

26 procedures;

27 ▶ provides for the executive director of the Department of Environmental Quality to
28 take final dispositive action on an adjudicative proceeding under Title 19,
29 Environmental Quality Code;

30 ▶ transfers powers and duties from a board to a division director;

31 ▶ provides for certain division boards to approve enforcement settlements negotiated
32 by a division director that exceed \$25,000; and

33 ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill provides an effective date.

37a **H→ This bill coordinates with S.B. 11, Department of Environmental Quality Boards**
37b **Adjudicative Proceedings, by providing substantive and technical amendments.** ←H

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **19-1-105**, as enacted by Laws of Utah 1991, Chapter 112

41 **19-1-201**, as last amended by Laws of Utah 2010, Chapter 17

42 **19-1-301**, as last amended by Laws of Utah 2009, Chapter 377

43 **19-2-102**, as last amended by Laws of Utah 2008, Chapter 68

44 **19-2-103**, as last amended by Laws of Utah 2010, Chapter 286

45 **19-2-104**, as last amended by Laws of Utah 2011, Chapter 174

46 **19-2-105**, as last amended by Laws of Utah 2005, Chapter 2

47 **19-2-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112

48 **19-2-108**, as last amended by Laws of Utah 2009, Chapter 377

49 **19-2-109**, as last amended by Laws of Utah 2010, Chapter 90

50 **19-2-109.1**, as last amended by Laws of Utah 2011, Chapter 297

51 **19-2-109.2**, as last amended by Laws of Utah 2010, Chapters 286 and 324

52 **19-2-110**, as last amended by Laws of Utah 2009, Chapter 377

53 **19-2-115**, as last amended by Laws of Utah 2011, Chapter 297

54 **19-2-116**, as renumbered and amended by Laws of Utah 1991, Chapter 112

55 **19-2-117**, as renumbered and amended by Laws of Utah 1991, Chapter 112

56 **19-2-120**, as renumbered and amended by Laws of Utah 1991, Chapter 112

- 150 **19-8-106**, as enacted by Laws of Utah 1997, Chapter 247
 151 **19-8-119**, as last amended by Laws of Utah 2009, Chapter 356
 152 **41-6a-1644**, as last amended by Laws of Utah 2009, Chapter 333
 153 **59-1-403**, as last amended by Laws of Utah 2011, Chapters 46, 344, and 410
 154 **72-6-106.5**, as enacted by Laws of Utah 2009, Chapter 340

154a **Ĥ→ Utah Code Sections Affected by Coordination Clause:**

- 154b **19-1-201, as last amended by Laws of Utah, 2010, Chapter 17**
 154c **19-1-301, as last amended by Laws of Utah, 2009, Chapter 377**
 154d **19-1-301.5, Utah Code Annotated 1953 ←Ĥ**

155
 156 *Be it enacted by the Legislature of the state of Utah:*

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

158 **19-1-105. Divisions of department -- Control by division directors.**

159 (1) The following divisions are created within the department:

160 (a) the Division of Air Quality, to administer Title 19, Chapter 2, Air Conservation

161 Act;

162 (b) the Division of Drinking Water, to administer Title 19, Chapter 4, Safe Drinking

163 Water Act;

164 (c) the Division of Environmental Response and Remediation, to administer:

165 (i) Title 19, Chapter 6, [~~Parts 3 and 4~~] Part 3, Hazardous Substances Mitigation Act;

166 and

167 (ii) Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

168 (d) the Division of Radiation Control, to administer Title 19, Chapter 3, Radiation

169 Control Act;

170 (e) the Division of Solid and Hazardous Waste, to administer:

171 (i) Title 19, Chapter 6, [~~Parts 1, 2, and 5~~] Part 1, Solid and Hazardous Waste Act; [and]

172 (ii) Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;

173 (iii) Title 19, Chapter 6, Part 5, Solid Waste Management Act;

174 (iv) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal;

175 (v) Title 19, Chapter 6, Part 7, Used Oil Management Act;

176 (vi) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act;

177 (vii) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act;

178 (viii) Title 19, Chapter 6, Part 11, Industrial Byproduct Reuse; and

179 (ix) Title 19, Chapter 6, Part 12, Disposal of Electronic Waste Program; and

180 (f) the Division of Water Quality, to administer Title 19, Chapter 5, Water Quality Act.

367 accessories of them, installed or acquired for the primary purpose of controlling or disposing of
368 air pollution.

369 (b) "Facility" does not include an air conditioner, fan, or other similar facility for the
370 comfort of personnel.

371 [~~(12)~~] (13) "Friable asbestos-containing material" means any material containing more
372 than 1% asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M,
373 National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce
374 to powder when dry.

375 [~~(13)~~] (14) "Indirect source" means a facility, building, structure, or installation which
376 attracts or may attract mobile source activity that results in emissions of a pollutant for which
377 there is a national standard.

