Repealed 7/1/2028

Part 4
Underground Storage Tank Act

19-6-401 Short title.

This part is known as the "Underground Storage Tank Act."

Renumbered and Amended by Chapter 112, 1991 General Session

19-6-402 Definitions.

As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:
- (a) a release from a petroleum storage tank; or
- (b) the damage caused by that release.

(2) "Aboveground petroleum storage tank" means a storage tank that is, by volume, less than 10% buried in the ground, including the pipes connected to the storage tank and:
- (a)
  - (i) has attached underground piping; or
  - (ii) rests directly on the ground;
- (b) contains regulated substances;
- (c) has the capacity to hold 501 gallons or more; and
- (d) is not:
  - (i) used in agricultural operations, as defined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (ii) used for heating oil for consumptive use on the premises where stored;
  - (iii) related to a petroleum facility under SIC Code 2911 or 5171 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;
  - (iv) directly related to oil or gas production and gathering operations; or
  - (v) used in the fueling of aircraft or ground service equipment at a commercial airport that serves passengers or cargo, with commercial airport defined in Section 72-10-102.

(3) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.

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

(5) "Certificate of compliance" means a certificate issued to a facility by the director:
- (a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and
- (b) listing petroleum storage tanks at the facility, specifying:
  - (i) which tanks may receive petroleum; and
  - (ii) which tanks have not met the requirements for compliance.

(6) "Certificate of registration" means a certificate issued to a facility by the director demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has:
- (a) registered the tanks; and
- (b) paid the annual tank fee.

(7)
- (a) "Certified petroleum storage tank consultant" means a person who:

(i) for a fee, or in connection with services for which a fee is charged, provides or contracts to provide information, opinions, or advice relating to underground storage tank release:
(A) management;
(B) abatement;
(C) investigation;
(D) corrective action; or
(E) evaluation;
(ii) has submitted an application to the director;
(iii) received a written statement of certification from the director; and
(iv) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vii).
(b) "Certified petroleum storage tank consultant" does not include:
(i)
(A) an employee of the owner or operator of the underground storage tank; or
(B) an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and markets petroleum products or manages underground storage tanks; or
(ii) a person licensed to practice law in this state who offers only legal advice on underground storage tank release:
(A) management;
(B) abatement;
(C) investigation;
(D) corrective action; or
(E) evaluation.
(8) "Closed" means a petroleum storage tank that is no longer in use that has been:
(a) emptied and cleaned to remove the liquids and accumulated sludges; and
(b)
(i) removed along with all underground components; or
(ii) filled with an inert solid material, and in the case of piping, secured and capped.
(9) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for any of the following:
(a) cleanup or removal of the release;
(b) containment or isolation of the release;
(c) treatment of the release;
(d) correction of the cause of the release;
(e) monitoring and maintenance of the site of the release;
(f) provision of alternative water supplies to a person whose drinking water has become contaminated by the release; or
(g) temporary or permanent relocation, whichever is determined by the director to be more cost-effective, of a person whose dwelling has been determined by the director to be no longer habitable due to the release.
(10) "Costs" means money expended for:
(a) investigation;
(b) abatement action;
(c) corrective action;
(d) judgments, awards, and settlements for bodily injury or property damage to third parties;
(e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or

(f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.
(11) "Covered by the fund" means the requirements of Section 19-6-424 have been met.
(12) "Director" means the director of the Division of Environmental Response and Remediation.
(13) "Division" means the Division of Environmental Response and Remediation, created in Subsection 19-1-105(1)(c).
(14) "Dwelling" means a building that is usually occupied by a person lodging there at night.
(15) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.
(16) "Facility" means the petroleum storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.
(17) "Fund" means the Petroleum Storage Tank Fund created in Section 19-6-409.
(18) "Operator" means a person in control of or who is responsible on a daily basis for the maintenance of a petroleum storage tank that is in use for the storage, use, or dispensing of a regulated substance.
(19) "Owner" means:
(a) in the case of an underground storage tank in use on or after November 8, 1984, a person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance;
(b) in the case of an underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, a person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance; and
(c) in the case of an aboveground petroleum storage tank, a person who owns the aboveground petroleum storage tank.
(20) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:
(a) 60 degrees Fahrenheit; and
(b) a pressure of 14.7 pounds per square inch absolute.
(21) "Petroleum storage tank" means a tank that:
(a) is an underground storage tank;
(b) is an aboveground petroleum storage tank; or
(c) is a tank containing regulated substances that is voluntarily submitted for participation in the Petroleum Storage Tank Fund under Section 19-6-415.
(22) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.
(23) "Program" means the Environmental Assurance Program under Section 19-6-410.5.
(24) "Property damage" means physical injury to, destruction of, or loss of use of tangible property.
(25)
(a) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing.
(b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
(26)
(a) "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing a regulated substance from a petroleum storage tank into ground water, surface water, or subsurface soils.
(b) A release of a regulated substance from a petroleum storage tank is considered a single release from that tank system.
(27)

(a) "Responsible party" means a person who:
(i) is the owner or operator of a facility;
(ii) owns or has legal or equitable title in a facility or a petroleum storage tank;
(iii) owned or had legal or equitable title in a facility at the time petroleum was received or contained at the facility;
(iv) operated or otherwise controlled activities at a facility at the time petroleum was received or contained at the facility; or
(v) is an underground storage tank installation company.
(b) "Responsible party" is as defined in Subsections (27)(a)(i), (ii), and (iii) does not include:
(i) a person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:
(A) primarily to protect the person's security interest in the facility; or
(B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan; or
(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).
(c) The exemption created by Subsection (27)(b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.
(d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "security interest" under this part are in accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).
(e) The terms "participate in management" and "indicia of ownership" as defined in 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the fiduciaries listed in Subsection (27)(b)(i)(B).
(28) "Rests directly on the ground" means that at least some portion of a petroleum storage tank situated aboveground is in direct contact with soil.
(29) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.
(30) "State cleanup appropriation" means money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.
(31) "Underground piping" means piping that is buried in the ground that is in direct contact with soil and connected to an aboveground petroleum storage tank.
(32) "Underground storage tank" means a tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:
(a) underground pipes and lines connected to a storage tank;
(b) underground ancillary equipment;
(c) a containment system; and
(d) each compartment of a multi-compartment storage tank.
(33) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization that installs underground storage tanks.
(34) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the director.
(35) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified petroleum storage tank consultant to assist in carrying out the functions described in Subsection (7)(a).

