

Effective 5/13/2014

**Part 1
General Provisions**

19-2-101 Short title -- Policy of state and purpose of chapter -- Support of local and regional programs -- Provision of coordinated statewide program.

- (1) This chapter is known as the "Air Conservation Act."
- (2) It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.
- (3) Local and regional air pollution control programs shall be supported to the extent practicable as essential instruments to secure and maintain appropriate levels of air quality.
- (4) The purpose of this chapter is to:
 - (a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;
 - (b) provide for an appropriate distribution of responsibilities among the state and local units of government;
 - (c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and
 - (d) provide a framework within which air quality may be protected and consideration given to the public interest at all levels of planning and development within the state.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-102 Definitions.

As used in this chapter:

- (1) "Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.
- (2) "Air pollutant source" means private and public sources of emissions of air pollutants.
- (3) "Air pollution" means the presence of an air pollutant in the ambient air in the quantities, for a duration, and under the conditions and circumstances that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property, as determined by the rules adopted by the board.
- (4) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
- (5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, actinolite-tremolite, and libby amphibole.
- (6) "Asbestos-containing material" means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos.
- (7) "Asbestos inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material.
- (8) "Board" means the Air Quality Board.
- (9) "Clean school bus" means the same as that term is defined in 42 U.S.C. Sec. 16091.

- (10) "Director" means the director of the Division of Air Quality.
- (11) "Division" means the Division of Air Quality created in Section 19-1-105.
- (12) "Friable asbestos-containing material" means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce to powder when dry.
- (13) "Indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard.

Amended by Chapter 154, 2015 General Session

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

- (1) The board consists of the following nine members:
 - (a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:
 - (i) the executive director; or
 - (ii) an employee of the department designated by the executive director; and
 - (b) the following eight voting members, who shall be appointed by the governor with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies:
 - (i) one representative who:
 - (A) is not connected with industry;
 - (B) is an expert in air quality matters; and
 - (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience;
 - (ii) two government representatives who do not represent the federal government;
 - (iii) one representative from the mining industry;
 - (iv) one representative from the fuels industry;
 - (v) one representative from the manufacturing industry;
 - (vi) one representative from the public who represents:
 - (A) an environmental nongovernmental organization; or
 - (B) a nongovernmental organization that represents community interests and does not represent industry interests; and
 - (vii) one representative from the public who is trained and experienced in public health.
- (2) A member of the board shall:
 - (a) be knowledgeable about air pollution matters, as evidenced by a professional degree, a professional accreditation, or documented experience;
 - (b) be a resident of Utah;
 - (c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
 - (d) comply with all applicable statutes, rules, and policies, including the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest, and the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).
- (3) No more than five of the appointed members of the board shall belong to the same political party.
- (4) A majority of the members of the board may not derive any significant portion of their income from persons subject to permits or orders under this chapter.

- (5)
 - (a) Members shall be appointed for a term of four years.
 - (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
- (6) A member may serve more than one term.
- (7) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.
- (8) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (9) The board shall elect annually a chair and a vice chair from its members.
- (10)
 - (a) The board shall meet at least quarterly.
 - (b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.
 - (c) Three days' notice shall be given to each member of the board before a meeting.
- (11) Five members constitute a quorum at a meeting, and the action of a majority of members present is the action of the board.
- (12) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 352, 2020 General Session

Amended by Chapter 373, 2020 General Session

19-2-104 Powers of board.

- (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source;
 - (b) establishing air quality standards;
 - (c) requiring persons engaged in operations that result in air pollution to:
 - (i) install, maintain, and use emission monitoring devices, as the board finds necessary;
 - (ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air pollutant; and
 - (iii) provide access to records relating to emissions which cause or contribute to air pollution;
 - (d)
 - (i) implementing:
 - (A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;
 - (B) 40 C.F.R. Part 763, Asbestos; and
 - (C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos; and

