is not a dispositive action.

(11)

(a) A person who files a petition for review has the burden of demonstrating that an issue or argument raised in the petition for review has been preserved in accordance with Subsection (4).

(b) The administrative law judge shall dismiss, with prejudice, any issue or argument raised in a petition for review that has not been preserved in accordance with Subsection (4).

(12) In response to a dispositive motion, within 45 days after the day on which oral argument takes place, or, if there is no oral argument, within 45 days after the day on which the reply brief on the dispositive motion is due, the administrative law judge shall:

(a) submit a proposed dispositive action to the executive director recommending full or partial resolution of the special adjudicative proceeding, that includes:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order; or

(b) if the administrative law judge determines that a full or partial resolution of the special adjudicative proceeding is not appropriate, issue an order that explains the basis for the administrative law judge's determination.

(13) For each issue or argument that is not dismissed or otherwise resolved under Subsection (11)(b) or (12), the administrative law judge shall:

(a) provide the parties an opportunity for briefing and oral argument in accordance with this section;

(b) conduct a review of the director's order or determination, based on the record described in Subsections (9)(b), (9)(c), and (10)(e); and

(c) within 60 days after the day on which the reply brief on the dispositive motion is due, submit to the executive director a proposed dispositive action, that includes:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order.

(14)

(a) When the administrative law judge submits a proposed dispositive action to the executive director, the executive director may:

(i) adopt, adopt with modifications, or reject the proposed dispositive action; or

(ii) return the proposed dispositive action to the administrative law judge for further action as directed.

(b) On review of a proposed dispositive action, the executive director shall uphold all factual, technical, and scientific agency determinations that are not clearly erroneous based on the petitioner's marshaling of the evidence.

(c) In reviewing a proposed dispositive action during a special adjudicative proceeding, the executive director may take judicial notice of matters not in the record, in accordance with Utah Rules of Evidence, Rule 201.

(d) The executive director may use the executive director's technical expertise in making a determination.

(15)

(a) Except as provided in Subsection (15)(b), the executive director may not participate in an ex parte communication with a party to a special adjudicative proceeding regarding the merits of the special adjudicative proceeding, unless notice and opportunity to be heard are afforded to all parties involved in the proceeding.

(b) The executive director may discuss ongoing operational matters that require the involvement of a division director without violating Subsection (15)(a).

(c) Upon receiving an ex parte communication from a party to a proceeding, the executive director shall place the communication in the public record of the proceeding and afford all parties to the proceeding with an opportunity to comment on the communication.

(16)

(a) A party may seek judicial review in the Utah Court of Appeals of a dispositive action in a special adjudicative proceeding, in accordance with Sections 63G-4-401, 63G-4-403, and 63G-4-405.

(b) An appellate court shall limit its review of a dispositive action of a special adjudicative proceeding under this section to:

(i) the record described in Subsections (9)(b), (9)(c), (10)(e), and (14)(c); and

(ii) the record made by the administrative law judge and the executive director during the special adjudicative proceeding.

(c) During judicial review of a dispositive action, the appellate court shall:

(i) review all agency determinations in accordance with Subsection 63G-4-403(4), recognizing that the agency has been granted substantial discretion to interpret its governing statutes and rules; and

(ii) uphold all factual, technical, and scientific agency determinations that are not clearly erroneous based upon the petitioner's marshaling of the evidence.

(17)

(a) The filing of a petition for review does not:

(i) stay a permit order or a financial assurance determination; or

(ii) delay the effective date of a permit order or a portion of a financial assurance determination.

(b) A permit order or a financial assurance determination may not be stayed or delayed unless a stay is granted under this Subsection (17).

(c) The administrative law judge shall:

(i) consider a party's motion to stay a permit order or a financial assurance determination during a special adjudicative proceeding; and

(ii) within 45 days after the day on which the reply brief on the motion to stay is due, submit a proposed determination on the stay to the executive director.

(d) The administrative law judge may not recommend to the executive director a stay of a permit order or a financial assurance determination, or a portion of a permit order or a portion of a financial assurance determination, unless:

(i) all parties agree to the stay; or

(ii) the party seeking the stay demonstrates that:

(A) the party seeking the stay will suffer irreparable harm unless the stay is issued;

(B) the threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(C) the stay, if issued, would not be adverse to the public interest; and

(D) there is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits, which should be the subject of further adjudication.