378 [~~(14)~~] (15) (a) "Pollution control facility" or "facility" means, as used in Sections
379 19-2-123 through 19-2-126, any land, structure, building, installation, excavation, machinery,
380 equipment, or device, or any addition to, reconstruction, replacement or improvement of, land
381 or an existing structure, building, installation, excavation, machinery, equipment, or device
382 reasonably used, erected, constructed, acquired, or installed by any person if the primary
383 purpose of the use, erection, construction, acquisition, or installation is the prevention, control,
384 or reduction of air or water pollution by:

385 (i) the disposal or elimination of or redesign to eliminate waste and the use of treatment
386 works for industrial waste as defined in Title 19, Chapter 5, Water Quality Act; or

387 (ii) the disposal, elimination, or reduction of or redesign to eliminate or reduce air
388 contaminants or air pollution or air contamination sources and the use of air cleaning devices.

389 (b) "Pollution control facility" or "facility" does not include air conditioners, septic
390 tanks, or other facilities for human waste, nor any property installed, constructed, or used for
391 the moving of sewage to the collection facilities of a public or quasi-public sewerage system.

392 Section 5. Section **19-2-103** is amended to read:

393 **19-2-103. Members of board -- Appointment -- Terms -- Organization -- Per diem**
394 **and expenses.**

395 (1) The board [~~comprises 11 members, one of whom shall be~~] consists of the following
396 nine members:

397 (a) ~~H~~→ the following non-voting member, except that the member may vote to break a
397a tie vote between the voting members: ←~~H~~

397b (i) the executive director [~~and 10 of whom~~]; or

- 398 (ii) an employee of the department designated by the executive director; and
 399 (b) the following eight ~~H~~→ **voting** ←~~H~~ members, who shall be appointed by the
 399a governor with the
 400 consent of the Senate[-]:
 401 (i) one representative who:
 402 (A) is not connected with industry;
 403 (B) is an expert in air quality matters; and
 404 (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist
 405 with relevant training and experience;
 406 (ii) two government representatives who do not represent the federal government;
 407 (iii) one representative from the mining industry;
 408 (iv) one representative from the fuels industry;
 409 (v) one representative from the manufacturing industry;
 410 (vi) one representative from the public who represents ~~H~~→ [a ~~S~~→ **nongovernmental**
 410a **environmental ←~~S~~**
 411 **organization;] :**
 411a **(A) an environmental nongovernmental organization; or**
 411b **(B) a nongovernmental organization that represents community interests and does not**
 411c **represent industry interests; ←~~H~~ and**
 412 (vii) one representative from the public who is trained and experienced in public
 413 health.
 414 (2) [~~The members~~] A member of the board shall:
 415 (a) be knowledgeable [of] about air pollution matters [~~and shall be~~], as evidenced by a
 416 professional degree, a professional accreditation, or documented experience;
 417 [(a) a practicing physician and surgeon licensed in the state not connected with
 418 industry;]
 419 [(b) a registered professional engineer who is not from industry;]
 420 [(c) a representative from municipal government;]
 421 [(d) a representative from county government;]
 422 [(e) a representative from agriculture;]
 423 [(f) a representative from the mining industry;]
 424 [(g) a representative from manufacturing;]
 425 [(h) a representative from the fuel industry; and]
 426 [(i) two representatives of the public not representing or connected with industry, at
 427 least one of whom represents organized environmental interests.];
 428 (b) be a resident of Utah;

1111 (6) "Division" means the Division of Radiation Control, created in Subsection
 1112 19-1-105(1)(d).

1113 [~~(6)~~] (7) "Generator" means a person who:

1114 (a) possesses any material or component:

1115 (i) that contains radioactivity or is radioactively contaminated; and

1116 (ii) for which the person foresees no further use; and

1117 (b) transfers the material or component to:

1118 (i) a commercial radioactive waste treatment or disposal facility; or

1119 (ii) a broker.

1120 [~~(7)~~] (8) (a) "High-level nuclear waste" means spent reactor fuel assemblies,
 1121 dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and
 1122 defense-related wastes.

1123 (b) "High-level nuclear waste" does not include medical or institutional wastes,
 1124 naturally-occurring radioactive materials, or uranium mill tailings.

1125 [~~(8)~~] (9) (a) "Low-level radioactive waste" means waste material which contains
 1126 radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or
 1127 quantities which exceed applicable federal or state standards for unrestricted release.

1128 (b) "Low-level radioactive waste" does not include waste containing more than 100
 1129 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor
 1130 material classified as either high-level waste or waste which is unsuited for disposal by
 1131 near-surface burial under any applicable federal regulations.

1132 [~~(9)~~] (10) "Radiation" means ionizing and nonionizing radiation, including gamma
 1133 rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

1134 [~~(10)~~] (11) "Radioactive" means any solid, liquid, or gas which emits radiation
 1135 spontaneously from decay of unstable nuclei.