- (ii) reviewing and approving asbestos management plans submitted by local education agencies under the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;
 - (e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;
 - (f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;
 - (g) establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements;
 - (h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2);
 - (i) implementing lead-based paint training, certification, and performance requirements in accordance with 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406; and
 - (j) to implement the requirements of Section 19-2-107.5.
- (2) When implementing Subsection (1)(h) the board shall take into consideration:
- (a) the impact of the business on overall air quality; and
 - (b) the need of the business to use automobiles in order to carry out its business purposes.
- (3)
- (a) The board may:
 - (i) hold a hearing that is not an adjudicative proceeding relating to any aspect of, or matter in, the administration of this chapter;
 - (ii) recommend that the director:
 - (A) issue orders necessary to enforce the provisions of this chapter;
 - (B) enforce the orders by appropriate administrative and judicial proceedings;
 - (C) institute judicial proceedings to secure compliance with this chapter; or
 - (D) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, or interested persons or groups; and
 - (iii) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of a person who:
 - (A) receives relevant asbestos training, as defined by rule; and
 - (B) has acquired a minimum of 1,000 hours of asbestos project monitoring related work experience.
 - (b) The board shall:
 - (i) to ensure compliance with applicable statutes and regulations:
 - (A) review a settlement negotiated by the director in accordance with Subsection 19-2-107(2)(b)(viii) that requires a civil penalty of \$25,000 or more; and
 - (B) approve or disapprove the settlement;
 - (ii) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;
 - (iii) meet the requirements of federal air pollution laws;
 - (iv) by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish work practice and certification requirements for persons who:

- (A) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections if:
 - (I) the contract work is done on a site other than a residential property with four or fewer units; or
 - (II) the contract work is done on a residential property with four or fewer units where a tested sample contained greater than 1% of asbestos;
 - (B) conduct work described in Subsection (3)(b)(iv)(A) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;
 - (C) conduct asbestos inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or
 - (D) conduct lead-based paint inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;
 - (v) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited as an inspector, management planner, abatement project designer, asbestos abatement contractor and supervisor, or an asbestos abatement worker;
 - (vi) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Control Act, Subchapter IV - Lead Exposure Reduction, to be accredited as an inspector, risk assessor, supervisor, project designer, abatement worker, renovator, or dust sampling technician; and
 - (vii) assist the State Board of Education in adopting school bus idling reduction standards and implementing an idling reduction program in accordance with Section 41-6a-1308.
- (4) A rule adopted under this chapter shall be consistent with provisions of federal laws, if any, relating to control of motor vehicles or motor vehicle emissions.
- (5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.
- (6)
- (a) The board may not require testing for asbestos or related materials on a residential property with four or fewer units, unless:
 - (i) the property's construction was completed before January 1, 1981; or
 - (ii) the testing is for:
 - (A) a sprayed-on or painted on ceiling treatment that contained or may contain asbestos fiber;
 - (B) asbestos cement siding or roofing materials;
 - (C) resilient flooring products including vinyl asbestos tile, sheet vinyl products, resilient flooring backing material, whether attached or unattached, and mastic;
 - (D) thermal-system insulation or tape on a duct or furnace; or
 - (E) vermiculite type insulation materials.
 - (b) A residential property with four or fewer units is subject to an abatement rule made under Subsection (1) or (3)(b)(iv) if:
 - (i) a sample from the property is tested for asbestos; and
 - (ii) the sample contains asbestos measuring greater than 1%.
- (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-2-107 or 19-2-108:
- (a) a permit;
 - (b) a license;

- (c) a registration;
 - (d) a certification; or
 - (e) another administrative authorization made by the director.
- (8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.
- (9) Notwithstanding Subsection (7), the board may exercise all authority granted to the board by a federally enforceable state implementation plan.

Amended by Chapter 139, 2023 General Session

19-2-105 Duties of board.

The board, in conjunction with the governing body of each county identified in Section 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the inspection and maintenance program developed under Section 41-6a-1643 including issues relating to:

- (1) the implementation of a standardized inspection and maintenance program;
- (2) out-of-state registration of vehicles used in Utah;
- (3) out-of-county registration of vehicles used within the areas required to have an inspection and maintenance program;
- (4) use of the farm truck exemption;
- (5) mechanic training programs;
- (6) emissions standards; and
- (7) emissions waivers.

Amended by Chapter 360, 2012 General Session

19-2-105.3 Clean fuel requirements for fleets.

- (1) As used in this section:
- (a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
 - (b) "Clean fuel" means:
 - (i) propane, compressed natural gas, or electricity;
 - (ii) other fuel the board determines annually on or before July 1 is at least as effective as fuels under Subsection (1)(b)(i) in reducing air pollution; and
 - (iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.
 - (c) "Fleet" means 10 or more vehicles:
 - (i) owned or operated by a single entity as defined by board rule; and
 - (ii) capable of being fueled or that are fueled at a central location.
 - (d) "Fleet" does not include motor vehicles that are:
 - (i) held for lease or rental to the general public;
 - (ii) held for sale or used as demonstration vehicles by motor vehicle dealers;
 - (iii) used by motor vehicle manufacturers for product evaluations or tests;
 - (iv) authorized emergency vehicles as defined in Section 41-6a-102;
 - (v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;
 - (vi) special mobile equipment as defined in Section 41-1a-102;
 - (vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000 pounds;
 - (viii) regularly used by employees to drive to and from work, parked at the employees' personal residences when they are not at their employment, and not practicably fueled at a central location;

- (ix) owned, operated, or leased by public transit districts; or
 - (x) exempted by board rule.
- (2)
- (a) After evaluation of reasonably available pollution control strategies, and as part of the state implementation plan demonstrating attainment of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:
 - (i) necessary to demonstrate attainment of the national ambient air quality standards in an area where they are required; and
 - (ii) reasonably cost effective when compared to other similarly beneficial control strategies for demonstrating attainment of the national ambient air quality standards.
 - (b) A vehicle retrofit to operate on compressed natural gas in accordance with Section 19-1-406 qualifies as a clean fuel vehicle under this section.
- (3) After evaluation of reasonably available pollution control strategies, and as part of a state implementation plan demonstrating only maintenance of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:
- (a) necessary to demonstrate maintenance of the national ambient air quality standards in an area where they are required; and
 - (b) reasonably cost effective as compared with other similarly beneficial control strategies for demonstrating maintenance of the national ambient air quality standards.
- (4) Rules the board makes under this section may include:
- (a) dates by which fleets are required to convert to clean fuels under the provisions of this section;
 - (b) definitions of fleet owners or operators;
 - (c) definitions of vehicles exempted from this section by rule;
 - (d) certification requirements for persons who install clean fuel conversion equipment, including testing and certification standards regarding installers; and
 - (e) certification fees for installers, established under Section 63J-1-504.
- (5) Implementation of this section and rules made under this section are subject to the reasonable availability of clean fuel in the local market as determined by the board.

Amended by Chapter 154, 2015 General Session

19-2-106 Rulemaking authority and procedure.

- (1)
- (a) In carrying out the duties of Section 19-2-104, the board may make rules for the purpose of administering a program under the federal Clean Air Act different than the corresponding federal regulations which address the same circumstances if:
 - (i) the board holds a public comment period, as described in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and a public hearing; and
 - (ii) the board finds that the different rule will provide reasonable added protections to public health or the environment of the state or a particular region of the state.
 - (b) The board shall consider the differences between an industry that continuously produces emissions and an industry that episodically produces emissions, and make rules that reflect those differences.
- (2) The findings described in Subsection (1)(a)(ii) shall be:
- (a) in writing; and

- (b) based on evidence, studies, or other information contained in the record that relates to the state of Utah and type of source involved.
- (3) In making rules, the board may incorporate by reference corresponding federal regulations.