(e) A party may appeal the executive director's decision regarding a stay of a permit order or a financial assurance determination to the Utah Court of Appeals, in accordance with Section 78A-4-103.

(18)

(a) Subject to Subsection (18)(c), the administrative law judge shall issue a written response to a non-dispositive motion within 45 days after the day on which the reply brief on the non-dispositive motion is due or, if the administrative law judge grants oral argument on the non-dispositive motion, within 45 days after the day on which oral argument takes place.

(b) If the administrative law judge determines that the administrative law judge needs more time to issue a response to a non-dispositive motion, the administrative law judge may issue a response after the deadline described in Subsection (18)(a) if, before the deadline expires, the administrative law judge gives notice to the parties that includes:

(i) the amount of additional time that the administrative law judge requires; and

(ii) the reason the administrative law judge needs the additional time.

(c) If the administrative law judge grants oral argument on a non-dispositive motion, the administrative law judge shall hold the oral argument within 30 days after the day on which the reply brief on the non-dispositive motion is due.

Amended by Chapter 281, 2018 General Session

19-1-302 Violation of laws and orders unlawful.

It is unlawful for any person:

(1) to violate the provisions of the laws of this title or the terms of any order or rule issued under it; or

(2) to fail to remove or abate from private property under the person's control at his own expense within 48 hours, or such other reasonable time as the department determines, after being ordered to do so, any nuisance, source of filth, or other sanitation violation.

Enacted by Chapter 112, 1991 General Session

19-1-303 Criminal and civil penalties -- Liability for violations.

(1)

(a) Any person who violates any provision of this title or lawful orders or rules adopted under this title by the department shall:

(i) in a civil proceeding be assessed a penalty not to exceed the sum of $5,000; or

(ii) in a criminal proceeding:

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

(B) for a subsequent similar violation within two years, be guilty of a class A misdemeanor.

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

(2) Assessment or conviction under this title does not relieve the person assessed or convicted from civil liability for any act which was also a violation of the public health laws.

(3) Each day of violation of this title or rules made by the department under it may be considered a separate violation.

(4) The enforcement procedures and penalties provided in Subsections (1) through (3) do not apply to chapters in this title which provide for other specific enforcement procedures and penalties.

(5) Unless otherwise specified in statute, the department shall deposit all civil penalties and fines imposed and collected under this title into the General Fund.

Amended by Chapter 324, 1995 General Session

19-1-304 Principal and branch offices of department.

(1) The principal office of the department shall be in Salt Lake County.
(2) The department may establish branch offices at other places in the state to furnish comprehensive and effective environmental programs and to coordinate with and assist local health officers.

Enacted by Chapter 112, 1991 General Session

19-1-305 Administrative enforcement proceedings -- Tolling of limitation period.

Issuing a notice of a violation, an order, or a notice of agency action under this title tolls the running of the period of limitation for commencing a civil action to assess or collect a penalty until the sooner of:

(1) the day on which the notice of violation, order, or agency action becomes final under Title 63G, Chapter 4, Administrative Procedures Act; or
(2) three years from the day on which the department issues a notice or order described in this section.

Amended by Chapter 382, 2008 General Session

19-1-306 Records of the department.

(1) Except as provided in this section, records of the department shall be subject to Title 63G, Chapter 2, Government Records Access and Management Act.
(2)
  (a) The standards of the federal Freedom of Information Act, 5 U.S.C. Sec. 552, and not the standards of Subsections 63G-2-305(1) and (2), shall govern access to records of the department for which business confidentiality has been claimed under Section 63G-2-309, to the extent those records relate to a program:
    (i) that is delegated, authorized, or for which primacy has been granted to the state;
    (ii) for which the state is seeking delegation, authorization, or primacy; or
    (iii) under the federal Comprehensive Environmental Response, Compensation, and Liability Act.
  (b) The regulation of the United States Environmental Protection Agency interpreting the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2 on January 1, 1992, shall also apply to the records described in Subsection (1).
(3)
  (a) The department may, upon request, make trade secret and confidential business records available to the United States Environmental Protection Agency insofar as they relate to a delegated program, to a program for which the state is seeking delegation, or to a program under the federal Comprehensive Environmental Response, Compensation, and Liability Act.
  (b) In the event a record is released to the United States Environmental Protection Agency under Subsection (3)(a), the department shall convey any claim of confidentiality to the United States Environmental Protection Agency and shall notify the person who submitted the information of its release.