1136 Section 19. Section **19-3-103** is amended to read:

1137 **19-3-103. Radiation Control Board -- Members -- Organization -- Meetings -- Per**
 1138 **diem and expenses.**

1139 (1) The board [~~created under Section 19-1-106 comprises 13~~] consists of the following
 1140 nine members[~~, one of whom shall be~~]:

1141 (a) ~~H~~→ the following non-voting member, except that the member may vote to break a
 1141a tie vote between the voting members: ←~~H~~

1141b (i) the executive director[~~;~~]; or [~~his designee, and the remainder of whom shall be~~]

1142 (ii) an employee of the department designated by the executive director; and
 1143 (b) the following eight ~~H~~→ **voting** ←~~H~~ members, who shall be appointed by the
 1143a governor with the
 1144 consent of the Senate[-]:

1145 (i) one representative who is:

1146 (A) a health physicist; or

1147 (B) a professional employed in the field of radiation safety;

1148 (ii) two government representatives who do not represent the federal government;

1149 (iii) one representative from the radioactive waste management industry;

1150 (iv) one representative from the uranium milling industry;

1151 (v) one representative from the regulated industry who is knowledgeable about
 1152 radiation control regulatory issues;

1153 (vi) one representative from the public who represents ~~H~~→ [a ~~S~~→ **nongovernmental**

1153a **environmental** ←~~S~~

1154 **organization;**] :

1154a **(A) an environmental nongovernmental organization; or**

1154b **(B) a nongovernmental organization that represents community interests and does not**
 1154c **represent industry interests;** ←~~H~~ and

1155 (vii) one representative from the public who is trained and experienced in public
 1156 health.

1157 [~~2~~] No more than six appointed members shall be from the same political party.]

1158 [~~3~~] (2) [The appointed members] A member of the board shall:

1159 (a) be knowledgeable about radiation protection [and shall be as follows:], as
 1160 evidenced by a professional degree, a professional accreditation, or documented experience;

1161 [~~(a) one physician;~~]

1162 [~~(b) one dentist;~~]

1163 [~~(c) one health physicist or other professional employed in the field of radiation safety;~~]

1164 [~~(d) three representatives of regulated industry, at least one of whom represents the~~
 1165 radioactive waste management industry, and at least one of whom represents the uranium
 1166 milling industry;]

1167 [~~(e) one registrant or licensee representative from academia;~~]

1168 [~~(f) one representative of a local health department;~~]

1169 [~~(g) one elected county official; and~~]

1170 [~~(h) three members of the general public, at least one of whom represents organized~~
 1171 environmental interests;]

1172 (b) be a resident of Utah;

1576 19-1-105(1)(b).

1577 [~~4~~] (5) (a) "Groundwater source" means an underground opening from or through
1578 which groundwater flows or is pumped from a subsurface water-bearing formation.

1579 (b) "Groundwater source" includes:

1580 (i) a well;

1581 (ii) a spring;

1582 (iii) a tunnel; or

1583 (iv) an adit.

1584 [~~5~~] (6) "Maximum contaminant level" means the maximum permissible level of a
1585 contaminant in water that is delivered to a user of a public water system.

1586 [~~6~~] (7) (a) "Public water system" means a system providing water for human
1587 consumption and other domestic uses that:

1588 (i) has at least 15 service connections; or

1589 (ii) serves an average of 25 individuals daily for at least 60 days of the year.

1590 (b) "Public water system" includes:

1591 (i) a collection, treatment, storage, or distribution facility under the control of the
1592 operator and used primarily in connection with the system; and

1593 (ii) a collection, pretreatment, or storage facility used primarily in connection with the
1594 system but not under the operator's control.

1595 [~~7~~] (8) "Retail water supplier" means a person that:

1596 (a) supplies water for human consumption and other domestic uses to an end user; and

1597 (b) has more than 500 service connections.

1598 [~~8~~] (9) "Supplier" means a person who owns or operates a public water system.

1599 [~~9~~] (10) "Wholesale water supplier" means a person that provides most of that
1600 person's water to a retail water supplier.

1601 Section 28. Section **19-4-103** is amended to read:

1602 **19-4-103. Drinking Water Board -- Members -- Organization -- Meetings -- Per**
1603 **diem and expenses.**

1604 (1) The board [~~created under Section 19-1-106 comprises 11 members, one of whom~~
1605 ~~is] consists of the following nine members:~~

1606 (a) **Ĥ→ the following non-voting member, except that the member may vote to break a**
1606a **tie vote between the voting members: ←Ĥ**

1606b (i) the executive director [~~and the remainder of whom]; or~~

1607 (ii) an employee of the department designated by the executive director; and
 1608 (b) the following eight ~~H~~→ **voting** ←~~H~~ members, who shall be appointed by the
 1608a governor with the
 1609 consent of the Senate[-]:

1610 (i) one representative who is a Utah-licensed professional engineer with expertise in
 1611 civil or sanitary engineering;

1612 (ii) two representatives who are elected officials from a municipal government that is
 1613 involved in the management or operation of a public water system;

1614 (iii) one representative from an improvement district, a water conservancy district, or a
 1615 metropolitan water district;

1616 (iv) one representative from an entity that manages or operates a public water system;

1617 (v) one representative from:

1618 (A) the state water research community; or

1619 (B) an institution of higher education that has comparable expertise in water research
 1620 to the state water research community;

1621 (vi) one representative from the public who represents ~~H~~→ [a ~~S~~→ **nongovernmental**

1621a **environmental** ←~~S~~

1622 **organization;**] :

1622a **(A) an environmental nongovernmental organization; or**

1622b **(B) a nongovernmental organization that represents community interests and does not**

1622c **represent industry interests;** ←~~H~~ and

1623 (vii) one representative from the public who is trained and experienced in public
 1624 health.

