

1 **UNDERGROUND WATERS - REGULATION OF**
2 **DISCHARGE**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Melvin R. Brown**

6 AN ACT RELATING TO ENVIRONMENTAL QUALITY; GIVING TO THE RADIATION
7 CONTROL BOARD AUTHORITY TO REGULATE DISCHARGE INTO GROUNDWATER
8 AFFECTED BY FACILITIES LICENSED UNDER THE RADIATION CONTROL ACT OR
9 THE FEDERAL NUCLEAR REGULATORY COMMISSION; PLACING STATE
10 REQUIREMENTS ON HOLDERS OF STATE OR FEDERAL PERMITS REGARDING
11 RADIOACTIVE MATERIAL THAT MAY RESULT IN A DISCHARGE INTO
12 GROUNDWATER OF THE STATE; AND LIMITING APPLICATION REGARDING
13 FEDERAL PREEMPTION.

14 This act affects sections of Utah Code Annotated 1953 as follows:

15 AMENDS:

16 **19-3-103.5**, as last amended by Chapter 90, Laws of Utah 1995

17 **19-3-104**, as last amended by Chapters 28 and 90, Laws of Utah 1995

18 **19-3-108**, as enacted by Chapter 112, Laws of Utah 1991

19 **19-3-110**, as last amended by Chapter 271, Laws of Utah 1998

20 **19-3-111**, as last amended by Chapter 87 and renumbered and amended by Chapter 112,
21 Laws of Utah 1991

22 **19-5-104**, as last amended by Chapter 126, Laws of Utah 1998

23 ENACTS:

24 **19-3-114**, Utah Code Annotated 1953

25 **19-3-115**, Utah Code Annotated 1953

26 **19-3-116**, Utah Code Annotated 1953

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

28 Section 1. Section **19-3-103.5** is amended to read:

29 **19-3-103.5. Board authority and duties.**

30 (1) The board may:

31 (a) require submittal of specifications or other information relating to licensing
32 applications for radioactive materials or registration of radiation sources for review, approval,
33 disapproval, or termination;

34 (b) issue orders necessary to enforce the provisions of this part, enforce the orders by
35 appropriate administrative and judicial proceedings, and institute judicial proceedings to secure
36 compliance with this part;

37 (c) hold hearings and compel the attendance of witnesses, the production of documents,
38 and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or
39 appoint hearing officers and authorize them to exercise the powers under this Subsection (1)(c);

40 (d) settle or compromise any administrative or civil action initiated to compel compliance
41 with this part or any rules adopted under this part;

42 (e) advise, consult, cooperate with, and provide technical assistance to other agencies of
43 the state and federal government, other states, interstate agencies, and affected groups, political
44 subdivisions, industries, and other persons in carrying out the provisions of this part;

45 (f) promote the planning and application of pollution prevention and radioactive waste
46 minimization measures to prevent the unnecessary waste and depletion of natural resources;

47 (g) cooperate with any persons in studies, research, or demonstration projects regarding
48 radioactive waste management or control of radiation sources;

49 (h) accept, receive, and administer grants or other funds or gifts from public and private
50 agencies, including the federal government, for the purpose of carrying out any of the functions
51 of this part;

52 (i) exercise all incidental powers necessary to carry out the purposes of this part;

53 (j) submit an application to the U.S. Food and Drug Administration for approval as an
54 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of
55 1992;

56 (k) accredit mammography facilities, pursuant to approval as an accrediting body from the
57 U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography Quality
58 Standards Act of 1992; [and]

59 (l) review the qualifications of and issue certificates of approval to individuals who survey
60 mammography equipment and oversee quality assurance practices at mammography facilities[-];

61 and

62 (m) make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the
63 prevention, control, and abatement of new or existing pollution of underground waters of the state
64 that are or may be affected by activities subject to this part or 42 U.S.C. 2011 et seq., as amended,
65 Atomic Energy Act, to the extent the rules are not preempted by the Atomic Energy Act.

66 (2) The board shall:

67 (a) hear appeals of final decisions made by the executive secretary or appoint a hearing
68 officer to hear the appeal and make recommendations to the board;

69 (b) prepare a radioactive waste management plan in compliance with Section 19-3-107 as
70 soon as practicable; and

71 (c) impound radioactive material as authorized in Section 19-3-111.

72 (3) Representatives of the board upon presentation of appropriate credentials may enter
73 at reasonable times upon the premises of public and private properties subject to regulation under
74 this part to perform inspections to insure compliance with this part and rules made by the board.

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

76 **19-3-104. Registration and licensing of radiation sources by department --**

77 **Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.**

78 (1) The board may require the registration or licensing of radiation sources that constitute
79 a significant health hazard.

80 (2) All sources of ionizing radiation, including ionizing radiation producing machines,
81 shall be registered or licensed by the department.