(4) Trade secret and confidential business records under Subsection (2) shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except Subsections 63G-2-305(1) and (2).
(5) Records obtained from the United States Environmental Protection Agency and requested by that agency to be kept confidential shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except to the extent they conflict with this section.

Amended by Chapter 382, 2008 General Session

19-1-307 Evaluation of closure, postclosure, and perpetual care and maintenance for hazardous waste and radioactive waste treatment and disposal facilities -- Report.

(1)
(a) The Waste Management and Radiation Control Board created in Section 19-1-106 may direct an evaluation of a commercial hazardous waste treatment, storage, or disposal facility, if the facility is:
(i) licensed or permitted after July 1, 2017; or
(ii)
(A) licensed or permitted before July 1, 2017; and
(B) has cumulatively increased the facility's licensed disposal volume by 25% or more.
(b) The evaluation shall determine:
(i) the adequacy of the amount of financial assurance required for closure and postclosure care under 40 C.F.R. subpart H, Sections 264.140 through 264.151 submitted pursuant to a hazardous waste operation plan for a commercial hazardous waste treatment, storage, or disposal facility under Section 19-6-108;
(ii) the adequacy of the amount of financial assurance or funds required for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c);
(iii) whether the amount of financial assurance required is adequate for closure and postclosure care of hazardous waste treatment, storage, or disposal facilities;
(iv) whether the amount of financial assurance or funds required is adequate for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c); and
(v) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial hazardous waste treatment, storage, or disposal facilities including:
(A) groundwater corrective action;
(B) differential settlement failure; or
(C) major maintenance of a cell or cells.
(c) The Waste Management and Radiation Control Board shall evaluate in 2006 whether financial assurance or funds are necessary for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility to protect human health and the environment.

(2)
(a) The Waste Management and Radiation Control Board created in Section 19-1-106 may direct an evaluation of a commercial radioactive waste treatment or disposal facility if the facility is:

(i) licensed or permitted after July 1, 2017; or
(ii)
(A) licensed or permitted before July 1, 2017; and
(B) has cumulatively increased the facility's licensed disposal volume by 25% or more.
(b) The evaluation shall determine:
(i) the adequacy of the Radioactive Waste Perpetual Care and Maintenance Account created by Section 19-3-106.2;
(ii) the adequacy of the amount of financial assurance required for closure and postclosure care of commercial radioactive waste treatment or disposal facilities under Subsection 19-3-104(11);
(iii) whether the restricted account is adequate to provide for perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities;
(iv) the costs under Subsection 19-3-106.2(4)(b) of using the Radioactive Waste Perpetual Care and Maintenance Account during the period before the end of 100 years following final closure of the facility for maintenance, monitoring, or corrective action in the event that the owner or operator is unwilling or unable to carry out the duties of postclosure maintenance, monitoring, or corrective action; and
(v) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities including:
(A) groundwater corrective action;
(B) differential settlement failure; or
(C) major maintenance of a cell or cells.
(3)
(a) The board under Subsections (1) and (2) shall submit a report on the evaluations to the Legislative Management Committee.
(b) For each report received under Subsection (3)(a), the Legislative Management Committee shall review and evaluate the report and determine whether to recommend further action.

Amended by Chapter 343, 2017 General Session

19-1-308 Background checks for employees.
(1) As used in this section, "bureau" means the Bureau of Criminal Identification created in Section 53-10-201.
(2) Beginning July 1, 2018, the department shall require all appointees and applicants for the following positions to submit to a fingerprint-based local, regional, and national criminal history background check and ongoing monitoring as a condition of employment:
(a) administrative services managers;
(b) financial analysts;
(c) financial managers; and
(d) schedule AB and AD employees, in accordance with Section 63A-17-301, in appointed positions.
(3) Each appointee or applicant for a position listed in Subsection (2) shall provide a completed fingerprint card to the department upon request.
(4) The department shall require that an individual required to submit to a background check under Subsection (3) provide a signed waiver on a form provided by the department that meets the requirements of Subsection 53-10-108(4).

(5) For a noncriminal justice background search and registration in accordance with Subsection 53-10-108(13), the department shall submit to the bureau:
  (a) the applicant's personal identifying information and fingerprints for a criminal history search of applicable local, regional, and national databases; and
  (b) a request for all information received as a result of the local, regional, and nationwide background check.
(6) The department is responsible for the payment of all fees required by Subsection 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.
(7) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
  (a) determine how the department will assess the employment status of an individual upon receipt of background information; and
  (b) identify the appropriate privacy risk mitigation strategy to be used in accordance with Subsection 53-10-108(13)(b).