Amended by Chapter 451, 2022 General Session

19-6-402.5 Retroactive effect.

(1) The Legislature finds the definitions in this part prior to the passage of this act did not clearly set forth procedures for identifying responsible parties and interfered with effective allocation of costs of cleanup as required by this part.

(2) It is the intent of the Legislature that this act provides clarification regarding procedures for allocating responsibility for the costs of investigation, abatement, and corrective action as required under this part.

(3) It is the intent of the Legislature that this part imposes liability as determined under this part retroactively to any release of petroleum or any other regulated substance subject to investigation, abatement, or corrective action under this part.

Enacted by Chapter 214, 1992 General Session

19-6-403 Powers and duties of board.

The board shall regulate a petroleum storage tank by:

(1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that:

(a) provide for the:

(i) certification of an underground storage tank installer, inspector, tester, or remover;

(ii) registration of an underground storage tank operator;

(iii) registration of an underground storage tank;

(iv) administration of the petroleum storage tank program;

(v) format of, and required information in, a record kept by an underground storage or petroleum storage tank owner or operator who is participating in the fund;

(vi) voluntary participation in the fund for a tank containing regulated substances, but excluded from the definition of a petroleum storage tank as provided in Section 19-6-415;

(vii) certification of a petroleum storage tank consultant including:

(A) a minimum education or experience requirement; and

(B) a recognition of the educational requirement of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, as meeting the education requirement for certification; and

(viii) compliance with this chapter by an aboveground petroleum storage tank;

(b) adopt the requirements for an underground storage tank contained in:

(i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may be amended in the future; and

(ii) an applicable federal requirement authorized by the federal law referenced in Subsection (1)(b)(i); and

(c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may be amended in the future, for the state's assumption of primacy in the regulation of an underground storage tank; and

(2) applying the provisions of this part.

Amended by Chapter 202, 2021 General Session

19-6-404 Powers and duties of director.

(1) The director shall:
(a) administer the petroleum storage tank program established in this part; and
(b) as authorized by the board and subject to the provisions of this part, act as executive secretary of the board under the direction of the chairman of the board.
(2) As necessary to meet the requirements or carry out the purposes of this part, the director may:
(a) advise, consult, and cooperate with other persons;
(b) employ persons;
(c) authorize a certified employee or a certified representative of the department to conduct facility inspections and reviews of records required to be kept by this part and by rules made under this part;
(d) encourage, participate in, or conduct studies, investigation, research, and demonstrations;
(e) collect and disseminate information;
(f) enforce rules made by the board and any requirement in this part by issuing notices and orders;
(g) review plans, specifications, or other data;
(h) under the direction of the executive director, represent the state in all matters pertaining to interstate underground storage tank management and control, including entering into interstate compacts and other similar agreements;
(i) enter into contracts or agreements with political subdivisions for the performance of any of the department's responsibilities under this part if:
(i) the contract or agreement is not prohibited by state or federal law and will not result in a loss of federal funding; and
(ii) the director determines that:
(A) the political subdivision is willing and able to satisfactorily discharge its responsibilities under the contract or agreement; and
(B) the contract or agreement will be practical and effective;
(j) take any necessary enforcement action authorized under this part, including filing a lien against the real property, which is subject to cleanup and is owned by a responsible party, for the costs of abatement, investigative and corrective actions taken by the agency, if necessary, and depositing any funds received into the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7;
(k) require an owner or operator of an underground storage tank to:
(i) furnish information or records relating to the tank, its equipment, and contents;
(ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils, air, or water; or
(iii) provide access to the tank at reasonable times;
(l) take any abatement, investigative, or corrective action as authorized in this part; or
(m) enter into agreements or issue orders to apportion percentages of liability of responsible parties under Section 19-6-424.5.

Amended by Chapter 227, 2014 General Session

19-6-405.5 Creation of restricted account.
(1) There is created in the General Fund a restricted account known as the Petroleum Storage Tank Restricted Account.
(2) All penalties and interest imposed under this part shall be deposited in this account, except as provided in Section 19-6-410.5. Specified program funds under this part that are unexpended at the end of the fiscal year lapse into this account.

(3) The Legislature shall appropriate the money in the account to the department for the costs of administering the petroleum storage tank program under this part.

Amended by Chapter 95, 1998 General Session

19-6-405.7 Petroleum Storage Tank Cleanup Fund -- Revenue and purposes -- Relation to Petroleum Storage Tank Fund.

(1) There is created an enterprise fund entitled the "Petroleum Storage Tank Cleanup Fund," which is referred to in this section as the cleanup fund.

(2) The cleanup fund sources of revenue are:

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

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

(c) costs recovered under this part.

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

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

Amended by Chapter 451, 2022 General Session

19-6-407 Underground storage tank registration -- Change of ownership or operation -- Aboveground petroleum storage tank -- Civil penalty.

(1)

(a) An owner or operator of an underground storage tank shall register the tank with the director if the tank:

(i) is in use; or

(ii) was closed after January 1, 1974.

(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the director of the change within 30 days after the change occurs.

(c) Each installer of an underground storage tank shall notify the director of the completed installation within 60 days following the installation of an underground storage tank.