1625 ~~[(2) No more than five appointed members shall be from the same political party.]~~

1626 ~~[(3)] (2) [The appointed members] A member of the board shall:~~

1627 (a) be knowledgeable about drinking water and public water systems [and shall], as
 1628 evidenced by a professional degree, a professional accreditation, or documented experience;

1629 (b) represent different geographical areas within the state insofar as practicable[-];

1630 (c) be a resident of Utah;

1631 (d) attend board meetings in accordance with the attendance rules made by the
 1632 department under Subsection 19-1-201(1)(d)(i)(A); and

1633 (e) comply with all applicable statutes, rules, and policies, including the conflict of
 1634 interest rules made by the department under Subsection 19-1-201(1)(d)(ii)(B).

1635 (3) No more than five appointed members of the board shall be from the same political
 1636 party.

1637 ~~[(4) The 10 appointed members shall be appointed from the following areas:]~~

1886 of a pollutant that a body of water can receive and still meet water quality standards.

1887 ~~[(18)]~~ (19) "Treatment works" means any plant, disposal field, lagoon, dam, pumping
1888 station, incinerator, or other works used for the purpose of treating, stabilizing, or holding
1889 wastes.

1890 ~~[(19)]~~ (20) "Underground injection" means the subsurface emplacement of fluids by
1891 well injection.

1892 ~~[(20)]~~ (21) "Underground wastewater disposal system" means a system for disposing of
1893 domestic wastewater discharges as defined by the board and the executive director.

1894 ~~[(21)]~~ (22) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator
1895 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,
1896 radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and
1897 industrial, municipal, and agricultural waste discharged into water.

1898 ~~[(22)]~~ (23) "Waters of the state":

1899 (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs,
1900 irrigation systems, drainage systems, and all other bodies or accumulations of water, surface
1901 and underground, natural or artificial, public or private, which are contained within, flow
1902 through, or border upon this state or any portion of the state; and

1903 (b) does not include bodies of water confined to and retained within the limits of
1904 private property, and which do not develop into or constitute a nuisance, a public health hazard,
1905 or a menace to fish or wildlife.

1906 Section 34. Section **19-5-103** is amended to read:

1907 **19-5-103. Water Quality Board -- Members of board -- Appointment -- Terms --**
1908 **Organization -- Meetings -- Per diem and expenses.**

1909 (1) The board ~~[comprises]~~ consists of the following nine members:

1910 (a) ~~H→~~ the following non-voting member, except that the member may vote to break a
1910a tie vote between the voting members: ←H

1910b (i) the executive director ~~[and 11 members]; or~~

1911 (ii) an employee of the department designated by the executive director; and

1912 (b) the following eight H→ voting ←H members, who shall be appointed by the
1912a governor with the

1913 consent of the Senate[-]:

1914 (i) one representative who:

1915 (A) is not connected with industry;

1916 (B) is an expert in water quality matters; and

- 1917 (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist
 1918 with relevant training and experience;
- 1919 (ii) two government representatives who do not represent the federal government;
 1920 (iii) one representative from the mineral industry;
 1921 (iv) one representative from the manufacturing industry;
 1922 (v) one representative who represents agricultural and livestock interests;
 1923 (vi) one representative from the public who represents ~~H~~→ [a ~~S~~→ ~~nongovernmental~~
 1923a environmental ~~S~~
 1924 organization;] :
- 1924a (A) an environmental nongovernmental organization; or
 1924b (B) a nongovernmental organization that represents community interests and does not
 1924c represent industry interests; ~~H~~ and
- 1925 (vii) one representative from the public who is trained and experienced in public
 1926 health.
- 1927 [~~(2) No more than six of the appointed members may be from the same political party.]~~
 1928 [~~(3) The appointed members, insofar as practicable, shall include the following:]~~
 1929 [~~(a) one member representing the mineral industry;]~~
 1930 [~~(b) one member representing the food processing industry;]~~
 1931 [~~(c) one member representing another manufacturing industry;]~~
 1932 [~~(d) two members who are officials of a municipal government or the officials'~~
 1933 ~~representative involved in the management or operation of a wastewater treatment facility;]~~
 1934 [~~(e) one member representing agricultural and livestock interests;]~~
 1935 [~~(f) one member representing fish, wildlife, and recreation interests;]~~
 1936 [~~(g) one member representing an improvement or special service district;]~~
 1937 [~~(h) two members at large, one of whom represents organized environmental interests;~~
 1938 ~~selected with due consideration of the areas of the state affected by water pollution and not~~
 1939 ~~representing other interests named in this Subsection (3); and]~~
- 1940 [~~(i) one member representing a local health department.]~~
- 1941 (2) A member of the board shall:
- 1942 (a) be knowledgeable about water quality matters, as evidenced by a professional
 1943 degree, a professional accreditation, or documented experience;
- 1944 (b) be a resident of Utah;
- 1945 (c) attend board meetings in accordance with the attendance rules made by the
 1946 department under Subsection 19-1-201(1)(d)(i)(A); and
- 1947 (d) comply with all applicable statutes, rules, and policies, including the conflict of

2661 hearings.

2662 (5) The committee shall:

2663 (a) appoint a chair from among its members; and

2664 (b) meet as necessary, but not less often than once per month, until its work is

2665 completed.

2666 (6) The committee shall report in writing the results of its work and any
2667 recommendations it may have for legislative action to the interim committees of the Legislature
2668 as directed by the Legislative Management Committee.

2669 (7) (a) All action by the division, the [~~executive secretary~~] director, or the division
2670 board of the Department of Environmental Quality regarding any proposed municipal landfill
2671 site, regarding which a request has been submitted under Subsection (1), is tolled for one year
2672 from the date the request is submitted, or until the committee completes its work under this
2673 section, whichever occurs first. This Subsection (7) also tolls the time limits imposed by
2674 Subsection 19-6-108(13).

2675 (b) This Subsection (7) applies to any proposed landfill site regarding which the
2676 department has not granted final approval on or before March 21, 1995.

2677 (c) As used in this Subsection (7), "final approval" means final agency action taken
2678 after conclusion of proceedings under Sections 63G-4-207 through 63G-4-405.

2679 (8) This section does not apply to a municipal solid waste facility that is, on or before
2680 March 23, 1994:

2681 (a) operating under an existing permit or the renewal of an existing permit issued by
2682 the local health department or other authority granted by the Department of Environmental
2683 Quality; or

2684 (b) operating under the approval of the local health department, regardless of whether a
2685 formal permit has been issued.

2686 Section 48. Section **19-6-103** is amended to read:

2687 **19-6-103. Solid and Hazardous Waste Control Board -- Members -- Terms --**
2688 **Organization -- Meetings -- Per diem and expenses.**

2689 (1) The [~~Solid and Hazardous Waste Control Board created by Section 19-1-106~~
2690 ~~comprises the~~] board consists of the following nine members:

2691 (a) ~~H~~→ the following non-voting member, except that the member may vote to break a
2691a tie vote between the voting members: ←~~H~~

2691b (i) the executive director [~~and 12~~]; or

- 2692 (ii) an employee of the department designated by the executive director; and
 2693 (b) the following eight ~~H~~→ **voting** ←~~H~~ members appointed by the governor with the
 2693a consent of the
 2694 Senate[-]:
 2695 (i) one representative who:
 2696 (A) is not connected with industry;
 2697 (B) is an expert in waste management matters; and
 2698 (C) is a Utah-licensed professional engineer;
 2699 (ii) two government representatives who do not represent the federal government;
 2700 (iii) one representative from the manufacturing, mining, or fuel industry;
 2701 (iv) one representative from the private solid or hazardous waste disposal industry;
 2702 (v) one representative from the private hazardous waste recovery industry;
 2703 (vi) one representative from the public who represents ~~H~~→ [a ~~S~~→ **nongovernmental**]
 2703a **environmental** ←~~S~~
 2704 **organization;] :**
 2704a (A) an environmental nongovernmental organization; or
 2704b (B) a nongovernmental organization that represents community interests and does not
 2704c represent industry interests; ←~~H~~ and
 2705 (vii) one representative from the public who is trained and experienced in public
 2706 health.
 2707 (2) [~~The appointed members~~] A member of the board shall:
 2708 (a) be knowledgeable about solid and hazardous waste matters [~~and consist of:~~] as
 2709 evidenced by a professional degree, a professional accreditation, or documented experience;
 2710 [~~(a) one representative of municipal government;~~]
 2711 [~~(b) one representative of county government;~~]
 2712 [~~(c) one representative of the manufacturing or fuel industry;~~]
 2713 [~~(d) one representative of the mining industry;~~]
 2714 [~~(e) one representative of the private solid waste disposal or solid waste recovery~~
 2715 industry;]
 2716 [~~(f) one registered professional engineer;~~]
 2717 [~~(g) one representative of a local health department;~~]
 2718 [~~(h) one representative of the hazardous waste disposal industry; and]~~
 2719 [~~(i) four representatives of the public, at least one of whom is a representative of~~
 2720 organized environmental interests.]
 2721 (b) be a resident of Utah;
 2722 (c) attend board meetings in accordance with the attendance rules made by the

5792 (iii) engineered equivalency in lifespan, durability, and maintenance.

5793 (3) After the [~~executive secretary~~] director issues an approval under Section 19-6-1104
5794 and the department uses the industrial byproduct in compliance with the [~~executive secretary's~~]
5795 director's approval:

5796 (a) the department is not responsible for further management of the industrial
5797 byproduct; and

5798 (b) the generator or originator of the industrial byproduct is not responsible for the
5799 industrial byproduct under Title 19, Environmental Quality Code.

5800 Section 114. **Effective date.**

5801 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

5802 (2) The amendments to Sections 19-5-102 (Effective 07/01/12) and 19-5-104
5803 (Effective 07/01/12) take effect on July 1, 2012.

5803a **Ĥ→ Section 115. Coordinating S.B. 21 with S.B. 11 -- Substantive and technical amendments.**
5803b **If this S.B. 21 and S.B. 11, Department of Environmental Quality Boards Adjudicative**
5803c **Proceedings, both pass and become law, the Legislature intends that the Office of Legislative**
5803d **Research and General Counsel shall prepare the Utah Code database for publication as**
5803e **follows:**

5803f **(1) amend Subsection 19-1-201(1)(d)(ii) to read as follows:**

5803g **"(ii) procedural rules that govern:**

5803h **(A) an adjudicative proceeding, consistent with Section 19-1-301; and**

5803i **(B) a permit review adjudicative proceeding, consistent with Section 19-1-301.5.";**

5803j **(2) delete Subsection 19-1-301(12); and**

5803k **(3) amend Section 19-1-301.5 to read as follows:**

5803l **"19-1-301.5. Permit review adjudicative proceedings.**

5803m **(1) As used in this section:**

5803n **(a) "Dispositive action" means a final agency action that:**

5803o **(i) the executive director takes as part of a permit review adjudicative proceeding; and**

5803p **(ii) is subject to judicial review, in accordance with Subsection (14).**

5803q **(b) "Dispositive motion" means a motion that is equivalent to:**

5803r **(i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);**

5803s **(ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule 12(c);**

5803t **or**

5803u **(iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.**

5803v **(c) "Party" means: ←Ĥ**

- 5803w **Ĥ→ (i) the director who issued the permit order being challenged in the permit review**
- 5803x **adjudicative proceeding;**
- 5803y **(ii) the permittee;**
- 5803z **(iii) the person who applied for the permit, if the permit was denied; or**
- 5803aa **(iv) a person granted intervention by the administrative law judge.**
- 5803ab **(d) "Permit" means any of the following issued under this title:**
- 5803ac **(i) a permit;**
- 5803ad **(ii) a plan;**
- 5803ae **(iii) a license;**
- 5803af **(iv) an approval order; or**
- 5803ag **(v) another administrative authorization made by a director.**
- 5803ah **(e) (i) "Permit order" means an order issued by a director that:**
- 5803ai **(A) approves a permit;**
- 5803aj **(B) renews a permit;**
- 5803ak **(C) denies a permit;**
- 5803al **(D) modifies or amends a permit; or**
- 5803am **(E) revokes and reissues a permit.**
- 5803an **(ii) "Permit order" does not include an order terminating a permit.**
- 5803ao **(f) "Permit review adjudicative proceeding" means a proceeding to resolve a challenge to a**
- 5803ap **permit order.**
- 5803aq **(2) This section governs permit review adjudicative proceedings.**
- 5803ar **(3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4,**
- 5803as **Administrative Procedures Act, do not apply to a permit review adjudicative proceeding.**
- 5803at **(4) If a public comment period was provided during the permit application process, a person**
- 5803au **who challenges a permit order, including the permit applicant, may only raise an issue or**
- 5803av **argument during the permit review adjudicative proceeding that:**
- 5803aw **(a) the person raised during the public comment period; and**
- 5803ax **(b) was supported with sufficient information or documentation to enable the director to fully**
- 5803ay **consider the substance and significance of the issue.**
- 5803az **(5) The executive director shall appoint an administrative law judge, in accordance with**
- 5803ba **Subsections 19-1-301(5) and (6), to conduct a permit review adjudicative proceeding.**
- 5803bb **(6) (a) Only the following may file a request for agency action seeking review of a permit**
- 5803bc **order:**
- 5803bd **(i) a party; or ←Ĥ**

5803be H→ (ii) a person who is seeking to intervene under Subsection (7).

5803bf (b) A person who files a request for agency action seeking review of a permit order shall file

5803bg the request:

5803bh (i) within 30 days after the day on which the permit order is issued; and

5803bi (ii) in accordance with Subsections 63G-4-201(3)(a) through (c).

5803bj (c) A person may not raise an issue or argument in a request for agency action unless the

5803bk issue or argument:

5803bl (i) was preserved in accordance with Subsection (4); or

5803bm (ii) was not reasonably ascertainable before or during the public comment period. (d) The

5803bn department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

5803bo Act, make rules allowing the extension of the filing deadline described in Subsection (6)(b)(i).

5803bp (7) (a) A person who is not a party may not participate in a permit review adjudicative

5803bq proceeding unless the person is granted the right to intervene under this Subsection (7).