Amended by Chapter 345, 2021 General Session

Part 4
Clean Fuels and Emission Reduction Technology Program Act

19-1-402 Definitions.

As used in this part:
(1) "Air barrier system" means air barrier material, a system, or an assembly that is specifically and primarily designed to minimize the passage of air through the building thermal envelope and the assemblies when installed in or on a dwelling.
(2) "Clean fuel" means:
  (a) propane, natural gas, renewable natural gas, hydrogen, or electricity; or
  (b) other fuel that meets the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.
(3)
  (a) "Clean vehicle" means a vehicle that:
    (i) uses a clean fuel;
    (ii) is an electric-hybrid vehicle; or
    (iii) is an electric vehicle.
  (b) "Clean vehicle" may include heavy duty equipment, such as:
    (i) a tractor;
    (ii) earth-moving equipment;
    (iii) an off-highway vehicle; or
    (iv) other equipment approved by the director of the Division of Air Quality.
(4) "Dwelling" means a house, multi-family dwelling, apartment complex, or other residential type building.
(5) "Electric-hybrid vehicle" means a vehicle:
  (a) primarily powered by an electric motor that draws current from:
    (i) rechargeable storage batteries;
    (ii) fuel cells; or

(iii) other sources of electric current; and
(b) that also operates on or is capable of operating on a nonelectrical source of power.
(6) "Electric vehicle" means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electric current and does not need carbon based fuel for operation.
(7) "Energy-efficient building envelope improvements" means an insulation and air barrier system that meets the prescriptive criteria for insulation and air barrier systems established by the 2021 International Energy Conservation Code.
(8) "Fund" means the Clean Fuels and Emission Reduction Technology Fund created in Section 19-1-403.
(9)
(a) "Government vehicle" means a motor vehicle:
(i) registered in Utah; and
(ii) owned and operated by:
(A) the state;
(B) a public trust authority;
(C) a school district;
(D) a county; or
(E) a municipality.
(b) "Government vehicle" includes a metropolitan rapid transit motor vehicle, bus, truck, law enforcement vehicle, or emergency vehicle.
(10) "Incremental cost" means the difference between the cost of an OEM vehicle and the same vehicle model manufactured without the clean fuel fueling system.
(11) "Insulation" means a material or system that is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on the dwelling unit.
(12) "OEM vehicle" means a vehicle manufactured by the original vehicle manufacturer or the manufacturer's contractor as a clean vehicle.
(13) "Private sector business vehicle" means a motor vehicle registered in Utah that is owned and operated solely in the conduct of a private business enterprise.
(14) "Qualified energy-efficient residential dwelling" means a dwelling with an energy efficiency rating determined by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(15) "Refueling equipment" means:
(a) compressors when used separately;
(b) compressors used in combination with cascade tanks;
(c) other equipment that constitute a central refueling system capable of dispensing vehicle fuel; and
(d) electric charging stations and equipment.

Amended by Chapter 100, 2022 General Session

19-1-403 Clean Fuels and Emission Reduction Technology Program -- Contents -- Loans or grants made with fund money.
(1)
(a) There is created a revolving fund known as the Clean Fuels and Emission Reduction Technology Fund.
(b) The fund consists of:
(i) appropriations to the fund;