Amended by Chapter 80, 2015 General Session

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

- (1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.
- (2)
 - (a) The director shall:
 - (i) prepare and develop comprehensive plans for the prevention, abatement, and control of air pollution in Utah;
 - (ii) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;
 - (iii) review plans, specifications, or other data relative to air pollution control equipment or any part of the air pollution control equipment;
 - (iv) under the direction of the executive director, represent the state in all matters relating to interstate air pollution, including interstate compacts and similar agreements;
 - (v) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;
 - (vi) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;
 - (vii) encourage local units of government to handle air pollution within their respective jurisdictions on a cooperative basis and provide technical and consulting assistance to them;
 - (viii) determine by means of field studies and sampling the degree of air contamination and air pollution in all parts of the state;
 - (ix) monitor the effects of the emission of air pollutants from motor vehicles on the quality of the outdoor atmosphere in all parts of Utah and take appropriate responsive action;
 - (x) collect and disseminate information relating to air contamination and air pollution and conduct educational and training programs relating to air contamination and air pollution;
 - (xi) assess and collect noncompliance penalties as required in Section 120 of the federal Clean Air Act, 42 U.S.C. Section 7420;
 - (xii) comply with the requirements of federal air pollution laws;
 - (xiii) subject to the provisions of this chapter, enforce rules through the issuance of orders, including:
 - (A) prohibiting or abating discharges of wastes affecting ambient air;
 - (B) requiring the construction of new control facilities or any parts of new control facilities or the modification, extension, or alteration of existing control facilities or any parts of new control facilities; or
 - (C) adopting other remedial measures to prevent, control, or abate air pollution; and
 - (xiv) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.
 - (b) The director may:
 - (i) employ full-time, temporary, part-time, and contract employees necessary to carry out this chapter;

- (ii) subject to the provisions of this chapter, authorize an employee or representative of the department to enter at reasonable times and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible air pollution;
 - (iii) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air pollution and its causes, effects, prevention, abatement, and control, as advisable and necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;
 - (iv) collect and disseminate information relating to air pollution and the prevention, control, and abatement of it;
 - (v) cooperate with studies and research relating to air pollution and its control, abatement, and prevention;
 - (vi) subject to Subsection (3), upon request, consult concerning the following with a person proposing to construct, install, or otherwise acquire an air pollutant source in Utah:
 - (A) the efficacy of proposed air pollution control equipment for the source; or
 - (B) the air pollution problem that may be related to the source;
 - (vii) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter;
 - (viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise a civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter; or
 - (ix) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to state or federal authorities for tax purposes that air pollution control equipment has been certified in conformity with Title 19, Chapter 12, Pollution Control Act.
- (3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the requirements of this chapter, the rules adopted under this chapter, or any other provision of law.

Amended by Chapter 281, 2018 General Session

19-2-107.5 Solid fuel burning.

- (1) The division shall create a public awareness campaign, in consultation with representatives of the solid fuel burning industry, the healthcare industry, and members of the clean air community, on best wood burning practices and the effects of wood burning on air quality, specifically targeting nonattainment areas.
- (2)
 - (a) Subject to Subsection (2)(b), the division shall create a program to assist an individual to convert a dwelling to a natural gas, propane, or electric heating source, as funding allows, if the individual lives in a dwelling where wood burning is the sole or secondary source of heat.
 - (b) In creating the program described in Subsection (2)(a), the division shall give preference to applicants who:
 - (i) have an adjusted gross household income of 250% or less of the federal poverty level;
 - (ii) live in a house where wood is the sole or supplemental source of heating; or
 - (iii) live within six miles of the Great Salt Lake Base and Meridian.
- (3)
 - (a) The division may not impose a burning ban prohibiting burning during a specified seasonal period of time.
 - (b) Notwithstanding Subsection (3)(a), the division shall:

- (i) allow burning:
 - (A) during local emergencies and utility outages; or
 - (B) if the primary purpose of the burning is to cook food; and
 - (ii) provide for exemptions, through registration with the division, for:
 - (A) devices that are sole sources of heat; or
 - (B) locations where natural gas service is limited or unavailable.
- (4) The division may seek private donations and federal sources of funding to supplement any funds appropriated by the Legislature to fulfill Subsection (2).

Amended by Chapter 470, 2019 General Session

19-2-107.7 Water heater regulations.

- (1) As used in this section:
- (a) "Natural gas-fired water heater" means a device that heats water by the combustion of natural gas to a thermostatically-controlled temperature not exceeding 210 degrees Fahrenheit for use external to the vessel at pressures not exceeding 160 pounds per square inch gauge.
 - (b) "Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy.
- (2) A person may not sell or purchase a natural gas-fired water heater that is manufactured after July 1, 2018 with the intent to install it in Utah if the natural gas-fired water heater exceeds the applicable nitrogen oxide emission rate limit set in Title 15A, State Construction and Fire Codes Act.
- (3) A manufacturer in Utah shall display the model number and nitrogen oxide emission rate of a water heater complying with this section on:
- (a) the shipping carton for the water heater; and
 - (b) the permanent rating plate of each water heater unit.
- (4) This section does not apply to a water heater unit that:
- (a) uses a fuel other than natural gas;
 - (b) is used in a recreational vehicle; or
 - (c) is manufactured in Utah for shipment and use outside of Utah.

Enacted by Chapter 247, 2016 General Session

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

- (1) Notice shall be given to the director by a person planning to:
- (a) construct a new installation that will or might reasonably be expected to be a source or indirect source of air pollution;
 - (b) make modifications to an existing installation that will or might reasonably be expected to increase the amount of or change the character or effect of air pollutants discharged, so that the installation may be expected to be a source or indirect source of air pollution; or
 - (c) install an air cleaning device or other equipment intended to control emission of air pollutants.
- (2) A person may not operate a source of air pollution required to have a permit by a rule adopted under Section 19-2-104 or 19-2-107 without having obtained a permit from the director under procedures the board establishes by rule.
- (3)

- (a) The director may require, as a condition precedent to the construction, modification, installation, or establishment of the air pollutant source or indirect source, the submission of plans, specifications, and other information as the director finds necessary to determine whether the proposed construction, modification, installation, or establishment will be in accord with applicable rules in force under this chapter, and the payment of a new source review fee established under Subsection 19-1-201(6)(i).
- (b) If within 90 days after the receipt of plans, specifications, or other information required under this Subsection (3), the director determines that the proposed construction, installation, or establishment or any part of it will not be in accord with the requirements of this chapter or applicable rules or that further time, not exceeding three extensions of 30 days each, is required by the director to adequately review the plans, specifications, or other information, the director shall issue an order prohibiting the construction, installation, or establishment of the air pollutant source or sources in whole or in part.
- (4) In addition to any other remedies but before invoking any other remedies, a person aggrieved by the issuance of an order either granting or denying a request for the construction of a new installation, upon request, in accordance with the rules of the department, is entitled to a special adjudicative proceeding conducted by an administrative law judge as provided by Section 19-1-301.5.
- (5) A feature, machine, or device constituting a part of or called for by plans, specifications, or other information submitted under Subsection (1) shall be maintained in good working order.
- (6) This section does not authorize the director to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.
- (7)
 - (a) An authorized officer, employee, or representative of the director may enter and inspect a property, premise, or place on or at which an air pollutant source is located or is being constructed, modified, installed, or established at a reasonable time for the purpose of ascertaining the state of compliance with this chapter and the rules adopted under this chapter.
 - (b)
 - (i) A person may not refuse entry or access to an authorized representative of the director who requests entry for purposes of inspection and who presents appropriate credentials.
 - (ii) A person may not obstruct, hamper, or interfere with an inspection.
 - (c) If requested, the owner or operator of the premises shall receive a report setting forth the facts found that relate to compliance status.

Amended by Chapter 256, 2020 General Session

19-2-109 Air quality standards -- Hearings on adoption -- Notice requirements -- Orders of director -- Adoption of emission control requirements.

