

1                    **DEPARTMENT OF ENVIRONMENTAL QUALITY**

2                                    **AMENDMENTS**

3    2009 GENERAL SESSION

4    STATE OF UTAH

5                                    **Chief Sponsor: Margaret Dayton**

6    House Sponsor: Melvin R. Brown

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8                    **LONG TITLE**

9                    **General Description:**

10                    This bill amends provisions relating to adjudicative proceedings within the Department  
11 of Environmental Quality.

12                    **Highlighted Provisions:**

13                    This bill:

- 14                    ▶ defines terms;
- 15                    ▶ authorizes the executive director of the Department of Environmental Quality to  
16 appoint an administrative law judge;
- 17                    ▶ requires an administrative law judge to conduct all adjudicative proceedings within  
18 the department, except an emergency adjudicative proceeding;
- 19                    ▶ establishes powers, duties, and qualifications for an administrative law judge; and
- 20                    ▶ amends or repeals the powers of boards within the department regarding hearings,  
21 adjudicative proceedings, and hearing officers or examiners.

22                    **Monies Appropriated in this Bill:**

23                    None

24                    **Other Special Clauses:**

25                    None

26                    **Utah Code Sections Affected:**

27                    AMENDS:

28                    **19-1-202**, as last amended by Laws of Utah 2005, Chapter 200

29                    **19-1-301**, as last amended by Laws of Utah 2008, Chapter 382

- 30           **19-2-104**, as last amended by Laws of Utah 2008, Chapters 68 and 382
- 31           **19-2-108**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 32           **19-2-109.1**, as last amended by Laws of Utah 2008, Chapter 382
- 33           **19-2-109.5**, as last amended by Laws of Utah 2008, Chapter 382
- 34           **19-2-110**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 35           **19-2-112**, as last amended by Laws of Utah 2008, Chapter 382
- 36           **19-3-103.5**, as last amended by Laws of Utah 1995, Chapter 90
- 37           **19-4-104**, as last amended by Laws of Utah 2008, Chapter 382
- 38           **19-5-111**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 39           **19-5-112**, as last amended by Laws of Utah 1995, Chapter 114
- 40           **19-6-104**, as last amended by Laws of Utah 2007, Chapter 72
- 41           **19-6-704**, as last amended by Laws of Utah 2008, Chapter 382

42 REPEALS:

- 43           **19-2-111**, as renumbered and amended by Laws of Utah 1991, Chapter 112



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

46           Section 1. Section **19-1-202** is amended to read:

47           **19-1-202. Duties and powers of the executive director.**

48           (1) The executive director shall:

49           (a) administer and supervise the department;

50           (b) coordinate policies and program activities conducted through boards, divisions,

51 and offices of the department;

52           (c) approve the proposed budget of each board, division, and office within the

53 department;

54           (d) approve all applications for federal grants or assistance in support of any

55 department program; [~~and~~]

56           (e) with the governor's specific, prior approval, expend funds appropriated by the

57 Legislature necessary for participation by the state in any fund, property, or service provided

58 by the federal government[-]; and

59 (f) in accordance with Section 19-1-301, appoint one or more administrative law  
60 judges to hear an adjudicative proceeding within the department.

61 (2) The executive director may:

62 (a) issue orders to enforce state laws and rules established by the department except  
63 where the enforcement power is given to a board created under Section 19-1-106, unless the  
64 executive director finds that a condition exists [~~which~~] that creates a clear and present hazard  
65 to the public health or the environment and [~~which~~] requires immediate action, and if the  
66 enforcement power is vested with a board created under Section 19-1-106, the executive  
67 director may with the concurrence of the governor order any person causing or contributing to  
68 the condition to reduce, mitigate, or eliminate the condition;

69 (b) with the approval of the governor, participate in the distribution, disbursement, or  
70 administration of any fund or service, advanced, offered, or contributed by the federal  
71 government for purposes consistent with the powers and duties of the department;

72 (c) accept and receive funds and gifts available from private and public groups for the  
73 purposes of promoting and protecting the public health and the environment and expend the  
74 funds as appropriated by the Legislature;

75 (d) make policies not inconsistent with law for the internal administration and  
76 government of the department, the conduct of its employees, and the custody, use, and  
77 preservation of the records, papers, books, documents, and property of the department;

78 (e) create advisory committees as necessary to assist in carrying out the provisions of  
79 this title;

80 (f) appoint division directors who may be removed at the will of the executive director  
81 and who shall be compensated in an amount fixed by the executive director;

82 (g) advise, consult, and cooperate with other agencies of the state, the federal  
83 government, other states and interstate agencies, affected groups, political subdivisions, and  
84 industries in carrying out the purposes of this title;

85 (h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act,

86 employ employees necessary to meet the requirements of this title;

87 (i) authorize any employee or representative of the division to conduct inspections as  
88 permitted in this title;

89 (j) encourage, participate in, or conduct any studies, investigations, research, and  
90 demonstrations relating to hazardous materials or substances releases necessary to meet the  
91 requirements of this title;

92 (k) collect and disseminate information about hazardous materials or substances  
93 releases;

94 (l) review plans, specifications, or other data relating to hazardous substances releases  
95 as provided in this title; and

96 (m) maintain, update not less than annually, and make available to the public a record  
97 of sites, by name and location, at which response actions for the protection of the public health  
98 and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, or  
99 under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous  
100 calendar year, and those that the department plans to address in the upcoming year pursuant to  
101 this title, including if upon completion of the response action the site:

102 (i) will be suitable for unrestricted use; or

103 (ii) will be suitable only for restricted use, stating the institutional controls identified  
104 in the remedy to which use of the site is subject.