(ii) other public and private contributions made under Subsection (1)(c);
(iii) interest earnings on cash balances; and
(iv) money collected for loan repayments and interest on loans.
(c) The department may accept contributions from other public and private sources for deposit into the fund.
(2) The department may accept federal money, including from the Infrastructure Investment and Jobs Act, P.L. 117-58, toward making:
(a) a loan or grant for the cost of a new clean vehicle or refueling equipment; or
(b) a grant for:
(i) the installation of energy-efficient building envelope improvements at a dwelling; or
(ii) construction of a qualified energy-efficient residential dwelling.
(3)
(a) The department may make a loan or a grant:
(i) with money available in the fund for:
(A) the conversion of a private sector business vehicle, a government vehicle, or a fleet of private sector business vehicles or government vehicles to use a clean fuel, if certified by the Air Quality Board under Subsection 19-1-405(1)(a); or
(B) the purchase of a clean vehicle for use as a private sector business vehicle, a government vehicle, or a fleet of private sector business vehicles or government vehicles; and
(ii) with federal money available under Subsection (2) for the cost of a new clean vehicle or clean vehicle refueling equipment.
(b) The amount of a loan for any vehicle under Subsection (3)(a) may not exceed:
(i) the actual cost of the vehicle conversion;
(ii) the incremental cost of purchasing the clean vehicle; or
(iii) the cost of purchasing the clean vehicle if there is no documented incremental cost.
(c) The amount of a grant for any vehicle under Subsection (3)(a) may not exceed:
(i) 50% of the actual cost of the vehicle conversion for the vehicle for which a grant is requested; or
(ii) 100% of the cost of purchasing the vehicle for the vehicle for which a grant is requested.
(d)
(i) Subject to the availability of money in the fund or the federal money described in Subsection (2), the department may make a loan or grant for the purchase of refueling equipment for a private sector business vehicle, a government vehicle, or a fleet of private sector business vehicles or government vehicles.
(ii) The maximum amount loaned or granted per installation of refueling equipment may not exceed the actual cost of the refueling equipment.
(4) The department may:
(a) establish an application fee for a loan or grant under this section by following Section 63J-1-504; and
(b) reimburse itself for the costs incurred in administering the fund and federal money described in Subsection (2) from:
(i) the fund; or
(ii) application fees established under Subsection (4)(a).
(5)
(a) A loan made from money in the fund or federal money described in Subsection (2) shall be supported by loan documents evidencing the intent of the borrower to repay the loan.
(b) The original loan documents described in this Subsection (5) shall be filed with the Division of Finance and a copy shall be filed with the department.

(6)
(a) The department may make grants to a person or government agency from the fund for the following:
(i) installation of energy-efficient building envelope improvements at a dwelling; and
(ii) construction of a qualified energy-efficient residential dwelling.
(b) The size of a grant under this Subsection (6) shall be commensurate with the square footage of a dwelling, but may not exceed $5,000 per dwelling.
(c) The department shall determine grant allocation under this Subsection (6).
(d) The department may not issue a loan from the fund for the purposes outlined in Subsection (6)(a).

Amended by Chapter 100, 2022 General Session

19-1-403.3 Conversion to Alternative Fuel Grant Program Fund -- Contents -- Grants made with fund money.
(1)
(a) There is created an expendable special revenue fund known as the Conversion to Alternative Fuel Grant Program Fund.
(b) The fund consists of:
(i) appropriations to the fund;
(ii) other public and private contributions made under Subsection (1)(c);
(iii) fees established by the department, as described in Subsection (3)(a), and deposited into the fund; and
(iv) interest earnings on cash balances.
(c) The department may accept contributions from other public and private sources for deposit into the fund.
(2) The department may make a grant with money available in the fund to a person who installs conversion equipment on an eligible vehicle, as described in Sections 19-2-301 through 19-2-304.
(3) The department may:
(a) establish an application fee for a grant from the fund by following the procedures and requirements of Section 63J-1-504; and
(b) reimburse itself for the costs incurred in administering the fund from:
(i) the fund; or
(ii) application fees established under Subsection (3)(a).
(4)
(a) The fund balance may not exceed $10,000,000.
(b) Interest on cash balances in excess of the amount necessary to maintain the fund balance at $10,000,000 shall be deposited into the General Fund.

Enacted by Chapter 369, 2016 General Session

19-1-404 Department duties -- Rulemaking -- Loan repayment.
(1) The department shall:
(a) administer the fund created in Section 19-1-403 and the federal money described in Subsection 19-1-403(2) to encourage emission reductions through energy efficient building practices and the use and acquisition of clean vehicles; and
(b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) specifying the amount of money in the fund and federal money to be dedicated annually for grants;
(ii) limiting the number of motor vehicles per fleet operator that may be eligible for a grant in a year;
(iii) specifying criteria the department shall consider in prioritizing and awarding loans and grants;
(iv) specifying repayment periods;
(v) specifying procedures for:
(A) awarding loans and grants; and
(B) collecting loans; and
(vi) requiring loan and grant applicants to:
(A) apply on forms provided by the department;
(B) if the loan or grant is for a clean vehicle, agree in writing to use the clean fuel for which each clean vehicle is converted or purchased using loan or grant proceeds for a minimum of 70% of the vehicle miles traveled beginning from the time of conversion or purchase of the clean vehicle;
(C) if the loan or grant is for a clean vehicle, agree in writing to notify the department if a clean vehicle converted or purchased using loan or grant proceeds becomes inoperable through mechanical failure or accident and to pursue a remedy outlined in department rules;
(D) if the loan or grant is for a clean vehicle, provide reasonable data to the department on a clean vehicle converted or purchased with loan or grant proceeds; and
(E) if the loan or grant is for a clean vehicle, submit a clean vehicle converted or purchased with loan or grant proceeds to inspections by the department as required in department rules and as necessary for administration of the loan and grant program.