- (1)
 - (a) The board, in adopting standards of quality for ambient air, shall conduct public hearings.
 - (b) Notice of any public hearing for the consideration, adoption, or amendment of air quality standards shall specify the locations to which the proposed standards apply and the time, date, and place of the hearing.
 - (c) The notice shall be:
 - (i) published for the area affected, as a class A notice under Section 63G-30-102, for at least 20 days; and

- (ii) mailed at least 20 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the director has reason to believe will be affected by the standards.
- (d) The adoption of air quality standards or any modification or changes to air quality standards shall be by order of the director following formal action of the board with respect to the standards.
- (e) The order shall be published:
 - (i) for the area affected, as a class A notice under Section 63G-30-102, for at least 20 days; and
 - (ii) as required in Section 45-1-101.
- (2)
 - (a) The board may establish emission control requirements by rule that in its judgment may be necessary to prevent, abate, or control air pollution that may be statewide or may vary from area to area, taking into account varying local conditions.
 - (b) In adopting these requirements, the board shall give notice and conduct public hearings in accordance with the requirements in Subsection (1).

Amended by Chapter 435, 2023 General Session

19-2-109.1 Operating permit required -- Fees -- Implementation.

- (1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:
 - (a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
 - (b) "EPA" means the federal Environmental Protection Agency.
 - (c) "Operating permit" means a permit issued by the director to sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.
 - (d) "Program" means the air pollution operating permit program established under this section to comply with Title V of the 1990 Clean Air Act.
 - (e) "Regulated pollutant" means the same as that term is defined in Title V of the 1990 Clean Air Act and implementing federal regulations.
- (2) A person may not operate a source of air pollution required to have a permit under Title V of the 1990 Clean Air Act without having obtained an operating permit from the director under procedures the board establishes by rule.
- (3)
 - (a) Operating permits issued under this section shall be for a period of five years unless the director makes a written finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five years is necessary to protect the public health and the environment of the state.
 - (b) The director may issue, modify, or renew an operating permit only after providing public notice, an opportunity for public comment, and an opportunity for a public hearing.
 - (c) The director shall, in conformity with the 1990 Clean Air Act and implementing federal regulations, revise the conditions of issued operating permits to incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990 Clean Air Act, if the remaining period of the permit is three or more years.
 - (d) The director may terminate, modify, revoke, or reissue an operating permit for cause.
- (4) If the owner or operator of a source subject to this section fails to timely pay a fee established under Subsection 19-1-201(1)(f), the director may:
 - (a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually; or
 - (b) revoke the operating permit.

- (5) The owner or operator of a source subject to this section may contest a fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (5).
 - (a) The owner or operator shall pay the fee under protest before being entitled to a hearing. Payment of a fee or penalty under protest is not a waiver of the right to contest the fee or penalty under this section.
 - (b) A request for a hearing under this Subsection (5) shall be made after payment of the fee and within six months after the fee was due.
- (6) To reinstate an operating permit revoked under Subsection (4) the owner or operator shall pay the outstanding fees, a penalty of not more than 50% of outstanding fees, and interest on the outstanding fees computed at 12% annually.
- (7) Failure of the director to act on an operating permit application or renewal is a final administrative action only for the purpose of obtaining judicial review by any of the following persons to require the director to take action on the permit or the permit's renewal without additional delay:
 - (a) the applicant;
 - (b) a person who participated in the public comment process; or
 - (c) a person who could obtain judicial review of that action under applicable law.

Amended by Chapter 256, 2020 General Session

19-2-109.2 Small business assistance program.

The division shall establish a small business stationary source technical and environmental compliance assistance program that conforms with Title V of the 1990 Clean Air Act to assist small businesses to comply with state and federal air pollution laws.

Amended by Chapter 154, 2015 General Session

19-2-109.3 Public access to information.

A copy of each permit application, compliance plan, emissions or compliance monitoring report, certification, and each operating permit issued under this chapter shall be made available to the public in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

19-2-110 Violations -- Notice to violator -- Corrective action orders -- Conference, conciliation, and persuasion by director -- Hearings.

- (1) Whenever the director has reason to believe that a violation of any provision of this chapter or any rule issued under it has occurred, the director may serve written notice of the violation upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute the violation, and may include an order that necessary corrective action be taken within a reasonable time.
- (2) Nothing in this chapter prevents the director from making efforts to obtain voluntary compliance through warning, conference, conciliation, persuasion, or other appropriate means.
- (3) Hearings may be held before an administrative law judge as provided by Section 19-1-301.