(2)

(a) The owner or operator of an aboveground petroleum storage tank shall notify the director of the location of the aboveground petroleum storage tank by no later than:

(i) June 30, 2022, if the aboveground petroleum storage tank is installed on or before June 30, 2022;

(ii) if the aboveground petroleum storage tank is installed on or after July 1, 2022, 30 days after the day on which the aboveground petroleum storage tank is installed;

(iii) 30 days before the aboveground petroleum storage tank is closed; or

(iv) within 24 hours of the discovery of a reportable release or suspected release, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, from an aboveground petroleum storage tank.

(b) When notifying the director under this Subsection (2), an owner of an aboveground petroleum storage tank described in this Subsection (2) shall pay a processing fee established under Section 63J-1-504.

(c) Before operating an aboveground petroleum storage tank on or after June 30, 2023, the owner or operator of the aboveground petroleum storage tank shall provide financial responsibility by participating in the Environmental Assurance Program or demonstrating coverage through another method approved by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d)

(i) The director shall certify when an owner or operator of an aboveground petroleum storage tank is in compliance with this Subsection (2).

(ii) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of an aboveground petroleum storage tank under Subsection (2)(a) that is not certified by the director as in compliance with this Subsection (2).

(3) The director may issue a notice of agency action assessing a civil penalty in the amount of $1,000 if an owner, operator, or installer of a petroleum storage tank fails to register the tank or provide notice as required in Subsection (1) or (2).

(4) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

Amended by Chapter 202, 2021 General Session

19-6-408 Petroleum storage tank registration fee -- Processing fee.

(1) The department may assess an annual petroleum storage tank registration fee against an owner or operator of a petroleum storage tank that has not been closed. These fees shall be:

(a) billed per facility;

(b) due on July 1 annually;

(c) deposited with the department as dedicated credits;

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

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

(2)

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

(b)

(i) In addition to the fee under Subsection (1), an owner or operator of a petroleum storage tank who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee established under Section 63J-1-504.

(ii) This Subsection (2)(b) does not apply to a self-insured public entity.

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

(3) Money provided for administration of the petroleum storage tank program under this section that is not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

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

(5)

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

(b) The registration fee and late payment penalty accrue interest at 12% per annum.
(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The director may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.
(d) The director may waive any penalty assessed under this Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

Amended by Chapter 202, 2021 General Session

19-6-409 Petroleum Storage Tank Fund -- Source of revenues.

(1)
(a) There is created an enterprise fund entitled the "Petroleum Storage Tank Fund."
(b) The sole sources of revenues for the fund are:
(i) petroleum storage tank fees paid under Section 19-6-411;
(ii) underground storage tank installation company permit fees paid under Section 19-6-411;
(iii) the environmental assurance fee and penalties paid under Section 19-6-410.5;
(iv) appropriations to the fund;
(v) principal and interest received from the repayment of loans made by the director under Subsection (5); and
(vi) interest accrued on revenues listed in this Subsection (1)(b).
(c) Interest earned on fund money is deposited into the fund.

(2) The director may expend money from the fund to pay costs:
(a) covered by the fund under Section 19-6-419;
(b) of administering the:
(i) fund; and
(ii) environmental assurance program and fee under Section 19-6-410.5;
(c) incurred by the state for a legal service or claim adjusting service provided in connection with a claim, judgment, award, or settlement for bodily injury or property damage to a third party;
(d) incurred by the director in determining the actuarial soundness of the fund;
(e) incurred by a third party claiming injury or damages from a release reported on or after May 11, 2010, for hiring a certified petroleum storage tank consultant:
(i) to review an investigation or corrective action by a responsible party; and
(ii) in accordance with Subsection (4); and
(f) allowed under this part that are not listed under this Subsection (2).

(3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.

(4) The director shall:
(a) in paying costs under Subsection (2)(e):
(i) determine a reasonable limit on costs paid based on the:
(A) extent of the release;
(B) impact of the release; and
(C) services provided by the certified petroleum storage tank consultant;
(ii) pay, per release, costs for one certified petroleum storage tank consultant agreed to by all third parties claiming damages or injury;
(iii) include costs paid in the coverage limits allowed under Section 19-6-419; and
(iv) not pay legal costs of third parties;

(b) review and give careful consideration to reports and recommendations provided by a certified petroleum storage tank consultant hired by a third party; and
(c) make reports and recommendations provided under Subsection (4)(b) available on the Division of Environmental Response and Remediation's website.
(5) The director may loan, in accordance with this section, money available in the fund to a person to be used for:
(a) upgrading an underground storage tank;
(b) replacing an underground storage tank; or
(c) permanently closing an underground storage tank.
(6)
(a) A person may apply to the director for a loan under Subsection (5)(c) if all tanks owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the fund.
(b) A person may apply to the director for a loan under Subsection (5)(a) or (b) if:
(i) the requirements of Subsection (6)(a) are met; and
(ii) the person participates in the Environmental Assurance Program under Section 19-6-410.5.
(7) The director shall consider loan applications under Subsection (6) to meet the following objectives:
(a) support availability of gasoline in rural parts of the state;
(b) support small businesses; and
(c) reduce the threat of a petroleum release endangering the environment.
(8)
(a) A loan made under this section may not be for more than:
(i) $300,000 for all tanks at any one facility;
(ii) $100,000 per tank; and
(iii) 80% of the total cost of:
(A) upgrading an underground storage tank;
(B) replacing an underground storage tank; or
(C) permanently closing an underground storage tank.
(b) A loan made under this section shall:
(i) have a fixed annual interest rate of 0%;
(ii) have a term no longer than 10 years;
(iii) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (9); and
(iv) comply with rules made by the board under Subsection (9).
(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:
(a) form, content, and procedure for a loan application;
(b) criteria and procedures for prioritizing a loan application;
(c) requirements and procedures for securing a loan;
(d) procedures for making a loan;
(e) procedures for administering and ensuring repayment of a loan, including late payment penalties;
(f) procedures for recovering on a defaulted loan; and
(g) the maximum amount of the fund that may be used for loans.
(10) A decision by the director to loan money from the fund and otherwise administer the fund is not subject to Title 63G, Chapter 4, Administrative Procedures Act.