105 Section 2. Section **19-1-301** is amended to read:

106 **19-1-301. Adjudicative proceedings.**

107 (1) As used in this section, "dispositive action" is a final agency action that:

108 (a) a board takes following an adjudicative proceeding on a request for agency action;

109 and

110 (b) is subject to judicial review under Section 63G-4-403.

111 (2) (a) The department and its boards shall comply with the procedures and  
112 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

113 (b) The procedures for an adjudicative proceeding conducted by an administrative law

114 judge are governed by:  
115 (i) Title 63G, Chapter 4, Administrative Procedures Act;  
116 (ii) rules adopted by a board as authorized by:  
117 (A) Subsection 63G-4-102(6); and  
118 (B) this title; and  
119 (iii) the Utah Rules of Civil Procedure, in the absence of a procedure established under  
120 Subsection (2)(b)(i) or (ii).  
121 (3) An administrative law judge shall hear a party's request for agency action made to  
122 a board created in Section 19-1-106.  
123 (4) The executive director shall appoint an administrative law judge who:  
124 (a) is a member in good standing of the Utah State Bar;  
125 (b) has a minimum of:  
126 (i) ten years of experience practicing law; and  
127 (ii) five years of experience practicing in the field of:  
128 (A) environmental compliance;  
129 (B) natural resources;  
130 (C) regulation by an administrative agency; or  
131 (D) a field related to a field listed in Subsections (4)(b)(ii)(A) through (C); and  
132 (c) has a working knowledge of the federal laws and regulations and state statutes and  
133 rules applicable to a request for agency action.  
134 (5) In appointing an administrative law judge who meets the qualifications listed in  
135 Subsection (4), the executive director may:  
136 (a) compile a list of persons who may be engaged as an administrative law judge pro  
137 tempore by mutual consent of the parties to an adjudicative proceeding;  
138 (b) appoint an assistant attorney general as an administrative law judge pro tempore;  
139 or  
140 (c) (i) appoint an administrative law judge as an employee of the department; and  
141 (ii) assign the administrative law judge responsibilities in addition to conducting an

142 adjudicative proceeding.

143 (6) (a) An administrative law judge shall:

144 (i) conduct an adjudicative proceeding;

145 (ii) take any action that is not a dispositive action; and

146 (iii) submit to the board a proposed dispositive action, including:

147 (A) written findings of fact;

148 (B) written conclusions of law; and

149 (C) a recommended order.

150 (b) A board may:

151 (i) approve, approve with modifications, or disapprove a proposed dispositive action

152 submitted to the board under Subsection (6)(a); or

153 (ii) return the proposed dispositive action to the administrative law judge for further

154 action as directed.

155 (7) To conduct an adjudicative proceeding, an administrative law judge may:

156 (a) compel:

157 (i) the attendance of a witness; and

158 (ii) the production of a document or other evidence;

159 (b) administer an oath;

160 (c) take testimony; and

161 (d) receive evidence as necessary.

162 (8) A party may appear before an administrative law judge in person, through an agent

163 or employee, or as provided by a board rule.

164 (9) (a) An administrative law judge or board member may not communicate with a  
165 party to an adjudicative proceeding regarding the merits of the adjudicative proceeding unless  
166 notice and an opportunity to be heard are afforded to all parties.

167 (b) An administrative law judge or board member who receives an ex parte  
168 communication shall place the communication into the public record of the proceedings and  
169 afford all parties an opportunity to comment on the information.

170           (10) Nothing in this section limits a party's right to an adjudicative proceeding under  
171 Title 63G, Chapter 4, Administrative Procedures Act.

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

173           **19-2-104. Powers of board.**

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

176           (a) regarding the control, abatement, and prevention of air pollution from all sources  
177 and the establishment of the maximum quantity of air contaminants that may be emitted by  
178 any air contaminant source;

179           (b) establishing air quality standards;

180           (c) requiring persons engaged in operations which result in air pollution to:

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

183           (ii) file periodic reports containing information relating to the rate, period of emission,  
184 and composition of the air contaminant; and

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

187           (d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter  
188 II - Asbestos Hazard Emergency Response, and reviewing and approving asbestos  
189 management plans submitted by local education agencies under that act;

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

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

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

197           (h) with the approval of the governor, implementing in air quality nonattainment areas

198 employer-based trip reduction programs applicable to businesses having more than 100  
199 employees at a single location and applicable to federal, state, and local governments to the  
200 extent necessary to attain and maintain ambient air quality standards consistent with the state  
201 implementation plan and federal requirements under the standards set forth in Subsection (2);  
202 and

203 (i) implementing lead-based paint remediation training, certification, and performance  
204 requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,  
205 Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406.