5803br (b) A person who seeks to intervene in a permit review adjudicative proceeding under this

5803bs section shall, within 30 days after the day on which the permit order being challenged was

5803bt issued, file:

5803bu (i) a petition to intervene that:

5803bv (A) meets the requirements of Subsection 63G-4-207(1); and

5803bw (B) demonstrates that the person is entitled to intervention under Subsection (7)(c)(ii); and

5803bx (ii) a timely request for agency action.

5803by (c) An administrative law judge shall grant a petition to intervene in a permit review

5803bz adjudicative proceeding, if:

5803ca (i) the petition to intervene is timely filed; and

5803cb (ii) the petitioner:

5803cc (A) demonstrates that the petitioner's legal interests may be substantially affected by the

5803cd permit review adjudicative proceeding;

5803ce (B) demonstrates that the interests of justice and the orderly and prompt conduct of the

5803cf permit review adjudicative proceeding will not be materially impaired by allowing the

5803cg intervention; and

5803ch (C) in the petitioner's request for agency action, raises issues or arguments that are preserved

5803ci in accordance with Subsection (4).

5803cj (d) An administrative law judge:

5803ck (i) shall issue an order granting or denying a petition to intervene in accordance with

5803cl Subsection 63G-4-207(3)(a); and

5803cm (ii) may impose conditions on intervenors as described in Subsection 63G-4-207(3)(b) and (c).

5803cn (e) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative

5803co Rulemaking Act, make rules allowing the extension of the filing deadline described in

5803cp Subsection (7)(b).

5803cq (8) (a) An administrative law judge shall conduct a permit review adjudicative proceeding

5803cr based only on the administrative record and not as a trial de novo.

5803cs (b) To the extent relative to the issues and arguments raised in the request for agency action,

5803ct the administrative record shall consist of the following items, if they exist:

5803cu (i) the permit application, draft permit, and final permit;

5803cv (ii) each statement of basis, fact sheet, engineering review, or other substantive explanation

5803cw designated by the director as part of the basis for the decision relating to the permit order;

5803cx (iii) the notice and record of each public comment period;

5803cy (iv) the notice and record of each public hearing, including oral comments made during the

5803cz public hearing;

5803da (v) written comments submitted during the public comment period;

5803db (vi) responses to comments that are designated by the director as part of the basis for the

5803dc decision relating to the permit order;

5803dd (vii) any information that is:

5803de (A) requested by and submitted to the director; and

5803df (B) designated by the director as part of the basis for the decision relating to the permit

5803dg order;

5803dh (viii) any additional information specified by rule;

5803di (ix) any additional documents agreed to by the parties; and

5803dj (x) information supplementing the record under Subsection (8)(c).

5803dk (c) (i) There is a rebuttable presumption against supplementing the record.

5803dl (ii) A party may move to supplement the record described in Subsection (8)(b) with technical

5803dm or factual information.

5803dn (iii) The administrative law judge may grant a motion to supplement the record described in

5803do Subsection (8)(b) with technical or factual information if the moving party proves that:

5803dp (A) good cause exists for supplementing the record;

5803dq (B) supplementing the record is in the interest of justice; and

5803dr (C) supplementing the record is necessary for resolution of the issues.

5803ds (iv) The administrative law judge may supplement the record with technical or factual

5803dt information on the administrative law judge's own motion if the administrative law ←Ĥ

5803du Ĥ→ judge determines that adequate grounds exist to supplement the record under Subsections
5803dv (8)(c)(iii)(A) through (C).

5803dw (v) In supplementing the record with testimonial evidence, the administrative law judge may
5803dx administer an oath or take testimony as necessary.

5803dy (vi) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative
5803dz Rulemaking Act, make rules permitting further supplementation of the record.

5803ea (9) (a) The administrative law judge shall review and respond to a request for agency action
5803eb in accordance with Subsections 63G-4-201(3)(d) and (e), following the relevant procedures for
5803ec formal adjudicative proceedings.

5803ed (b) The administrative law judge shall require the parties to file responsive pleadings in
5803ee accordance with Section 63G-4-204.

5803ef (c) If an administrative law judge enters an order of default against a party, the
5803eg administrative law judge shall enter the order of default in accordance with Section 63G-4-209,
5803eh following the relevant procedures for formal adjudicative proceedings.

5803ei (d) The administrative law judge, in conducting a permit review adjudicative proceeding:
5803ej (i) may not participate in an ex parte communication with a party to the permit review
5803ek adjudicative proceeding regarding the merits of the permit review adjudicative proceeding
5803el unless notice and an opportunity to be heard are afforded to all parties; and
5803em (ii) shall, upon receiving an ex parte communication, place the communication in the public
5803en record of the proceeding and afford all parties an opportunity to comment on the information.

5803eo (e) In conducting a permit review adjudicative proceeding, the administrative law judge may
5803ep take judicial notice of matters not in the administrative record, in accordance with Utah Rules
5803eq of Evidence, Rule 201.

5803er (f) An administrative law judge may take any action in a permit review adjudicative
5803es proceeding that is not a dispositive action.

5803et (10) (a) A person who files a request for agency action has the burden of demonstrating that
5803eu an issue or argument raised in the request for agency action has been preserved in accordance
5803ev with Subsection (4).