(11) The Legislature shall appropriate money from the fund to the department for the administration costs associated with making loans under this section.
(12) The director may enter into an agreement with a public entity or private organization to perform a task associated with administration of loans made under this section.

Amended by Chapter 451, 2022 General Session

19-6-410.5 Environmental Assurance Program -- Participant fee -- State Tax Commission administration, collection, and enforcement of tax.

(1) As used in this section:
(a) "Cash balance" means cash plus investments and current accounts receivable minus current accounts payable, excluding the liabilities estimated by the executive director.
(b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.
(2)
(a) There is created an Environmental Assurance Program.
(b) The program shall provide to a participating owner or operator, upon payment of the fee imposed under Subsection (4), assistance with satisfying the financial responsibility requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum Storage Tank Fund established in Section 19-6-409, subject to the terms and conditions of this part, and rules implemented under this part.
(3)
(a) Subject to Subsection (3)(b), participation in the program is voluntary.
(b) An owner or operator seeking to satisfy financial responsibility requirements through the program shall use the program for all petroleum storage tanks that the owner or operator owns or operates.
(4)
(a) There is assessed an environmental assurance fee of 13/20 cent per gallon on the first sale or use of petroleum products in the state.
(b) The environmental assurance fee and any other revenue collected under this section shall be deposited in the Petroleum Storage Tank Fund created in Section 19-6-409 and used solely for the purposes listed in Section 19-6-409.
(5)
(a) The commission shall administer, collect, and enforce the fee imposed under this section according to the same procedures used in the administration, collection, and enforcement of the state sales and use tax under:
(i)Title 59, Chapter 1, General Taxation Policies; and
(ii)Title 59, Chapter 12, Part 1, Tax Collection.
(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to establish:
(i) the method of payment of the environmental assurance fee;
(ii) the procedure for reimbursement or exemption of an owner or operator that does not participate in the program, including an owner or operator of an above ground storage tank; and
(iii) the procedure for confirming with the department that an owner or operator qualifies for reimbursement or exemption under Subsection (5)(b)(ii).
(c) The commission may retain an amount not to exceed 2.5% of fees collected under this section for the cost to the commission of rendering its services.

(d) By January 1, 2015, for underground storage tanks, and by July 1, 2026, for aboveground petroleum storage tanks, the division shall, by rule, create:
(i) a model for assessing the risk profile of each facility participating in the program, for purposes of qualifying for a rebate of a portion of the environmental assurance fee described in Subsection (4) collected from an owner or operator that participates in the program; and
(ii) a rebate schedule listing the amount of the environmental assurance fee that an owner or operator participating in the program may qualify for based on risk profiles determined by the model developed under Subsection (5)(d)(i).
(e) The rebate described in Subsection (5)(d):
(i) may not exceed 40% of the actual fee collected from an owner or operator of a low-risk underground storage tank as defined in the risk-based model developed under Subsection (5)(d);
(ii) is administered on a per facility basis;
(iii) is based on the facility's risk profile at the end of the prior calendar year;
(iv) is only applicable to an environmental assurance fee collected after December 30, 2014, for underground storage tanks, and June 30, 2026, for aboveground petroleum storage tanks; and
(v) shall be claimed in the form of a refund from the commission.
(f) The refund described in Subsection (5)(e)(v) may be claimed on a monthly basis.
(6)
(a) The person responsible for payment of the fee under this section shall, by the last day of the month following the month in which the sale occurs:
(i) complete and submit the form prescribed by the commission; and
(ii) pay the fee to the commission.
(b)
(i) The penalties and interest for failure to file the form or to pay the environmental assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.
(ii) The commission shall deposit penalties and interest collected under this section in the Petroleum Storage Tank Fund.
(c) The commission shall report to the department a person who is delinquent in payment of the fee under this section.
(7)
(a)
(i) If the cash balance of the Petroleum Storage Tank Fund on June 30 of any year exceeds $50,000,000, the assessment of the environmental assurance fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.
(ii) The reduction under this Subsection (7)(a) remains in effect until modified by the Legislature in a general or special session.
(b) The commission shall determine the cash balance of the fund each year as of June 30.
(c) Before September 1 of each year, the department shall provide the commission with the accounts payable of the fund as of June 30.

Amended by Chapter 451, 2022 General Session

19-6-411 Petroleum storage tank fee for program participants.
(1) In addition to the underground storage tank registration fee paid in Section 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the environmental

assurance program under Section 19-6-410.5 shall also pay an annual petroleum storage tank fee to the department for each facility as follows:

(a) an annual fee of:

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

(ii) $150 for each tank in a facility with an annual facility throughput rate of greater than 70,000 gallons; and

(iii) $450 for each tank in a facility regarding which:

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

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

(b) for any new tank:

(i) that is installed to replace an existing tank at an existing facility, any annual petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to the new tank; and

(ii) installed at a new facility or at an existing facility, which is not a replacement for another existing tank, the fees are as provided in Subsection (1)(a)(ii).

(2)

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

(i) an annual fee of:

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

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

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

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

(3)

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

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

(c)

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

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

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

(4)

(a)

(i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the department does not receive the fees on or before July 1, the department shall impose a late penalty of $60 per installation company. The fee and the late penalty accrue interest at 12% per annum.

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

(b)

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

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

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

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

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

(7)

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

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

Amended by Chapter 451, 2022 General Session

19-6-412 Petroleum storage tank -- Certificate of compliance.

(1)

(a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may obtain a certificate of compliance for the facility.

(b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall have a certificate of compliance for the facility.