(2)
(a) When developing repayment schedules for the loans, the department shall consider the projected savings from use of the clean vehicle.
(b) A repayment schedule may not exceed 10 years.
(c) The department shall make a loan from the fund or federal money described in Subsection 19-1-403(2) for a private sector business vehicle at an interest rate equal to the annual return earned in the state treasurer's Public Treasurer's Pool as determined the month immediately preceding the closing date of the loan.
(d) The department shall make a loan from the fund or federal money described in Subsection 19-1-403(2) for a government vehicle with no interest rate.

(3) The Division of Finance shall:
(a) collect and account for the loans; and
(b) have custody of the loan documents, including notes and contracts, evidencing the indebtedness of the fund or federal money described in Subsection 19-1-403(2).

Amended by Chapter 100, 2022 General Session

19-1-405 Air Quality Board duties -- Rulemaking.

(1) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Air Quality Board may make rules to:
(a) certify a motor vehicle on which conversion equipment has been installed if:
(i) before the installation of conversion equipment, the motor vehicle does not exceed the emission cut points for:
(A) a transient test driving cycle, as specified in 40 CFR 51, Appendix E to Subpart S; or

(B) an equivalent test for the make, model, and year of the motor vehicle; and
(ii) the motor vehicle's emissions of regulated pollutants, when operating with clean fuel, is less than the emissions were before the installation of conversion equipment;
(b) recognize a test or standard that demonstrates a reduction in emissions; or
(c) recognize a certification standard from another state.
(2) A reduction in emissions under Subsection (1)(a)(ii) is demonstrated by:
(a) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the Air Quality Board;
(b) testing the motor vehicle, before and after the installation of the conversion equipment, in accordance with 40 CFR 86, Control of Air Pollution from New and In-use Motor Vehicle Engines: Certification and Test Procedures, using all fuel the motor vehicle is capable of using; or
(c) any other test or standard recognized by the Air Quality Board in rule.

Amended by Chapter 295, 2014 General Session

19-1-406 Retrofit compressed natural gas vehicles -- Inspections, standards, and certification -- Compliance with other law -- Programs to coordinate.

(1) An owner of a retrofit compressed natural gas vehicle that is retrofit on or after July 1, 2010, may not operate the retrofit compressed natural gas vehicle before the owner has the retrofit compressed natural gas vehicle:
(a) inspected and certified as safe in accordance with relevant standards, including the National Fire Protection Association 52 Vehicular Gaseous Fuel Systems Code, by a CSA America CNG Fuel System Inspector; and
(b) tested to ensure that the retrofit compressed natural gas vehicle satisfies the emissions standards:
(i) if any, for the county in which the retrofit compressed natural gas vehicle is registered; or
(ii) for the county in the state with the most lenient emissions standards, if the retrofit compressed natural gas vehicle is registered in a county with no emissions standards.
(2) A person who performs a retrofit on a retrofit compressed natural gas vehicle shall certify to the owner of the retrofit compressed natural gas vehicle that the retrofit does not tamper with, circumvent, or otherwise affect the vehicle's on-board diagnostic system, if any.
(3)
(a) After the owner of a retrofit compressed natural gas vehicle that is retrofit on or after July 1, 2010, has the retrofit compressed natural gas vehicle inspected under Subsection (1), the owner shall have the retrofit inspected for safety by a CSA America CNG Fuel System Inspector:
(i) the sooner of:
(A) every three years after the retrofit; or
(B) every 36,000 miles after the retrofit; and
(ii) after any collision occurring at a speed of greater than five miles per hour.
(b) An inspector at a state-required safety inspection shall verify that a retrofit compressed natural gas vehicle is inspected in accordance with Subsection (3)(a).
(4)
(a) The Division of Air Quality may develop programs to coordinate amongst government agencies and interested parties in the private sector to facilitate:
(i) testing to ensure compliance with emissions and anti-tampering standards established in this section or by federal law; and

(ii) the retrofitting of vehicles to operate on compressed natural gas vehicles in a manner that provides for:
(A) safety;
(B) compliance with applicable law; and
(C) potential improvement in the air quality of this state.
(b) In developing a program under this Subsection (4), the Division of Air Quality shall:
(i) allow for testing using equipment widely available within the state, if possible; and
(ii) consult with relevant federal, state, and local government agencies and other interested parties.