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

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

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

210 (3) The board may:

211 (a) (i) hold ~~hearings~~ a hearing that is not an adjudicative proceeding relating to any  
212 aspect of or matter in the administration of this chapter and compel the attendance of  
213 witnesses and the production of documents and other evidence, administer oaths and take  
214 testimony, and receive evidence as necessary;

215 (ii) receive a proposed dispositive action from an administrative law judge as provided  
216 by Section 19-1-301; and

217 (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
218 action; or

219 (B) return the proposed dispositive action to the administrative law judge for further  
220 action as directed;

221 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders  
222 by appropriate administrative and judicial proceedings, and institute judicial proceedings to  
223 secure compliance with this chapter;

224 (c) settle or compromise any civil action initiated to compel compliance with this  
225 chapter and the rules made under this chapter;



226 (d) secure necessary scientific, technical, administrative, and operational services,  
227 including laboratory facilities, by contract or otherwise;

228 (e) prepare and develop a comprehensive plan or plans for the prevention, abatement,  
229 and control of air pollution in this state;

230 (f) encourage voluntary cooperation by persons and affected groups to achieve the  
231 purposes of this chapter;

232 (g) encourage local units of government to handle air pollution within their respective  
233 jurisdictions on a cooperative basis and provide technical and consultative assistance to them;

234 (h) encourage and conduct studies, investigations, and research relating to air  
235 contamination and air pollution and their causes, effects, prevention, abatement, and control;

236 (i) determine by means of field studies and sampling the degree of air contamination  
237 and air pollution in all parts of the state;

238 (j) monitor the effects of the emission of air contaminants from motor vehicles on the  
239 quality of the outdoor atmosphere in all parts of this state and take appropriate action with  
240 respect to them;

241 (k) collect and disseminate information and conduct educational and training  
242 programs relating to air contamination and air pollution;

243 (l) advise, consult, contract, and cooperate with other agencies of the state, local  
244 governments, industries, other states, interstate or interlocal agencies, the federal government,  
245 and with interested persons or groups;

246 (m) consult, upon request, with any person proposing to construct, install, or otherwise  
247 acquire an air contaminant source in the state concerning the efficacy of any proposed control  
248 device, or system for this source, or the air pollution problem which may be related to the  
249 source, device, or system, but a consultation does not relieve any person from compliance with  
250 this chapter, the rules adopted under it, or any other provision of law;

251 (n) accept, receive, and administer grants or other funds or gifts from public and  
252 private agencies, including the federal government, for the purpose of carrying out any of the  
253 functions of this chapter;

254 (o) require the owner and operator of each new source which directly emits or has the  
255 potential to emit 100 tons per year or more of any air contaminant or the owner or operator of  
256 each existing source which by modification will increase emissions or have the potential of  
257 increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee  
258 sufficient to cover the reasonable costs of:

- 259 (i) reviewing and acting upon the notice required under Section 19-2-108; and
- 260 (ii) implementing and enforcing requirements placed on the sources by any approval  
261 order issued pursuant to notice, not including any court costs associated with any enforcement  
262 action;

263 (p) assess and collect noncompliance penalties as required in Section 120 of the  
264 federal Clean Air Act, 42 U.S.C. Sec. 7420;

265 (q) meet the requirements of federal air pollution laws;

266 (r) establish work practice, certification, and clearance air sampling requirements for  
267 persons who:

- 268 (i) contract for hire to conduct demolition, renovation, salvage, encapsulation work  
269 involving friable asbestos-containing materials, or asbestos inspections;
- 270 (ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public  
271 has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard  
272 Emergency Response Act of 1986;
- 273 (iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,  
274 Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or
- 275 (iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,  
276 Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;
- 277 (s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et  
278 seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to  
279 be accredited as inspectors, management planners, abatement project designers, asbestos  
280 abatement contractors and supervisors, or asbestos abatement workers;
- 281 (t) establish certification requirements for asbestos project monitors, which shall

282 provide for experience-based certification of persons who, prior to establishment of the  
283 certification requirements, had received relevant asbestos training, as defined by rule, and had  
284 acquired at least 1,000 hours of experience as project monitors;

285 (u) establish certification procedures and requirements for certification of the  
286 conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the  
287 tax credit granted in Section 59-7-605 or 59-10-1009;

288 (v) establish a program to certify private sector air quality permitting professionals  
289 (AQPP), as described in Section 19-2-109.5;

290 (w) establish certification requirements for persons required under 15 U.S.C.A. 2601  
291 et seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as  
292 inspectors, risk assessors, supervisors, project designers, or abatement workers; and

293 (x) assist the State Board of Education in adopting school bus idling reduction  
294 standards and implementing an idling reduction program in accordance with Section  
295 41-6a-1308.

296 (4) Any rules adopted under this chapter shall be consistent with provisions of federal  
297 laws, if any, relating to control of motor vehicles or motor vehicle emissions.

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

302 Section 4. Section **19-2-108** is amended to read:

303 **19-2-108. Notice of construction or modification of installations required --**  
304 **Authority of executive secretary to prohibit construction -- Hearings -- Limitations on**  
305 **authority of board -- Inspections authorized.**

306 (1) The board shall require that notice be given to the executive secretary by any  
307 person planning to construct a new installation which will or might reasonably be expected to  
308 be a source or indirect source of air pollution or to make modifications to an existing  
309 installation which will or might reasonably be expected to increase the amount of or change

310 the character or effect of air contaminants discharged, so that the installation may be expected  
311 to be a source or indirect source of air pollution, or by any person planning to install an air  
312 cleaning device or other equipment intended to control emission of air contaminants.