5803ew (b) The administrative law judge shall dismiss, with prejudice, any issue or argument raised
5803ex in a request for agency action that has not been preserved in accordance with Subsection (4).

5803ey (11) In response to a dispositive motion, the administrative law judge may submit a proposed
5803ez dispositive action to the executive director recommending full or partial resolution of the
5803fa permit review adjudicative proceeding, that includes:

5803fb (a) written findings of fact; ←Ĥ

5803fc **Ĥ→ (b) written conclusions of law; and**
5803fd **(c) a recommended order.**
5803fe **(12) For each issue or argument that is not dismissed or otherwise resolved under Subsection**
5803ff **(10)(b) or (11), the administrative law judge shall:**
5803fg **(a) provide the parties an opportunity for briefing and oral argument;**
5803fh **(b) conduct a review of the director's determination, based on the record described in**
5803fi **Subsections (8)(b), (8)(c), and (9)(e); and**
5803fj **(c) submit to the executive director a proposed dispositive action, that includes:**
5803fk **(i) written findings of fact;**
5803fl **(ii) written conclusions of law; and**
5803fm **(iii) a recommended order.**
5803fn **(13) (a) When the administrative law judge submits a proposed dispositive action to the**
5803fo **executive director, the executive director may:**
5803fp **(i) adopt, adopt with modifications, or reject the proposed dispositive action; or**
5803fq **(ii) return the proposed dispositive action to the administrative law judge for further action**
5803fr **as directed.**
5803fs **(b) On review of a proposed dispositive action, the executive director shall uphold all factual,**
5803ft **technical, and scientific agency determinations that are supported by substantial evidence**
5803fu **taken from the record as a whole.**
5803fv **(c) (i) The executive director may not participate in an ex parte communication with a party**
5803fw **to the permit review adjudicative proceeding regarding the merits of the permit review**
5803fx **adjudicative proceeding unless notice and an opportunity to be heard are afforded to all**
5803fy **parties.**
5803fz **(ii) Upon receiving an ex parte communication, the executive director shall place the**
5803ga **communication in the public record of the proceeding and afford all parties an opportunity to**
5803gb **comment on the information.**
5803gc **(d) In reviewing a proposed dispositive action during a permit review adjudicative**
5803gd **proceeding, the executive director may take judicial notice of matters not in the record, in**
5803ge **accordance with Utah Rules of Evidence, Rule 201.**
5803gf **(e) The executive director may use the executive director's technical expertise in making a**
5803gg **determination.**
5803gh **(14) (a) A party may seek judicial review in the Utah Court of Appeals of a dispositive action**
5803gi **in a permit review adjudicative proceeding, in accordance with Sections 63G-4-401, 63G-4-403,**
5803gj **and 63G-4-405. ←Ĥ**

5803gk **Ĥ→ (b) An appellate court shall limit its review of a dispositive action of a permit review**
5803gl **adjudicative proceeding to:**
5803gm **(i) the record described in Subsections (8)(b), (8)(c), (9)(e), and (13)(d); and**
5803gn **(ii) the record made by the administrative law judge and the executive director during the**
5803go **permit review adjudicative proceeding.**
5803gp **(c) During judicial review of a dispositive action, the appellate court shall:**
5803gq **(i) review all agency determinations in accordance with Subsection 63G-4-403(4), recognizing**
5803gr **that the agency has been granted substantial discretion to interpret its governing statutes and**
5803gs **rules; and**
5803gt **(ii) uphold all factual, technical, and scientific agency determinations that are supported by**
5803gu **substantial evidence viewed in light of the record as a whole.**
5803gv **(15) (a) The filing of a request for agency action does not stay a permit or delay the effective**
5803gw **date of a permit.**
5803gx **(b) A permit may not be stayed or delayed unless a stay is granted under this Subsection (15).**
5803gy **(c) The administrative law judge shall:**
5803gz **(i) consider a party's motion to stay a permit during a permit review adjudicative proceeding;**
5803ha **and**
5803hb **(ii) submit a proposed determination on the stay to the executive director.**
5803hc **(d) The administrative law judge may not recommend to the executive director a stay of a**
5803hd **permit, or a portion of a permit, unless:**
5803he **(i) all parties agree to the stay; or**
5803hf **(ii) the party seeking the stay demonstrates that:**
5803hg **(A) the party seeking the stay will suffer irreparable harm unless the stay is issued;**
5803hh **(B) the threatened injury to the party seeking the stay outweighs whatever damage the**
5803hi **proposed stay is likely to cause the party restrained or enjoined;**
5803hj **(C) the stay, if issued, would not be adverse to the public interest; and**
5803hk **(D) there is a substantial likelihood that the party seeking the stay will prevail on the merits**
5803hl **of the underlying claim, or the case presents serious issues on the merits, which should be the**
5803hm **subject of further adjudication.**
5803hn **(e) A party may appeal the executive director's decision regarding a stay of a permit to the**
5803ho **Utah Court of Appeals, in accordance with Section 78A-4-103." ←Ĥ**