Enacted by Chapter 236, 2010 General Session

Part 5
Engine Coolant Bittering Agent Act

19-1-501 Title.
This part is known as the "Engine Coolant Bittering Agent Act."

Enacted by Chapter 170, 2010 General Session

19-1-502 Definitions.
(1) "Bittering agent" means an aversive agent that renders engine coolant unpalatable.
(2) "Engine coolant" means:
(a) a substance or preparation, regardless of its origin, used as the cooling medium in the cooling system of an internal combustion engine to provide protection against freezing, overheating, and corrosion of the cooling system; or
(b) a product that is labeled to indicate or imply that it will prevent freezing or overheating of the cooling system of an internal combustion engine.

Enacted by Chapter 170, 2010 General Session

19-1-503 Requirements for engine coolant sold in state.
On or after January 1, 2011, a person may not sell engine coolant to a person in this state that is manufactured on or after January 1, 2011, if the engine coolant:
(1) contains more than 10% ethylene glycol; and
(2) does not contain:
(a) denatonium benzoate within the following amounts:
(i) a minimum of 30 parts per million; and
(ii) a maximum of 50 parts per million; or
(b) a similar bittering agent that renders the engine coolant unpalatable if it meets or exceeds the degree of aversion as compared to denatonium benzoate at a concentration of 30 parts per million.

Enacted by Chapter 170, 2010 General Session

19-1-504 Recordkeeping.

(1) A manufacturer or packager of engine coolant that sells the engine coolant to a person in this state shall maintain for at least three years a record of the following for a bittering agent used in the engine coolant in accordance with Section 19-1-503:
  (a) the trade name;
  (b) the scientific name; and
  (c) the active ingredients.
(2) A manufacturer or packager shall make the information described in Subsection (1) available to the public upon request.

Enacted by Chapter 170, 2010 General Session

19-1-505 Liability limitation.
(1)
  (a) Subject to the other provisions of this section, a person may not be held liable as described in Subsection (1)(b) if:
    (i) the person is a manufacturer, processor, distributor, recycler, or seller of an engine coolant; and
    (ii) the engine coolant at issue contains denatonium benzoate in a concentration described in Section 19-1-503.
  (b) A person described in Subsection (1)(a) may not be held liable to any person for any of the following that results from the inclusion of denatonium benzoate in an engine coolant in the concentrations described in Section 19-1-503:
    (i) personal injury;
    (ii) death;
    (iii) property damage;
    (iv) damage to the environment, including natural resources; or
    (v) economic loss.
(2) Subsection (1) does not apply to a liability to the extent that:
  (a) the cause of the liability is unrelated to the inclusion of denatonium benzoate in an engine coolant; or
  (b) the injury described in Subsection (1)(b) is the result of willful or wanton misconduct or gross negligence by a manufacturer, processor, distributor, recycler, or seller of engine coolant.
(3) Nothing in this section shall be construed to exempt any manufacturer or distributor of denatonium benzoate from any liability related to denatonium benzoate.

Enacted by Chapter 170, 2010 General Session

19-1-506 Preemption.
With respect to a retail container containing less than 55 gallons of engine coolant, a political subdivision of this state may not establish or enforce a prohibition, limitation, standard, or other requirement relating to the inclusion of a bittering agent in an engine coolant that differs from, or is in addition to, a requirement under this part.

Enacted by Chapter 170, 2010 General Session

19-1-507 Civil action.
(1) The attorney general or a person may bring a civil action in a court of competent jurisdiction to seek:

(a) an injunction to enforce this part; and
(b) if the action is brought by the attorney general, a civil penalty not to exceed $500 for each day this part is violated.
(2) In an action brought under this section, a court may:
(a) order injunctive relief;
(b) impose a civil penalty to the extent provided in Subsection (1);
(c) award attorney fees and costs to the attorney general or person who brings the civil action, if the attorney general or person prevails; or
(d) take a combination of actions under this Subsection (2).
(3) A civil penalty imposed under this section shall be deposited into the General Fund.