313 (2) (a) (i) The executive secretary may require, as a condition precedent to the  
314 construction, modification, installation, or establishment of the air contaminant source or  
315 indirect source, the submission of plans, specifications, and other information as he finds  
316 necessary to determine whether the proposed construction, modification, installation, or  
317 establishment will be in accord with applicable rules in force under this chapter.

318 (ii) Plan approval for an indirect source may be delegated by the executive secretary to  
319 a local authority when requested and upon assurance that the local authority has and will  
320 maintain sufficient expertise to insure that the planned installation will meet the requirements  
321 established by law.

322 (b) If within 90 days after the receipt of plans, specifications, or other information  
323 required under this subsection, the executive secretary determines that the proposed  
324 construction, installation, or establishment or any part of it will not be in accord with the  
325 requirements of this chapter or applicable rules or that further time, not exceeding three  
326 extensions of 30 days each, is required by the board to adequately review the plans,  
327 specifications, or other information, he shall issue an order prohibiting the construction,  
328 installation, or establishment of the air contaminant source or sources in whole or in part.

329 (3) In addition to any other remedies, any person aggrieved by the issuance of an order  
330 either granting or denying a request for the construction of a new installation, and prior to  
331 invoking any such other remedies shall, upon request, in accordance with the rules of the  
332 board, be entitled to a hearing conducted by an administrative law judge as provided by  
333 Section 19-1-301. Following the hearing[,-the] and the receipt by the board of the proposed  
334 dispositive action from the administrative law judge, the board may affirm, modify, or  
335 withdraw the permit [may be affirmed, modified, or withdrawn].

336 (4) Any features, machines, and devices constituting parts of or called for by plans,  
337 specifications, or other information submitted under Subsection (1) shall be maintained in

338 good working order.

339 (5) This section does not authorize the board to require the use of machinery, devices,  
340 or equipment from a particular supplier or produced by a particular manufacturer if the  
341 required performance standards may be met by machinery, devices, or equipment otherwise  
342 available.

343 (6) (a) Any authorized officer, employee, or representative of the board may enter and  
344 inspect any property, premise, or place on or at which an air contaminant source is located or  
345 is being constructed, modified, installed, or established at any reasonable time for the purpose  
346 of ascertaining the state of compliance with this chapter and the rules adopted under it.

347 (b) (i) A person may not refuse entry or access to any authorized representative of the  
348 board who requests entry for purposes of inspection and who presents appropriate credentials.

349 (ii) A person may not obstruct, hamper, or interfere with any inspection.

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

352 Section 5. Section **19-2-109.1** is amended to read:

353 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

354 (1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

355 (a) "EPA" means the federal Environmental Protection Agency.

356 (b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

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

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

361 (e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990  
362 Clean Air Act and implementing federal regulations.

363 (2) (a) A person may not operate any source of air pollution required to have a permit  
364 under Title V of the 1990 Clean Air Act without having obtained an operating permit from the  
365 executive secretary under procedures the board establishes by rule.

366 (b) A person is not required to submit an operating permit application until the  
367 governor has submitted an operating permit program to the EPA.

368 (c) Any operating permit issued under this section may not become effective until the  
369 day after the EPA issues approval of the permit program or November 15, 1995, whichever  
370 occurs first.

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

375 (b) The executive secretary may issue, modify, or renew an operating permit only after  
376 providing public notice, an opportunity for public comment, and an opportunity for a public  
377 hearing.

378 (c) The executive secretary shall, in conformity with the 1990 Clean Air Act and  
379 implementing federal regulations, revise the conditions of issued operating permits to  
380 incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990  
381 Clean Air Act, if the remaining period of the permit is three or more years.

382 (d) The executive secretary may terminate, modify, revoke, or reissue an operating  
383 permit for cause.

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

388 (b) In establishing the fee the board shall comply with the provisions of Section  
389 63J-1-303 that require a public hearing and require the established fee to be submitted to the  
390 Legislature for its approval as part of the department's annual appropriations request.

391 (c) The fee shall cover all reasonable direct and indirect costs required to develop and  
392 administer the program and the small business assistance program established under Section  
393 19-2-109.2. The board shall prepare an annual report of the emissions fees collected and the

394 costs covered by those fees under this Subsection (4).

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

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

399 (f) An emissions fee may not be assessed for any amount of a regulated pollutant  
400 emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

401 (5) Emissions fees for the period:

402 (a) of July 1, 1992, through June 30, 1993, shall be based on the most recent  
403 emissions inventory prepared by the executive secretary; and

404 (b) on and after July 1, 1993, but prior to issuance of an operating permit, shall be  
405 based on the most recent emissions inventory, unless a source elects prior to July 1, 1992, to  
406 base the fee on allowable emissions, if applicable for a regulated pollutant.

407 (6) After an operating permit is issued the emissions fee shall be based on actual  
408 emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a  
409 permit, to base the fee during the period of the permit on allowable emissions for that  
410 regulated pollutant.

411 (7) If the owner or operator of a source subject to this section fails to timely pay an  
412 annual emissions fee, the executive secretary may:

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

415 (b) revoke the operating permit.

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

419 (a) The owner or operator must pay the fee under protest prior to being entitled to a  
420 hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to  
421 contest the fee or penalty under this section.

422 (b) A request for a hearing under this subsection shall be made after payment of the  
423 emissions fee and within six months after the emissions fee was due.

424 (9) To reinstate an operating permit revoked under Subsection (7) the owner or  
425 operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all  
426 outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

427 (10) All emissions fees and penalties collected by the department under this section  
428 shall be deposited in the General Fund as the Air Pollution Operating Permit Program  
429 dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred  
430 by the department in developing and administering the program and the small business  
431 assistance program under Section 19-2-109.2.

432 (11) Failure of the executive secretary to act on any operating permit application or  
433 renewal is a final administrative action only for the purpose of obtaining judicial review by  
434 any of the following persons to require the executive secretary to take action on the permit or  
435 its renewal without additional delay:

436 (a) the applicant;

437 (b) any person who participated in the public comment process; or

438 (c) any other person who could obtain judicial review of that action under applicable  
439 law.

440 Section 6. Section **19-2-109.5** is amended to read:

441 **19-2-109.5. Private sector air quality permitting professionals certification**  
442 **program.**

443 (1) As used in this section, "AQPP" means an air quality permitting professional.

444 (2) The board may establish a program to certify private sector AQPPs, including  
445 consultants and employees of companies that may seek air quality permits from the division.  
446 Any program established under this section shall include:

447 (a) a training program established and operated by the department, which describes  
448 and explains the state law and rules regarding the air quality permit application and approval  
449 procedure under this chapter;



450 (b) the requirement to pass an exam to measure qualifications of AQPP applicants;

451 (c) an option for certification of an AQPP by passing the exam without undergoing  
452 any training required under the program;

453 (d) an application process, including a fee established under Section 63J-1-303 that  
454 covers the costs of the training, testing, and application process and the department's  
455 maintenance of a list of certified AQPPs;

456 (e) certification of qualified AQPP applicants;

457 (f) maintenance by the department of a current list of certified AQPPs, which is  
458 available to the public;

459 (g) procedures for the expedited review by the department of air quality permit  
460 applications submitted by certified AQPPs; and

461 (h) professional standards for AQPPs.

462 (3) The board may not require AQPP certification as a condition of preparing or  
463 submitting a notice of intent or operating permit application under this chapter.

464 (4) Any program under this section shall provide for revocation of any certification  
465 issued under this section if the department determines, through an administrative hearing  
466 conducted under Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301,  
467 that the AQPP:

468 (a) knowingly or negligently submitted false information or data as part of an air  
469 quality permit application;

470 (b) prepared more than three air quality permit applications in one calendar year in a  
471 manner that each did not substantially comply with department application requirements; or

472 (c) prepared any air quality permit application in violation of the professional  
473 standards defined by department rule.

474 Section 7. Section **19-2-110** is amended to read:

475 **19-2-110. Violations -- Notice to violator -- Corrective action orders --**

476 **Conference, conciliation, and persuasion by board -- Hearings.**

477 (1) (a) Whenever the executive secretary has reason to believe that a violation of any

478 provision of this chapter or any rule issued under it has occurred, he may serve written notice  
479 of the violation upon the alleged violator. The notice shall specify the provision of this  
480 chapter or rule alleged to be violated, the facts alleged to constitute the violation, and may  
481 include an order that necessary corrective action be taken within a reasonable time.

482 (b) In lieu of beginning an adjudicative proceeding under Subsection (1)(a), the board  
483 may initiate an action pursuant to Section 19-2-115.

484 (2) Nothing in this chapter prevents the board from making efforts to obtain voluntary  
485 compliance through warning, conference, conciliation, persuasion, or other appropriate means.

486 (3) Hearings may be held before[:] an administrative law judge as provided by Section  
487 19-1-301.

488 [~~(a) the board;~~]

489 [~~(b) a hearing examiner of the board; or~~]

490 [~~(c) a board member especially appointed by the board to hold the hearing.~~]

491 Section 8. Section **19-2-112** is amended to read:

492 **19-2-112. Generalized condition of air pollution creating emergency -- Sources**  
493 **causing imminent danger to health -- Powers of executive director -- Declaration of**  
494 **emergency.**

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

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

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

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

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

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

514 Section 9. Section **19-3-103.5** is amended to read:

515 **19-3-103.5. Board authority and duties.**

516 (1) The board may:

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

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

523 (c) (i) hold ~~hearings~~ a hearing that is not an adjudicative proceeding and compel the  
524 attendance of witnesses, the production of documents, and other evidence, administer oaths  
525 and take testimony, and receive evidence it finds proper, or appoint hearing officers to conduct  
526 a hearing that is not an adjudicative proceeding and authorize them to exercise the powers  
527 under this Subsection (1);

528 (ii) receive a proposed dispositive action from an administrative law judge as provided  
529 by Section 19-1-301; and

530 (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
531 action; or

532 (B) return the proposed dispositive action to the administrative law judge for further  
533 action as directed;

- 534 (d) settle or compromise any administrative or civil action initiated to compel  
535 compliance with this part or any rules adopted under this part;
- 536 (e) advise, consult, cooperate with, and provide technical assistance to other agencies  
537 of the state and federal government, other states, interstate agencies, and affected groups,  
538 political subdivisions, industries, and other persons in carrying out the provisions of this part;
- 539 (f) promote the planning and application of pollution prevention and radioactive waste  
540 minimization measures to prevent the unnecessary waste and depletion of natural resources;
- 541 (g) cooperate with any persons in studies, research, or demonstration projects  
542 regarding radioactive waste management or control of radiation sources;
- 543 (h) accept, receive, and administer grants or other funds or gifts from public and  
544 private agencies, including the federal government, for the purpose of carrying out any of the  
545 functions of this part;
- 546 (i) exercise all incidental powers necessary to carry out the purposes of this part;
- 547 (j) submit an application to the U.S. Food and Drug Administration for approval as an  
548 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of  
549 1992;
- 550 (k) accredit mammography facilities, pursuant to approval as an accrediting body from  
551 the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography  
552 Quality Standards Act of 1992; and
- 553 (l) review the qualifications of and issue certificates of approval to individuals who  
554 survey mammography equipment and oversee quality assurance practices at mammography  
555 facilities.
- 556 (2) The board shall:
- 557 (a) ~~[hear appeals]~~ receive a proposed dispositive action from an administrative law  
558 judge on an appeal of final decisions made by the executive secretary ~~[or appoint a hearing~~  
559 ~~officer to hear the appeal and make recommendations to the board]~~ as provided by Section  
560 19-1-301;
- 561 (b) prepare a radioactive waste management plan in compliance with Section

562 19-3-107 as soon as practicable; and

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

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

568 Section 10. Section **19-4-104** is amended to read:

569 **19-4-104. Powers of board.**

570 (1) The board may:

571 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
572 Rulemaking Act:

573 (i) establishing standards that prescribe the maximum contaminant levels in any  
574 public water system and provide for monitoring, record-keeping, and reporting of water  
575 quality related matters;

576 (ii) governing design, construction, operation, and maintenance of public water  
577 systems;

578 (iii) granting variances and exemptions to the requirements established under this  
579 chapter that are not less stringent than those allowed under federal law;

580 (iv) protecting watersheds and water sources used for public water systems; and

581 (v) governing capacity development in compliance with Section 1420 of the federal  
582 Safe Drinking Water Act, 42 U.S.C.A. 300f et seq.;

583 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders  
584 by appropriate administrative and judicial proceedings, and institute judicial proceedings to  
585 secure compliance with this chapter;

586 (c) (i) hold [~~hearings~~] a hearing that is not an adjudicative proceeding relating to the  
587 administration of this chapter and compel the attendance of witnesses, the production of  
588 documents and other evidence, administer oaths and take testimony, and receive evidence as  
589 necessary; [~~or~~]

590 (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding  
591 and authorize them to exercise powers under [~~this~~] Subsection (1)(c)(i);

592 (iii) receive a proposed dispositive action from an administrative law judge as  
593 provided by Section 19-1-301; and

594 (iv) (A) approve, approve with modifications, or disapprove a proposed dispositive  
595 action; or

596 (B) return the proposed dispositive action to the administrative law judge for further  
597 action as directed;

598 (d) require the submission to the executive secretary of plans and specifications for  
599 construction of, substantial addition to, or alteration of public water systems for review and  
600 approval by the board before that action begins and require any modifications or impose any  
601 conditions that may be necessary to carry out the purposes of this chapter;

602 (e) advise, consult, cooperate with, provide technical assistance to, and enter into  
603 agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,  
604 municipalities, local health departments, educational institutions, or others necessary to carry  
605 out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of  
606 local jurisdictions;

607 (f) request and accept financial assistance from other public agencies, private entities,  
608 and the federal government to carry out the purposes of this chapter;

609 (g) develop and implement an emergency plan to protect the public when declining  
610 drinking water quality or quantity creates a serious health risk and issue emergency orders if a  
611 health risk is imminent;

612 (h) authorize employees or agents of the department, after reasonable notice and  
613 presentation of credentials, to enter any part of a public water system at reasonable times to  
614 inspect the facilities and water quality records required by board rules, conduct sanitary  
615 surveys, take samples, and investigate the standard of operation and service delivered by  
616 public water systems;

617 (i) meet the requirements of federal law related or pertaining to drinking water; and

618 (j) exercise all other incidental powers necessary to carry out the purpose of this  
619 chapter.

620 (2) (a) The board may adopt and enforce standards and establish fees for certification  
621 of operators of any public water system.

622 (b) The board may not require certification of operators for a water system serving a  
623 population of 800 or less except:

624 (i) to the extent required for compliance with Section 1419 of the federal Safe  
625 Drinking Water Act, 42 U.S.C.A. 300f et seq.; and

626 (ii) for a system that is required to treat its drinking water.

627 (c) The certification program shall be funded from certification and renewal fees.

628 (3) Routine extensions or repairs of existing public water systems that comply with the  
629 rules and do not alter the system's ability to provide an adequate supply of water are exempt  
630 from the provisions of Subsection (1)(d).

631 (4) (a) The board may adopt and enforce standards and establish fees for certification  
632 of persons engaged in administering cross connection control programs or backflow  
633 prevention assembly training, repair, and maintenance testing.

634 (b) The certification program shall be funded from certification and renewal fees.