82 (3) The board may make rules:

83 (a) necessary for controlling exposure to sources of radiation that constitute a significant
84 health hazard;

85 (b) to meet the requirements of federal law relating to radiation control to ensure the
86 radiation control program under this part is qualified to maintain primacy from the federal
87 government; and

88 (c) to establish:

89 (i) board accreditation requirements and procedures for mammography facilities; and

90 (ii) certification procedure and qualifications for persons who survey mammography
91 equipment and oversee quality assurance practices at mammography facilities.

92 (4) (a) The department shall assess fees for registration, licensing, and inspection of
93 radiation sources under this section.

94 (b) The department shall comply with the requirements of Section 63-38-3.2 in assessing
95 fees for licensure and registration.

96 (5) The department shall coordinate its activities with the Department of Health rules made
97 under Section 26-21a-203.

98 (6) (a) Except as provided in Subsection (7), the board may not adopt rules, for the purpose
99 of the state assuming responsibilities from the United States Nuclear Regulatory Commission with
100 respect to regulation of sources of ionizing radiation, that are more stringent than the
101 corresponding federal regulations which address the same circumstances.

102 (b) In adopting those rules, the board may incorporate corresponding federal regulations
103 by reference.

104 (7) (a) The board may adopt rules more stringent than corresponding federal regulations
105 for the purpose described in Subsection (6) only if it makes a written finding after public comment
106 and hearing and based on evidence in the record that corresponding federal regulations are not
107 adequate to protect public health and the environment of the state.

108 (b) Those findings shall be accompanied by an opinion referring to and evaluating the
109 public health and environmental information and studies contained in the record which form the
110 basis for the board's conclusion.

111 (8) (a) The board may by rule establish criteria for siting commercial low-level radioactive
112 waste treatment or disposal facilities.

113 (b) Any facility for which a radioactive material license is required by this section shall
114 comply with those criteria.

115 (c) A facility may not receive a radioactive material license until siting criteria have been
116 established by the board. The criteria also apply to facilities that have applied for but not received
117 a radioactive material license.

118 (9) The board shall by rule establish financial assurance requirements for closure and
119 postclosure care of radioactive waste land disposal facilities, taking into account existing financial
120 assurance requirements.

121 (10) The board shall establish rules under Title 63, Chapter 46a, Utah Administrative
122 Rulemaking Act, to establish requirements and standards governing actual or potential discharges
123 into underground waters of the state from operations or activities subject to this part or 42 U.S.C.
124 2011 et seq., as amended, Atomic Energy Act, to the extent the rules are not preempted by the
125 Atomic Energy Act.

126 Section 3. Section **19-3-108** is amended to read:

127 **19-3-108. Powers and duties of executive secretary.**

128 (1) The executive director shall appoint an executive secretary, with the approval of the
129 board, to serve under the direction of the executive director.

130 (2) The executive secretary may:

131 (a) develop programs to promote and protect the public from radiation sources in the state;

132 (b) advise, consult, and cooperate with other agencies, states, the federal government,
133 political subdivisions, industries, and other groups to further the purposes of this chapter;

134 (c) as authorized by the board:

135 (i) issue licenses, registrations, and certifications;

136 (ii) review and approve plans;

137 (iii) enforce rules through the issuance of orders and assess penalties in accordance with
138 Section 19-3-109;

139 (iv) impound radioactive material under Section 19-3-111; [and]

140 (v) authorize employees or representatives of the department to enter at reasonable times
141 and upon reasonable notice in and upon public or private property for the purpose of inspecting
142 and investigating conditions and records concerning radiation sources[-]; and

143 (vi) issue permits for discharge into underground waters of the state to persons who have
144 received a license, registration, or certification under this part or the 42 U.S.C. 2011 et seq., as
145 amended, Atomic Energy Act, to the extent the issuance of the permits is not preempted by the
146 Atomic Energy Act.

147 Section 4. Section **19-3-110** is amended to read:

148 **19-3-110. Criminal penalties.**

149 (1) Any person who knowingly violates any provision of Sections 19-3-104 through

150 [~~19-3-113~~] 19-3-116 or lawful orders or rules adopted by the department under those sections shall

151 in a criminal proceeding:

- 152 (a) for the first violation, be guilty of a class B misdemeanor; and
- 153 (b) for a subsequent similar violation within two years, be guilty of a third degree felony.
- 154 (2) In addition, a person is liable for any expense incurred by the department in removing
- 155 or abating any violation.

156 (3) Conviction under Sections 19-3-104 through [~~19-3-113~~] 19-3-116 does not relieve the

157 person convicted from civil liability for any act which was also a violation of the public health

158 laws.