Amended by Chapter 360, 2012 General Session

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

- (1)
- (a) Title 63G, Chapter 4, Administrative Procedures Act, and any other provision of law to the contrary notwithstanding, if the executive director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the executive director, with the concurrence of the governor, shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air pollutants.
 - (b) The order shall fix a place and time, not later than 24 hours after its issuance, for a hearing to be held before the governor.
 - (c) Not more than 24 hours after the commencement of this hearing, and without adjournment of it, the governor shall affirm, modify, or set aside the order of the executive director.
- (2)
- (a) In the absence of a generalized condition of air pollution referred to in Subsection (1), but if the executive director finds that emissions from the operation of one or more air pollutant sources is causing imminent danger to human health or safety, the executive director may commence adjudicative proceedings under Section 63G-4-502.
 - (b) Notwithstanding Section 19-1-301 or 19-1-301.5, the executive director may conduct the emergency adjudicative proceeding in place of an administrative law judge.
- (3) Nothing in this section limits any power that the governor or any other officer has to declare an emergency and act on the basis of that declaration.

Amended by Chapter 154, 2015 General Session

19-2-113 Variances -- Judicial review.

- (1)
- (a) A person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.
 - (b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.
- (2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.
- (3) A variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:
- (a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the board may prescribe;
 - (b)

- (i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and
 - (ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or
 - (c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of a kind other than that provided for in Subsection (3)(a) or (b), it may not be granted for more than one year.
- (4)
- (a) A variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.
 - (b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.
 - (c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.
 - (d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.
- (5)
- (a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.
 - (b) A person aggrieved by the board's decision may obtain judicial review.
 - (c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air pollutant source is situated.
- (6)
- (a) The board may review a variance during the term for which it was granted.
 - (b) The review procedure is the same as that for an original application.
 - (c) The variance may be revoked upon a finding that:
 - (i) the nature or amount of emission has changed or increased; or
 - (ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.
- (7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to a person or property.

Amended by Chapter 154, 2015 General Session

19-2-114 Activities not in violation of chapter or rules.

The following are not a violation of this chapter or of a rule made under it:

- (1) burning incident to horticultural or agricultural operations of:
 - (a) prunings from trees, bushes, and plants; or
 - (b) dead or diseased trees, bushes, and plants, including stubble;
- (2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;
- (3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

- (4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index for the area where the burn is to occur is above 500.

Amended by Chapter 154, 2015 General Session

19-2-115 Violations -- Penalties -- Reimbursement for expenses.

- (1) As used in this section, the terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.
- (2)
 - (a) A person who violates this chapter, or any rule, order, or permit issued or made under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for each violation.
 - (b) Subsection (2)(a) also applies to rules made under the authority of Section 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.
 - (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the amounts specified in that section and shall be used in accordance with that section.
- (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person knowingly violates any of the following under this chapter:
 - (a) an applicable standard or limitation;
 - (b) a permit condition; or
 - (c) a fee or filing requirement.
- (4) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:
 - (a) makes any false material statement, representation, or certification, in any notice or report required by permit; or
 - (b) renders inaccurate any monitoring device or method required to be maintained by this chapter or applicable rules made under this chapter.
- (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty under Section 19-2-109.1.
- (6) A person who willfully violates Section 19-2-120 is guilty of a class A misdemeanor.
- (7) A person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the director that the person is violating the requirement, knowingly violates an order issued under Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule made under this chapter is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation in the case of the first offense, and not more than \$50,000 per day of violation in the case of subsequent offenses.
- (8)
 - (a) As used in this section:
 - (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C. Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).
 - (ii) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

- (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (b)
 - (i) A person is guilty of a class A misdemeanor and subject to imprisonment under Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with criminal negligence:
 - (A) releases into the ambient air any hazardous air pollutant; and
 - (B) places another person in imminent danger of death or serious bodily injury.
 - (ii) As used in this Subsection (8)(b), "person" does not include an employee who is carrying out the employee's normal activities and who is not a part of senior management personnel or a corporate officer.
- (c) A person is guilty of a second degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:
 - (i) knowingly releases into the ambient air any hazardous air pollutant; and
 - (ii) knows at the time that the person is placing another person in imminent danger of death or serious bodily injury.
- (d) If a person is an organization, it shall, upon conviction of violating Subsection (8)(c), be subject to a fine of not more than \$1,000,000.
- (e)
 - (i) A defendant who is an individual is considered to have acted knowingly under Subsections (8)(c) and (d), if:
 - (A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and
 - (B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.
 - (ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.
 - (iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.
- (f)
 - (i) It is an affirmative defense to prosecution under this Subsection (8) that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:
 - (A) an occupation, a business, a profession; or
 - (B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.
 - (ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.
- (9)
 - (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law, all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.
 - (b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

- (c) The department shall regulate reimbursements by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
 - (i) define qualifying environmental enforcement activities; and
 - (ii) define qualifying extraordinary expenses.

Amended by Chapter 360, 2012 General Session

19-2-116 Injunction or other remedies to prevent violations -- Civil actions not abridged.

- (1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of the rules adopted under it or any orders made under it by injunction or other appropriate remedy. The director has the power to institute and maintain in the name of the state any and all enforcement proceedings.
- (2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding for this purpose.
- (3)
 - (a) In addition to any other remedy created in this chapter, the director may initiate an action for appropriate injunctive relief:
 - (i) upon failure of any person to comply with:
 - (A) any provision of this chapter;
 - (B) any rule adopted under this chapter; or
 - (C) any final order made by the board, the director, or the executive director; and
 - (ii) when it appears necessary for the protection of health and welfare.
 - (b) The attorney general shall bring injunctive relief actions on request.
 - (c) A bond is not required.

Amended by Chapter 360, 2012 General Session

19-2-117 Attorney general as legal advisor to board -- Duties of attorney general and county attorneys.

- (1) Except as provided in Section 63G-7-902, the attorney general is the legal advisor to the board and the director and shall defend them or any of them in all actions or proceedings brought against them or any of them.
- (2) The county attorney in the county in which a cause of action arises may, upon request of the board or the director, bring an action, civil or criminal, to abate a condition which exists in violation of, or to prosecute for the violation of or to enforce, this chapter or the standards, orders, or rules of the board or the director issued under this chapter.
- (3) The director may bring an action and be represented by the attorney general.
- (4) In the event a person fails to comply with a cease and desist order of the board or the director that is not subject to a stay pending administrative or judicial review, the director may initiate an action for, and is entitled to, injunctive relief to prevent any further or continued violation of the order.

Amended by Chapter 154, 2015 General Session

19-2-118 Violation of injunction evidence of contempt.

Failure to comply with the terms of any injunction issued under this chapter is prima facie evidence of contempt which is punishable as for other civil contempts.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-119 Civil or criminal remedies not excluded -- Actionable rights under chapter -- No liability for acts of God or other catastrophes.

- (1) Existing civil or criminal remedies for a wrongful action that is a violation of the law are not excluded by this chapter.
- (2) Except as provided in Sections 19-1-301 and 19-1-301.5, and rules implementing those provisions, persons other than the state or the board do not acquire actionable rights by virtue of this chapter.
- (3) The liabilities imposed for violation of this chapter are not imposed for a violation caused by an act of God, war, strike, riot, or other catastrophe.

Amended by Chapter 154, 2015 General Session

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

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

Amended by Chapter 154, 2015 General Session

19-2-121 Ordinances of political subdivisions authorized.

Any political subdivision of the state may enact and enforce ordinances to control air pollution that are consistent with this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

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

- (1) A political subdivision of the state may enter into and perform, with other political subdivisions of the state or with the department, contracts and agreements as they find proper for establishing, planning, operating, and financing air pollution programs.
- (2) The agreements may provide for an agency to:
 - (a) supervise and operate an air pollution program;
 - (b) prescribe the agency's powers and duties; and
 - (c) fix the compensation of the agency's members and employees.

Amended by Chapter 154, 2015 General Session