Amended by Chapter 281, 2018 General Session

19-1-508 Exemptions.

This part does not apply to:
(1) the sale of a motor vehicle or a part of a motor vehicle that contains engine coolant; or
(2) a wholesale container of engine coolant that contains 55 gallons or more of engine coolant if it contains a conspicuous label indicating whether or not it contains a bittering agent.

Enacted by Chapter 170, 2010 General Session

Part 6
Environmental Mitigation and Response Act

19-1-601 Title.

This part is known as the "Environmental Mitigation and Response Act."

Amended by Chapter 281, 2018 General Session

19-1-602 Definitions.

As used in this part:
(1) "Environmental mitigation" means an action or activity intended to remedy, reduce, or offset known negative impacts to the environment.
(2) "Environmental response action" means action taken to prevent, eliminate, minimize, investigate, monitor, clean up, or remove contaminants in the environment.
(3) "Financial assurance" means a mechanism or instrument intended to provide funds if necessary to the department to conduct closure, monitoring, or cleanup of a specific facility or site in accordance with the applicable environmental requirements provided in this title.
(4) "Funding source" means an individual or entity that provides a monetary contribution to the Environmental Mitigation and Response Fund.
(5) "Natural resource damage" means damages to land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other resources that are held in trust for the public or otherwise controlled by the United States, the state, or local government.
(6) "Unused funds" means the remaining funds from a specific funding source following the complete implementation of the environmental mitigation or response actions pursuant to the terms and conditions of the contribution.

Amended by Chapter 281, 2018 General Session

19-1-603 Environmental Mitigation and Response Fund.

(1) There is created an expendable special revenue fund known as the Environmental Mitigation and Response Fund.
(2) The fund consists of:
  (a) public and private funding sources made under Subsections (3) and (4);
  (b) legally binding bankruptcy, financial assurance, or natural resource damage claim settlements; and
  (c) interest earnings on cash balances.
(3) The department may accept contributions for deposit into the fund from public and private sources, including from a source as a condition of a consent decree, settlement agreement, stipulated agreement, or court order.
(4) If funds are deposited as part of a consent decree, settlement agreement, stipulated agreement, or court order, the source of the funding may specify terms and conditions in which the funds may be used, in accordance with the consent decree, settlement agreement, stipulated agreement, or court order.
(5) Unless mandated by court order, the department may refuse funds if the department determines it is incapable of meeting the terms and conditions of the agreement to obtain the funds, including covering the costs to administer the fund and oversee the implementation of the specific mitigation or response action.
(6) The fund may account for assets held by the state for:
  (a) an individual;
  (b) a private or public entity;
  (c) another governmental unit, including a local or federal agency;
  (d) a state agency; or
  (e) a Native American tribe.

Enacted by Chapter 246, 2017 General Session

19-1-604 Environmental mitigation.

(1) The director shall administer the fund created in Section 19-1-603.
(2) The director may:
  (a) disburse funds to an authorized individual or public, private, or governmental entity, or Native American tribe to implement a specified environmental mitigation action in accordance with any terms and conditions associated with the funding source, as provided in Subsection 19-1-603(4);
  (b) expend funds to implement certain environmental mitigation actions in accordance with any terms and conditions associated with the funding source, as provided in Subsection 19-1-603(4);
  (c) expend funds to implement an environmental response action or site closure, in accordance with any terms and conditions associated with the funding source, as provided in Subsection 19-1-603(4);
  (d) expend funds to cover actual administrative expenditures in accordance with any terms and conditions associated with the funds as provided in Subsection 19-1-603(4); and
  (e) return unused funds to the funding source, if required under the terms and conditions as provided in Subsection 19-1-603(4).

(3) For an environmental response action conducted pursuant to Subsection 19-1-604(2)(c), the director shall comply with applicable environmental cleanup standards described in this title.
(4) If the director disburses funds to another state agency in accordance with Subsection (2)(a), that agency may expend the funds in accordance with any terms and conditions associated with the fund contributions as provided in Subsection 19-1-603(4), including returning any unused funds to the department.
(5) Following the completion of an environmental mitigation and response action, any excess funds not returned to the funding source as provided in Subsection 19-1-603(4) shall be transferred to the Hazardous Substances Mitigation Fund, in accordance with Section 19-6-307.

Enacted by Chapter 246, 2017 General Session