635 Section 11. Section **19-5-111** is amended to read:

636 **19-5-111. Notice of violations -- Hearings.**

637 (1) Whenever the board determines there are reasonable grounds to believe that there  
638 has been a violation of this chapter or any order of the board, it may give written notice to the  
639 alleged violator specifying the provisions that have been violated and the facts that constitute  
640 the violation.

641 (2) The notice shall require that the matters complained of be corrected.

642 (3) The notice may order the alleged violator to appear before ~~[the board]~~ an  
643 administrative law judge as provided by Section 19-1-301 at a time and place specified in the  
644 notice and answer the charges.

645 Section 12. Section **19-5-112** is amended to read:

646 **19-5-112. Hearings conducted by an administrative law judge -- Decisions on**  
647 **denial or revocation of permit conducted by executive director.**

648 (1) (a) ~~[The]~~ Except as provided by Subsection (2), an administrative law judge shall  
649 conduct hearings authorized by Section 19-5-111~~[, except hearings for a person who is denied~~  
650 ~~a permit or whose permit has been revoked, may be conducted by the board at a regular or~~  
651 ~~special meeting, or by an examining officer designated by the board]~~ in accordance with  
652 Section 19-1-301.

653 (b) All decisions shall be rendered by a majority of the board.

654 ~~[(2) (a) A hearing for a person who has been denied a permit, or who has had a permit~~  
655 ~~revoked, shall be conducted before the executive director or his designee.]~~

656 (2) (a) An administrative law judge shall conduct, on the executive director's behalf, a  
657 hearing regarding an appeal of a permit decision for which the state has assumed primacy  
658 under the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

659 (b) Notwithstanding Subsection 19-1-301(6), the administrative law judge shall  
660 submit to the executive director a proposed dispositive action.

661 (c) The executive director may:

662 (i) approve, approve with modifications, or disapprove a proposed dispositive action  
663 submitted to the executive director under Subsection (2)(b); or

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

666 ~~[(b)]~~ (d) The decision of the executive director is final and binding on all parties as a  
667 final determination of the board unless stayed or overturned on appeal.

668 Section 13. Section **19-6-104** is amended to read:

669 **19-6-104. Powers of board -- Creation of statewide solid waste management**  
670 **plan.**

671 (1) The board shall:

672 (a) survey solid and hazardous waste generation and management practices within this  
673 state and, after public hearing and after providing opportunities for comment by local



674 governmental entities, industry, and other interested persons, prepare and revise, as necessary,  
675 a waste management plan for the state;

676 (b) carry out inspections pursuant to Section 19-6-109;

677 (c) (i) hold ~~[hearings]~~ a hearing that is not an adjudicative proceeding and compel the  
678 attendance of witnesses, the production of documents, and other evidence, administer oaths  
679 and take testimony, and receive evidence it finds proper, or appoint hearing officers to conduct  
680 a hearing that is not an adjudicative proceeding who shall be delegated these powers;

681 (ii) receive a proposed dispositive action from an administrative law judge as provided  
682 by Section 19-1-301; and

683 (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
684 action; or

685 (B) return the proposed dispositive action to the administrative law judge for further  
686 action as directed;

687 (d) issue orders necessary to effectuate the provisions of this part and implementing  
688 rules and enforce them by administrative and judicial proceedings, and cause the initiation of  
689 judicial proceedings to secure compliance with this part;

690 (e) settle or compromise any administrative or civil action initiated to compel  
691 compliance with this part and any rules adopted under this part;

692 (f) require submittal of specifications or other information relating to hazardous waste  
693 plans for review, and approve, disapprove, revoke, or review the plans;

694 (g) advise, consult, cooperate with, and provide technical assistance to other agencies  
695 of the state and federal government, other states, interstate agencies, and affected groups,  
696 political subdivisions, industries, and other persons in carrying out the purposes of this part;

697 (h) promote the planning and application of resource recovery systems to prevent the  
698 unnecessary waste and depletion of natural resources;

699 (i) meet the requirements of federal law related to solid and hazardous wastes to insure  
700 that the solid and hazardous wastes program provided for in this part is qualified to assume  
701 primacy from the federal government in control over solid and hazardous waste;

702 (j) (i) require any facility, including those listed in Subsection (1)(j)(ii), that is intended  
703 for disposing of nonhazardous solid waste or wastes listed in Subsection (1)(j)(ii)(B) to submit  
704 plans, specifications, and other information required by the board to the board prior to  
705 construction, modification, installation, or establishment of a facility to allow the board to  
706 determine whether the proposed construction, modification, installation, or establishment of  
707 the facility will be in accordance with rules made under this part;

708 (ii) facilities referred to in Subsection (1)(j)(i) include:

709 (A) any incinerator that is intended for disposing of nonhazardous solid waste; and

710 (B) except for facilities that receive the following wastes solely for the purpose of  
711 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or  
712 disposal, and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or  
713 flue gas emission control waste generated primarily from the combustion of coal or other fossil  
714 fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or  
715 cement kiln dust wastes; and

716 (k) exercise all other incidental powers necessary to carry out the purposes of this part.

717 (2) (a) The board shall establish a comprehensive statewide solid waste management  
718 plan by January 1, 1994.