(2) The director shall issue a certificate of compliance if:

(a) the owner or operator has a certificate of registration;

(b) the owner or operator demonstrates it is participating in the Environmental Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with financial assurance requirements as defined by rule;

(c) all state and federal statutes, rules, and regulations have been substantially complied with; and
(d) all tank test requirements of Section 19-6-413 have been met.
(3) If the ownership of or responsibility for the petroleum storage tank changes, the certificate of compliance is still valid unless it has been revoked or has lapsed.
(4) The director may issue a certificate of compliance for a period of less than one year to maintain an administrative schedule of certification.
(5) The director shall reissue a certificate of compliance if the owner or operator of an underground storage tank has complied with the requirements of Subsection (2).
(6) If the owner or operator electing to participate in the program has a number of tanks in an area where the director finds it would be difficult to accurately determine which of the tanks may be the source of a release, the owner may only elect to place all of the tanks in the area in the program, but not just some of the tanks in the area.

Amended by Chapter 360, 2012 General Session

19-6-413 Tank tightness test -- Actions required after testing.
(1) The owner or operator of any petroleum storage tank registered before July 1, 1991, shall submit to the director the results of a tank tightness test conducted:
(a) on or after September 1, 1989, and before January 1, 1990, if the test meets requirements set by rule regarding tank tightness tests that were applicable during that period; or
(b) on or after January 1, 1990, and before July 1, 1991.
(2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, shall submit to the director the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.
(3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the director at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.
(4)
(a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:
(i) correct the problem; and
(ii) submit evidence of the correction to the director.
(b) When the director receives evidence from an owner or operator of a petroleum storage tank that the problem with the tank has been corrected, the director shall:
(i) approve or disapprove the correction; and
(ii) notify the owner or operator that the correction has been approved or disapproved.
(5) The director shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.
(6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D, to perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

Amended by Chapter 360, 2012 General Session

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

(1) If the director determines that any of the requirements of Subsection 19-6-412(2), Section 19-6-413, or Subsection 19-6-420(2) have not been met, the director shall notify the owner or operator by certified mail that:
  (a) the owner or operator's certificate of compliance may be revoked;
  (b) if the owner or operator is participating in the program, the owner or operator is violating the eligibility requirements for the fund; and
  (c) the owner or operator shall demonstrate the owner or operator's compliance with this part within 60 days after receipt of the notification or the certificate of compliance will be revoked and if participating in the program the owner or operator will be ineligible to receive payment for claims against the fund.

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

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

Amended by Chapter 227, 2014 General Session

19-6-415 Participation of excluded or exempt tanks.

(1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280, Subpart A, may become eligible for payments from the Petroleum Storage Tank Fund if the underground storage tank:
  (a)
    (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;
    (ii) is used for storing heating oil for consumptive use on the premises where stored; or
    (iii) is used for any oxygenate blending component for motor fuels;
  (b) complies with the requirements of Section 19-6-412;
  (c) meets other requirements established by rules made under Section 19-6-403; and
  (d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.

(2) An aboveground petroleum storage tank excluded from the definition of aboveground petroleum storage tank under Section 19-6-402, may become eligible for payments from the Petroleum Storage Tank Fund if the owner or operator:
  (a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;
  (b) complies with the requirements of Section 19-6-412; and
  (c) meets other requirements established by rules made under Section 19-6-403.

Amended by Chapter 451, 2022 General Session

19-6-415.5 State owned or leased tanks to participate in program.

Any underground storage tank or aboveground petroleum storage tank owned or leased by the state and subject to the financial assurance requirements established by division rule shall participate in the program.

Amended by Chapter 202, 2021 General Session

19-6-416 Restrictions on delivery of petroleum -- Civil penalty.

(1)
(a) A person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(7).
(b) Beginning July 1, 2023, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in an aboveground petroleum storage tank that is not in compliance with Subsection 19-6-407(2).

(2) A person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank or aboveground petroleum storage tank in violation of Subsection (1) is subject to a civil penalty of not more than $500 for each occurrence.

(3) The director shall issue a notice of agency action assessing a civil penalty of not more than $500 against any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank.

(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank that is identified in compliance with Subsection 19-6-411(7) or 19-6-407(2) and rules made under the relevant subsection, whether or not the tank is in actual compliance with the other requirements of Section 19-6-411 or 19-6-407.

Amended by Chapter 202, 2021 General Session

19-6-416.5 Restrictions on underground storage tank installation companies -- Civil penalty.

(1) After July 1, 1994, no individual or underground installation company may install an underground storage tank without having a valid underground storage tank installation company permit.

(2) Any individual or underground storage tank installation company who installs an underground storage tank in violation of Subsection (1) is subject to a civil penalty of $500 per underground storage tank.

(3) The director shall issue a notice of agency action assessing a civil penalty of $500 against any underground storage tank installation company or person who installs an underground storage tank in violation of Subsection (1).

Amended by Chapter 360, 2012 General Session

19-6-417 Use of fund revenues to investigate certain releases from petroleum storage tank.

If the director is notified of or otherwise becomes aware of a release or suspected release of petroleum, he may expend revenues from the fund to investigate the release or suspected release if he has reasonable cause to believe the release is from a tank that is covered by the fund.

Amended by Chapter 360, 2012 General Session

19-6-418 Recovery of costs by director.

(1) The director may recover:

(a) from a responsible party the proportionate share of costs the party is responsible for as determined under Section 19-6-424.5;
(b) any amount required to be paid by the owner under this part which the owner has not paid; and
(c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).
(2) The director may pursue an action or recover costs from any other person if that person caused or substantially contributed to the release.
(3) All costs recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7.