159 Section 5. Section **19-3-111** is amended to read:

160 **19-3-111. Impounding of radioactive material.**

- 161 (1) The board may impound the radioactive material of any person if:
- 162 (a) the material poses an imminent threat or danger to the public health or safety; or
 - 163 (b) that person is violating:
 - 164 (i) any provision of Sections 19-3-104 through [~~19-3-113~~] 19-3-116;
 - 165 (ii) any rules or orders enacted or issued under the authority of those sections; or
 - 166 (iii) the terms of a license, permit, or registration certificate issued under the authority of
 - 167 those sections.

168 (2) Before any dispositive action may be taken with regard to impounded radioactive

169 materials, the board shall comply with the procedures and requirements of Title 63, Chapter 46b,

170 Administrative Procedures Act.

171 Section 6. Section **19-3-114** is enacted to read:

172 **19-3-114. Discharge of pollutants unlawful - Discharge permit required.**

173 (1) (a) Except as provided in this part or rules made under this part, it is unlawful for any

174 person receiving a license, registration, or certification under this part or under 42 U.S.C. 2011 et

175 seq., as amended, Atomic Energy Act, to:

176 (i) discharge a pollutant into underground waters of the state or to cause pollution from

177 the discharges which constitutes a menace to public health or welfare, or is harmful to wildlife,

178 fish, or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial

179 uses of water; or

180 (ii) place or cause to be placed any wastes in a location where there is probable cause to

181 believe the wastes will cause pollution.

182 (b) For purposes of injunctive relief, any violation of Subsection (1)(a) is a public

183 nuisance.

184 (2) It is unlawful for any person receiving a license, registration, or certification under this
185 part or under 42 U.S.C. 2011 et seq., as amended, Atomic Energy Act, without first securing a
186 permit from the executive secretary, to:

187 (a) make any discharge not authorized under an existing valid discharge permit; or

188 (b) construct, install, modify, or operate any treatment works or part of any treatment

189 works or any extension or addition to any treatment works or construct, install, or operate any

190 establishment or extension or modification of or any addition to any treatment works, the operation

191 of which would probably result in a discharge.

192 (3) This section has application to the extent it is not preempted by 42 U.S.C. 2011 et seq.,
193 as amended, Atomic Energy Act.

194 Section 7. Section **19-3-115** is enacted to read:

195 **19-3-115. Grounds for revocation, modification, or suspension of discharge permit.**

196 (1) Any permit issued under this part may be revoked, modified, or suspended in whole
197 or in part for cause, which may include:

198 (a) violation of any condition or term of the permit;

199 (b) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

200 or

201 (c) a change in any condition that requires either a temporary or permanent reduction or
202 elimination of the discharge allowed by the permit.

203 (2) As used in Subsection (1)(c), "condition" does not include statutory or regulatory
204 effluent limitations enacted or adopted during the permit term other than for toxic pollutants.

205 Section 8. Section **19-3-116** is enacted to read:

206 **19-3-116. Limitations and standards.**

207 In establishing limitations and standards for protection of underground waters of the state
208 under this part, the executive secretary shall use the applicable limits and standards established by:

209 (1) the Water Quality Board under Title 19, Chapter 5, Water Quality Act; and

210 (2) the Environmental Protection Agency under 33 U.S.C. 1251 et seq., Water Pollution

211 Control Act, and 42 U.S.C. 2011 et seq., as amended, Atomic Energy Act.

212 Section 9. Section **19-5-104** is amended to read:

213 **19-5-104. Powers and duties of board.**

214 (1) The board has the following powers and duties, but the board shall give priority to
215 pollution that results in hazards to the public health:

216 (a) develop programs for the prevention, control, and abatement of new or existing
217 pollution of the waters of the state;

218 (b) advise, consult, and cooperate with other agencies of the state, the federal government,
219 other states, and interstate agencies, and with affected groups, political subdivisions, and industries
220 to further the purposes of this chapter;

221 (c) encourage, participate in, or conduct studies, investigations, research, and
222 demonstrations relating to water pollution and causes of water pollution as the board finds
223 necessary to discharge its duties;

224 (d) collect and disseminate information relating to water pollution and the prevention,
225 control, and abatement of water pollution;

226 (e) adopt, modify, or repeal standards of quality of the waters of the state and classify those
227 waters according to their reasonable uses in the interest of the public under conditions the board
228 may prescribe for the prevention, control, and abatement of pollution;

229 (f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
230 Act, to:

231 (i) implement awarding construction loans to political subdivisions and municipal
232 authorities under Section 11-8-2, including:

233 (A) requirements pertaining to applications for loans;

234 (B) requirements for determination of eligible projects;

235 (C) requirements for determination of the costs upon which loans are based, which costs
236 may include engineering, financial, legal, and administrative expenses necessary for the
237 construction, reconstruction, and improvement of sewage treatment plants, including major
238 interceptors, collection systems, and other facilities appurtenant to the plant;