719 (b) The plan shall:

720 (i) incorporate the solid waste management plans submitted by the counties;

721 (ii) provide an estimate of solid waste capacity needed in the state for the next 20  
722 years;

723 (iii) assess the state's ability to minimize waste and recycle;

724 (iv) evaluate solid waste treatment, disposal, and storage options, as well as solid  
725 waste needs and existing capacity;

726 (v) evaluate facility siting, design, and operation;

727 (vi) review funding alternatives for solid waste management; and

728 (vii) address other solid waste management concerns that the board finds appropriate  
729 for the preservation of the public health and the environment.

730 (c) The board shall consider the economic viability of solid waste management  
731 strategies prior to incorporating them into the plan and shall consider the needs of population  
732 centers.

733 (d) The board shall review and modify the comprehensive statewide solid waste  
734 management plan no less frequently than every five years.

735 (3) (a) The board shall determine the type of solid waste generated in the state and  
736 tonnage of solid waste disposed of in the state in developing the comprehensive statewide  
737 solid waste management plan.

738 (b) The board shall review and modify the inventory no less frequently than once every  
739 five years.

740 (4) Subject to the limitations contained in Subsection 19-6-102(18)(b), the board shall  
741 establish siting criteria for nonhazardous solid waste disposal facilities, including incinerators.

742 Section 14. Section **19-6-704** is amended to read:

743 **19-6-704. Powers and duties of the board.**

744 (1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative  
745 Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279,  
746 Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil  
747 under 40 CFR 279. For these purposes the board shall:

748 ~~[(a) conduct adjudicative hearings as required in this part under Title 63G, Chapter 4,~~  
749 ~~Administrative Procedures Act;]~~

750 (a) (i) receive a proposed dispositive action from an administrative law judge as  
751 provided by Section 19-1-301; and

752 (ii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
753 action; or

754 (B) return the proposed dispositive action to the administrative law judge for further  
755 action as directed;

756 (b) establish by rule conditions and procedures for registration and revocation of  
757 registration as a used oil collection center, used oil aggregation point, or DIYer used oil

758 collection center;

759 (c) provide by rule that used oil aggregation points that do not accept DIYer used oil  
760 are required to comply with used oil collection standards under this part, but are not required  
761 to be permitted or registered;

762 (d) establish by rule conditions and fees required to obtain permits and operate as used  
763 oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil fuel  
764 marketers;

765 (e) establish by rule the amount of liability insurance or other financial responsibility  
766 the applicant shall have to qualify for a permit under Subsection (1)(d);

767 (f) establish by rule the form and amount of reclamation surety required for  
768 reclamation of any site or facility required to be permitted under this part;

769 (g) after public notice and opportunity for a public hearing, hear and act on permit  
770 issues appealed under Subsection 19-6-712(2);

771 (h) establish by rule standards for tracking, analysis, and recordkeeping regarding used  
772 oil subject to regulation under this part, including:

773 (i) manifests for handling and transferring used oil;

774 (ii) analyses necessary to determine if used oil is on-specification or off-specification;

775 (iii) records documenting date, quantities, and character of used oil transported,  
776 processed, transferred, or sold;

777 (iv) records documenting persons between whom transactions under this subsection  
778 occurred; and

779 (v) exemption of DIYer used oil collection centers from this subsection except as  
780 necessary to verify volumes of used oil picked up by a permitted transporter and the  
781 transporter's name and federal EPA identification number;

782 (i) authorize inspections and audits of facilities, centers, and operations subject to  
783 regulation under this part;

784 (j) establish by rule standards for:

785 (i) used oil generators;

- 786 (ii) used oil collection centers;
- 787 (iii) DIYer used oil collection centers;
- 788 (iv) aggregation points;
- 789 (v) curbside used oil collection programs;
- 790 (vi) used oil transporters;
- 791 (vii) used oil transfer facilities;
- 792 (viii) used oil burners;
- 793 (ix) used oil processors and rerefiners; and
- 794 (x) used oil marketers;
- 795 (k) establish by rule standards for determining on-specification and off-specification
- 796 used oil and specified mixtures of used oil, subject to Section 19-6-707 regarding rebuttable
- 797 presumptions;
- 798 (l) establish by rule standards for closure, remediation, and response to releases
- 799 involving used oil; and
- 800 (m) establish a public education program to promote used oil recycling and use of
- 801 used oil collection centers.
- 802 (2) The board may:
- 803 (a) (i) hold [hearings] a hearing that is not an adjudicative proceeding relating to any
- 804 aspect of or matter in the administration of this part and compel the attendance of witnesses
- 805 and the production of documents and other evidence, administer oaths and take testimony, and
- 806 receive evidence as necessary;
- 807 (ii) receive a proposed dispositive action from an administrative law judge as provided
- 808 by Section 19-1-301; and
- 809 (iii) (A) approve, approve with modifications, or disapprove a proposed dispositive
- 810 action; or
- 811 (B) return the proposed dispositive action to the administrative law judge for further
- 812 action as directed;
- 813 (b) require retention and submission of records required under this part; and

814 (c) require audits of records and recordkeeping procedures required under this part and  
815 rules made under this part, except that audits of records regarding the fee imposed and  
816 collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of  
817 the commission under Section 19-6-716.

818 Section 15. **Repealer.**

819 This bill repeals:

820 Section **19-2-111, Review of orders of hearing examiner -- Procedure.**