Amended by Chapter 360, 2012 General Session

19-6-419 Costs covered by the fund -- Costs paid by owner or operator -- Payments to third parties -- Apportionment of costs.
(1) If all requirements of this part have been met and a release occurs from a tank that is covered by the fund, the costs per release are covered as provided under this section.
(2) For releases reported before May 11, 2010, the responsible party shall pay:
(a) the first $10,000 of costs; and
(b)
(i) all costs over $1,000,000, if the release was from a tank:
(A) located at a facility engaged in petroleum production, refining, or marketing; or
(B) with an average monthly facility throughput of more than 10,000 gallons; and
(ii) all costs over $500,000, if the release was from a tank:
(A) not located at a facility engaged in petroleum production, refining, or marketing; and
(B) with an average monthly facility throughput of 10,000 gallons or less.
(3) For releases reported before May 11, 2010, if money is available in the fund and the responsible party has paid costs of $10,000, the director shall pay costs from the fund in an amount not to exceed:
(a) $990,000 if the release was from a tank:
(i) located at a facility engaged in petroleum production, refining, or marketing; or
(ii) with an average monthly facility throughput of more than 10,000 gallons; and
(b) $490,000 if the release was from a tank:
(i) not located at a facility engaged in petroleum production, refining, or marketing; and
(ii) with an average monthly facility throughput of 10,000 gallons or less.
(4) For a release reported on or after May 11, 2010, the responsible party shall pay:
(a) the first $10,000 of costs; and
(b)
(i) all costs over $2,000,000, if the release was from a tank:
(A) located at a facility engaged in petroleum production, refining, or marketing; or
(B) with an average monthly facility throughput of more than 10,000 gallons; and
(ii) all costs over $1,000,000, if the release was from a tank:
(A) not located at a facility engaged in petroleum production, refining, or marketing; and
(B) with an average monthly facility throughput of 10,000 gallons or less.
(5) For a release reported on or after May 11, 2010, if money is available in the fund and the responsible party has paid costs of $10,000, the director shall pay costs from the fund in an amount not to exceed:
(a) $1,990,000 if the release was from a tank:
(i) located at a facility engaged in petroleum production, refining, or marketing; or

(ii) with an average monthly facility throughput of more than 10,000 gallons; and
(b) $990,000 if the release was from a tank:
(i) not located at a facility engaged in petroleum production, refining, or marketing; and
(ii) with an average monthly facility throughput of 10,000 gallons or less.
(6) The director may pay fund money to a responsible party up to the following amounts in a fiscal year:
(a) $1,990,000 to a responsible party owning or operating less than 100 petroleum storage tanks; or
(b) $3,990,000 to a responsible party owning or operating 100 or more petroleum storage tanks.
(7)
(a) In authorizing payments for costs from the fund, the director shall apportion money:
(i) first, to the following type of expenses incurred by the state:
(A) legal;
(B) adjusting; and
(C) actuarial;
(ii) second, to costs incurred for:
(A) investigation;
(B) abatement action; and
(C) corrective action; and
(iii) third, to payment of:
(A) judgments;
(B) awards; and
(C) settlements to third parties for bodily injury or property damage.
(b) The board shall make rules governing the apportionment of costs among third party claimants.

Amended by Chapter 360, 2012 General Session

19-6-420 Releases -- Abatement actions -- Corrective actions.
(1) If the director determines that a release from a petroleum storage tank has occurred, the director shall:
(a) identify and name as many of the responsible parties as reasonably possible; and
(b) determine which responsible parties, if any, are covered by the fund regarding the release in question.
(2) Regardless of whether the petroleum storage tank generating the release is covered by the fund:
(a) the director may order the owner or operator to take abatement, or investigative or corrective action, including the submission of a corrective action plan; and
(b) if the owner or operator fails to comply with the action ordered by the director under Subsection (2)(a), the director may take one or more of the following actions:
(i) subject to the conditions in this part, use money from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;
(ii) commence an enforcement proceeding;
(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5;
(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5; or

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

(3)

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

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

(ii) the director approves the abatement action.

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

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

(4)

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

(b) If the owner or operator submits a corrective action plan, the director shall review the corrective action plan and approve or disapprove the plan.

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

(i) the threat to public health;

(ii) the threat to the environment; and

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

(5) If the director approves the corrective action plan or develops the director's own corrective action plan, the director shall:

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

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

(c)

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

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

(6)

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

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

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

(ii) the director approves the corrective action plan.

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

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

(a) develop an alternative corrective action plan; and

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

(9)
(a) When notified that the corrective action plan has been implemented, the director shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.
(b) If the director determines the corrective action has not been properly performed or completed, the director may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.
(10)
(a) For releases not covered by the fund, the director may recover from the responsible party expenses incurred by the division for managing and overseeing the abatement, and investigation or corrective action of the release. These expenses shall be:
(i) billed quarterly per release;
(ii) due within 30 days of billing;
(iii) deposited with the division as dedicated credits;
(iv) used by the division for the administration of the underground storage tank program outlined in this part; and
(v) billed per hourly rates as established under Section 63J-1-504.
(b) If the responsible party fails to pay expenses under Subsection 10(a), the director may:
(i) revoke the responsible party's certificate of compliance, as described in Section 19-6-414, if the responsible party is also the owner or operator; and
(ii) pursue an action to collect expenses in Subsection 10(a), including the costs of collection.
(11) This section does not apply to a release of a substance defined as a regulated substance in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Amended by Chapter 202, 2021 General Session

19-6-421 Third party payment restrictions and requirements.
(1) If there are sufficient revenues in the fund, and subject to the provisions of Sections 19-6-419, 19-6-422, and 19-6-423, the director shall authorize payment from the fund to third parties regarding a release covered by the fund as provided in Subsection (2) if:
(a)
(i) he is notified that a final judgment or award has been entered against the responsible party covered by the fund that determines liability for bodily injury or property damage to third parties caused by a release from the tank; or
(ii) approved by the state risk manager, the responsible party has agreed to pay an amount in settlement of a claim arising from the release; and
(b) the responsible party has failed to satisfy the judgment or award, or pay the amount agreed to.
(2) The director shall authorize payment to the third parties of the amount of the judgment, award, or amount agreed to subject to the limitations established in Section 19-6-419.

Amended by Chapter 360, 2012 General Session

19-6-422 Participation by state risk manager in suit, claim, or settlement.
(1) If a suit is filed or a claim is made against a responsible party who is eligible for payments from the fund for bodily injury or property damage connected with a release of petroleum from a

petroleum storage tank, the state risk manager and his legal counsel may participate with the responsible party and his legal counsel in:
(a) the defense of any suit;
(b) determination of legal strategy and any other decisions affecting the defense of any suit; and
(c) any settlement negotiations.
(2) The state risk manager shall approve any settlement between the responsible party and a third party before payment of fund money is made.

Amended by Chapter 214, 1992 General Session

19-6-423 Claim or suit against responsible parties -- Prerequisites for payment from fund to responsible parties or third parties -- Limitations of liability for third party claims.
(1)
(a) The director may authorize payments from the fund to a responsible party if the responsible party receives actual or constructive notice:
(i) of a release likely to give rise to a claim; or
(ii) that in connection with a release a:
(A) suit has been filed; or
(B) claim has been made against the responsible party for:
(I) bodily injury; or
(II) property damage.
(b) A responsible party described in Subsection (1)(a) shall:
(i) inform the state risk manager immediately of a release, suit, or claim described in Subsection (1)(a);
(ii) allow the state risk manager and the state risk manager's legal counsel to participate with the responsible party and the responsible party's legal counsel in:
(A) the defense of a suit;
(B) determination of legal strategy;
(C) other decisions affecting the defense of a suit; and
(D) settlement negotiations; and
(iii) conduct the defense of a suit or claim in good faith.
(2) The director may authorize payment of fund money for a judgment or award to third parties if the state risk manager:
(a) is allowed to participate in the defense of the suit as required under Subsection (1)(b); and
(b) approves the settlement.
(3) The director may make a payment from the fund to a third party pursuant to Section 19-6-421 or fund a corrective action plan pursuant to Section 19-6-420 if the payment or funding does not impose a liability or make a payment for:
(a) an obligation of a responsible party for:
(i) workers' compensation benefits;
(ii) disability benefits;
(iii) unemployment compensation; or
(iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);
(b) a bodily injury award to:
(i) a responsible party's employee arising from and in the course of the employee's employment; or
(ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of the employee described in Subsection (3)(b)(i);

(c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of an aircraft, motor vehicle, or watercraft;
(d) property damage to a property owned by, occupied by, rented to, loaned to, bailed to, or otherwise in the care, custody, or control of a responsible party except to the extent necessary to complete a corrective action plan;
(e) bodily injury or property damage for which a responsible party is obligated to pay damages by reason of the assumption of liability in a contract or agreement unless the responsible party entered into the contract or agreement to meet the financial responsibility requirements of:
(i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c et seq., or regulations issued under this act; or
(ii) this part, or rules made under this part;
(f) bodily injury or property damage for which a responsible party is liable to a third party solely on account of personal injury to the third party's spouse;
(g) bodily injury, property damage, or the cost of corrective action caused by releases reported before May 11, 2010 that are covered by the fund if the total amount previously paid by the director to compensate third parties and fund corrective action plans for the releases equals:
(i) $990,000 for a single release; and
(ii) for all releases by a responsible party in a fiscal year:
(A) $1,990,000 for a responsible party owning less than 100 petroleum storage tanks; and
(B) $3,990,000 for a responsible party owning 100 or more petroleum storage tanks; and
(h) bodily injury, property damage, or the cost of corrective action caused by releases reported on or after May 11, 2010, covered by the fund if the total amount previously paid by the director to compensate third parties and fund corrective action plans for the releases equals:
(i) $1,990,000 for a single release; and
(ii) for all releases by a responsible party in a fiscal year:
(A) $1,990,000 for a responsible party owning less than 100 petroleum storage tanks; and
(B) $3,990,000 for a responsible party owning 100 or more petroleum storage tanks.

Amended by Chapter 360, 2012 General Session

19-6-424 Claims not covered by fund.

(1) The director may not authorize payments from the fund unless:
(a) the claim was based on a release occurring during a period for which that tank was covered by the fund;
(b) the claim was made:
(i) during a period for which that tank was covered by the fund; or
(ii)
(A) within one year after that fund-covered tank is closed; or
(B) within six months after the end of the period during which the tank was covered by the fund; and
(c) there are sufficient revenues in the fund.
(2) The director may not authorize payments from the fund for an underground storage tank installation company unless:
(a) the claim was based on a release occurring during the period prior to the issuance of a certificate of compliance;
(b) the claim was made within 12 months after the date the tank is issued a certificate of compliance for that tank; and
(c) there are sufficient revenues in the fund.

(3) The director may require the claimant to provide additional information as necessary to demonstrate coverage by the fund at the time of submittal of the claim.
(4) If the Legislature repeals or refuses to reauthorize the program for petroleum storage tanks established in this part, the director may authorize payments from the fund as provided in this part for claims made until the end of the time period established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

Amended by Chapter 360, 2012 General Session

19-6-424.5 Apportionment of liability -- Liability agreements -- Legal remedies -- Amounts recovered.

(1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the director may:
  (a) issue written orders determining responsible parties;
  (b) issue written orders apportioning liability among responsible parties; and
  (c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.
(2)
  (a) In any apportionment of liability, whether made by the director or made in any administrative proceeding or judicial action, the following standards apply:
    (i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and
    (ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.
  (b)
    (i) The burden of proving proportionate contribution shall be borne by each responsible party.
    (ii) If a responsible party does not prove the responsible party's proportionate contribution, the court or the director shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).
  (c) The court, the board, or the director may not impose joint and several liability.
  (d) Each responsible party is strictly liable for his share of costs.
(3) The failure of the director to name all responsible parties is not a defense to an action under this section.
(4) The director may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party.
(5) The director and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):
  (a) have been notified in writing by either the director or the responsible party of the proposed agreement; and
  (b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.
(6)
  (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court.

(b) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).

(7)

(a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.

(b)

(i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.

(ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.

(8)

(a) If the director obtains less than complete relief from a party who has resolved his liability under this section, the director may bring an action against any party who has not resolved his liability as determined in an order.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order.

(9)

(a) An agreement or order determining liability under this part may provide that the director will pay for costs of actions that the parties have agreed to perform, but which the director has agreed to finance, under the terms of the agreement or order.

(b) If the director makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.

(c) Any amounts recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.

Amended by Chapter 360, 2012 General Session

19-6-425 Violation of part -- Civil penalty -- Suit in district court.

(1) Except as provided in Section 19-6-407, any person who violates any requirement of this part or any order issued or rule made under the authority of this part is subject to a civil penalty of not more than $10,000 per day for each day of violation.

(2) The director may enforce any requirement, rule, agreement, or order issued under this part by bringing a suit in the district court in the county where the underground storage tank or petroleum storage tank is located.

(3) The department shall deposit the penalties collected under this part in the Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

Amended by Chapter 360, 2012 General Session

19-6-426 Limitation of liability of state -- Liability of responsible parties -- Indemnification agreement involving responsible parties.

(1) This part is not intended to create an insurance program.

(2) The fund established in this part shall only provide funds to finance costs for responsible parties who meet the requirements of this part when releases from petroleum storage tanks occur.

(3) The assets of the fund, if any, are the sole source of money to pay claims against the fund.

(4) The state is not liable for:
(a) any amounts payable from the fund for which the fund does not have sufficient assets;
(b) any expenses or debts of the fund; or
(c) any claim arising from the creation, management, rate-setting, or any other activity pertaining to the fund.
(5) The responsible parties are liable for any costs associated with any release from the underground storage tank system.
(6) This part does not preclude a responsible party from enforcing or recovering under any agreement or contract for indemnification associated with a release from the tank or from pursuing any other legal remedies that may be available against any party.
(7) If any payment is made under this part, the fund shall be subrogated to all the responsible parties' rights of recovery against any person or organization and the responsible parties shall execute and deliver instruments and papers and do whatever else is necessary to secure the rights. The responsible parties shall do nothing after a release is discovered to prejudice the rights. In the event of recovery by the fund, any amount recovered shall first be used to reimburse the responsible parties for costs they are required to pay pursuant to Section 19-6-419.
(8) Parties who elect to participate in the fund do so subject to the conditions and limitations in this section and in this part.

Amended by Chapter 172, 1997 General Session

19-6-427 Liability of any person under other laws -- Additional state and governmental immunity -- Exceptions.
(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way:
(a) the obligations or liability of any person under any other provision of this part or state or federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of petroleum from an underground storage tank or a petroleum storage tank; or
(b) the liability of any person for costs incurred except as provided in this part.
(2) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

Amended by Chapter 382, 2008 General Session

19-6-428 Eligibility for participation in the fund.
(1) Subject to the requirements of Section 19-6-410.5, an owner or operator of an existing petroleum storage tank that is covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and 19-6-411.
(2) A new petroleum storage tank that is installed after May 5, 1997, or a tank eligible under Section 19-6-415, may elect to participate in the program by complying with the requirements of this part.
(3)

(a) An owner or operator of a petroleum storage tank who elects to not participate in the program, including by the use of an alternative financial assurance mechanism, shall, in order to subsequently participate in the program:
(i) perform a tank tightness test;
(ii) except as provided in Subsection (3)(b), (c), or (d), perform a site check, including soil and, when applicable, groundwater samples, to demonstrate that no release of petroleum exists or that there has been adequate remediation of releases as required by board rules;
(iii) provide the required tests and samples to the director; and
(iv) comply with the requirements of this part.
(b) A site check under Subsection (3)(a)(ii) is not required if the director determines, with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released.
(c) For an aboveground petroleum storage tank, a site check under Subsection (3)(a)(ii) is not required to participate in the program except that if the aboveground petroleum storage tank does not conduct a site check:
(i) historic contamination, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(A) subject to the other provisions of this Subsection (3)(c), is covered only if the historic contamination is discovered more than five years after the day the owner or operator elects to participate in the program;
(B) is 20% covered beginning on the five-year date; and
(C) is covered at increasing amounts of 20% each year after the five-year date until at the 10-year date historic contamination is covered at 100%; and
(ii) new releases, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are covered at 100% beginning on the day the aboveground petroleum storage tank participates in the program.
(d) For an underground storage tank that previously elected not to participate in the program, a site check under Subsection (3)(a)(ii) is not required to begin participating in the program, except that if the underground storage tank does not conduct a site check:
(i) historic contamination, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(A) subject to the other provisions of this Subsection (3)(d), is covered only if the historic contamination is discovered more than five years after the day the owner or operator elects to participate in the program;
(B) is 20% covered beginning on the five-year date; and
(C) is covered at increasing amounts of 20% each year after the five-year date until at the 10-year date historic contamination is covered at 100%; and
(ii) new releases, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are covered at 100% beginning on the day the underground storage tank participates in the program.
(4) The director shall review the tests and samples provided under Subsection (3)(a)(iii) to determine:
(a) whether or not any release of the petroleum has occurred; or
(b) if the remediation is adequate.

Amended by Chapter 202, 2021 General Session

19-6-429 False information and claims.

(1) Any person who presents or causes to be presented any oral or written statement, knowing the statement contains false information, in order to obtain a certificate of compliance is guilty of a class B misdemeanor.

(2)

(a) Any person who presents or causes to be presented any claim for payment from the fund, knowing the claim contains materially false information or knowing the claim is not eligible for payment from the fund, is subject to the criminal penalties under Section 76-10-1801 regarding fraud.

(b) The level of criminal penalty shall be determined by the value involved, in the same manner as in Section 76-10-1801.

Enacted by Chapter 172, 1997 General Session