239 (D) a priority schedule for awarding loans, in which the board may consider in addition
240 to water pollution control needs any financial needs relevant, including per capita cost, in making
241 a determination of priority; and

242 (E) requirements for determination of the amount of the loan, taking into consideration the
243 availability of federal grants in determining the eligible project costs and in establishing priorities;

244 (ii) set effluent limitations and standards subject to Section 19-5-116;

- 245 (iii) implement or effectuate the powers and duties of the board; and
- 246 (iv) protect the public health for the design, construction, operation, and maintenance of
- 247 individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit
- 248 privies;
- 249 (g) issue, modify, or revoke orders:
- 250 (i) prohibiting or abating discharges;
- 251 (ii) requiring the construction of new treatment works or any parts of them, or requiring
- 252 the modification, extension, or alteration of existing treatment works as specified by board rule or
- 253 any parts of them, or the adoption of other remedial measures to prevent, control, or abate
- 254 pollution;
- 255 (iii) setting standards of water quality, classifying waters or evidencing any other
- 256 determination by the board under this chapter; and
- 257 (iv) requiring compliance with this chapter and with rules made under this chapter;
- 258 (h) review plans, specifications, or other data relative to disposal systems or any part of
- 259 disposal systems, and issue construction permits for the installation or modification of treatment
- 260 works or any parts of them;
- 261 (i) after public notice and opportunity for a public hearing, issue, continue in effect,
- 262 revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe
- 263 to control the management of sewage sludge or to prevent or control the discharge of pollutants,
- 264 including effluent limitations for the discharge of wastes into the waters of the state;
- 265 (j) give reasonable consideration in the exercise of its powers and duties to the economic
- 266 impact of water pollution control on industry and agriculture;
- 267 (k) exercise all incidental powers necessary to carry out the purposes of this chapter,
- 268 including delegation to the department of its duties as appropriate to improve administrative
- 269 efficiency;
- 270 (l) meet the requirements of federal law related to water pollution;
- 271 (m) establish and conduct a continuing planning process for control of water pollution
- 272 including the specification and implementation of maximum daily loads of pollutants;
- 273 (n) make rules governing inspection, monitoring, recordkeeping, and reporting
- 274 requirements for underground injections and require permits for them, to protect drinking water
- 275 sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil,

276 recognizing that underground injection endangers drinking water sources if:

277 (i) injection may result in the presence of any contaminant in underground water which
278 supplies or can reasonably be expected to supply any public water system, as defined in Section
279 19-4-102; and

280 (ii) the presence of the contaminant may result in the public water system not complying
281 with any national primary drinking water standards or may otherwise adversely affect the health
282 of persons;

283 (o) make rules governing sewage sludge management, including permitting, inspecting,
284 monitoring, recordkeeping, and reporting requirements;

285 (p) adopt and enforce rules and establish fees to cover the costs of testing for certification
286 of operators of treatment works and sewerage systems operated by political subdivisions; and

287 (q) notwithstanding the provisions of Section 19-4-112, make rules governing design and
288 construction of irrigation systems which convey sewage treatment facility effluent of human origin
289 in pipelines under pressure, unless contained in surface pipes wholly on private property and for
290 agricultural purposes, and which are constructed after May 4, 1998.

291 (2) In establishing certification rules under Subsection (1)(p), the board shall:

292 (a) base the requirements for certification on the size, treatment process type, and
293 complexity of the treatment works and sewerage systems operated by political subdivisions;

294 (b) allow operators until three years after the date of adoption of the rules to obtain initial
295 certification;

296 (c) allow new operators one year from the date they are hired by a treatment plant or
297 sewerage system or three years after the date of adoption of the rules, whichever occurs later, to
298 obtain certification;

299 (d) issue certification upon application and without testing, at a grade level comparable
300 to the grade of current certification to operators who are currently certified under the voluntary
301 certification plan for wastewater works operators as recognized by the board; and

302 (e) issue a certification upon application and without testing that is valid only at the
303 treatment works or sewerage system where that operator is currently employed if the operator:

304 (i) is in charge of and responsible for the treatment works or sewerage system on March
305 16, 1991;

306 (ii) has been employed at least ten years in the operation of that treatment works or

307 sewerage system prior to March 16, 1991; and

308 (iii) demonstrates to the board his capability to operate the treatment works or sewerage
309 system at which he is currently employed by providing employment history and references as
310 required by the board.

311 (3) The board shall regulate the discharge of contaminants into underground waters of the
312 state by persons who have received a license, registration, or certification under Title 19, Chapter
313 3, Radiation Control Act, or 42 U.S.C. 2011 et seq., to the extent the regulation is not preempted
314 by 42 U.S.C. 2011 et seq., as amended, Atomic Energy Act.

Legislative Review Note
as of 2-17-00 11:04 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel