

Senator Margaret Dayton proposes the following substitute bill:

DEPARTMENT OF ENVIRONMENTAL QUALITY BOARDS

REVISIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Bill Wright

LONG TITLE

General Description:

This bill changes the composition of each board created under Title 19, Environmental Quality Code, requires specific qualifications for a board member, subjects a board member to certain requirements, transfers some powers and duties from the boards to the executive director or division directors, and gives rulemaking authority to the department.

Highlighted Provisions:

This bill:

- ▶ gives rulemaking authority to the Department of Environmental Quality to create attendance standards and conflicts of interest procedures for board members and to make procedural rules for adjudicative proceedings;
- ▶ changes the composition of each board created under Title 19, Environmental Quality Code;
- ▶ provides a transition to the new composition of each board created under Title 19, Environmental Quality Code;
- ▶ establishes qualifications for board members;
- ▶ requires board members to comply with attendance standards and conflict of interest



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

- 57 **19-3-102**, as last amended by Laws of Utah 2001, Chapter 314
- 58 **19-3-103**, as last amended by Laws of Utah 2010, Chapter 286
- 59 **19-3-103.5**, as last amended by Laws of Utah 2009, Chapter 377
- 60 **19-3-104**, as last amended by Laws of Utah 2009, Chapter 183
- 61 **19-3-105**, as last amended by Laws of Utah 2007, Chapter 26
- 62 **19-3-106.4**, as last amended by Laws of Utah 2009, Chapter 183
- 63 **19-3-108**, as enacted by Laws of Utah 1991, Chapter 112
- 64 **19-3-109**, as last amended by Laws of Utah 2008, Chapter 382
- 65 **19-3-111**, as last amended by Laws of Utah 2008, Chapter 382
- 66 **19-4-102**, as last amended by Laws of Utah 2008, Chapter 51
- 67 **19-4-103**, as last amended by Laws of Utah 2010, Chapter 286
- 68 **19-4-104**, as last amended by Laws of Utah 2009, Chapter 377
- 69 **19-4-106**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 70 **19-4-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 71 **19-4-109**, as last amended by Laws of Utah 2008, Chapter 382
- 72 **19-5-102 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapters 155,
- 73 297, and 304
- 74 **19-5-103**, as last amended by Laws of Utah 2010, Chapter 286
- 75 **19-5-104 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapter 304
- 76 **19-5-105.5**, as enacted by Laws of Utah 2011, Chapter 155
- 77 **19-5-106**, as last amended by Laws of Utah 1995, Chapter 114
- 78 **19-5-107**, as last amended by Laws of Utah 1998, Chapter 271
- 79 **19-5-108**, as last amended by Laws of Utah 1995, Chapter 114
- 80 **19-5-111**, as last amended by Laws of Utah 2009, Chapter 377
- 81 **19-5-112**, as last amended by Laws of Utah 2009, Chapter 377
- 82 **19-5-113**, as last amended by Laws of Utah 2008, Chapter 382
- 83 **19-5-114**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 84 **19-5-115**, as last amended by Laws of Utah 2011, Chapters 297 and 340
- 85 **19-6-102**, as last amended by Laws of Utah 2011, Chapter 366
- 86 **19-6-102.1**, as enacted by Laws of Utah 1996, Chapter 230
- 87 **19-6-102.6**, as last amended by Laws of Utah 2008, Chapter 382

- 88 **19-6-103**, as last amended by Laws of Utah 2010, Chapter 286
- 89 **19-6-104**, as last amended by Laws of Utah 2009, Chapter 377
- 90 **19-6-105**, as last amended by Laws of Utah 2008, Chapter 382
- 91 **19-6-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 92 **19-6-108**, as last amended by Laws of Utah 2011, Chapters 133 and 297
- 93 **19-6-108.3**, as last amended by Laws of Utah 2008, Chapters 250 and 382
- 94 **19-6-109**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 95 **19-6-112**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 96 **19-6-117**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 97 **19-6-119**, as last amended by Laws of Utah 2006, Chapter 251
- 98 **19-6-120**, as last amended by Laws of Utah 2010, Chapter 391
- 99 **19-6-402**, as last amended by Laws of Utah 2010, Chapter 324
- 100 **19-6-403**, as last amended by Laws of Utah 2008, Chapters 56 and 382
- 101 **19-6-404**, as last amended by Laws of Utah 1997, Chapter 172
- 102 **19-6-405.3**, as last amended by Laws of Utah 2010, Chapter 186
- 103 **19-6-405.7**, as last amended by Laws of Utah 2002, Chapter 256
- 104 **19-6-407**, as last amended by Laws of Utah 1997, Chapter 172
- 105 **19-6-408**, as last amended by Laws of Utah 2009, Chapter 183
- 106 **19-6-409**, as last amended by Laws of Utah 2010, Chapter 186
- 107 **19-6-411**, as last amended by Laws of Utah 1998, Chapter 95
- 108 **19-6-412**, as last amended by Laws of Utah 1997, Chapter 172
- 109 **19-6-413**, as last amended by Laws of Utah 2011, Chapter 297
- 110 **19-6-414**, as last amended by Laws of Utah 1997, Chapter 172
- 111 **19-6-416**, as last amended by Laws of Utah 1999, Chapter 21
- 112 **19-6-416.5**, as enacted by Laws of Utah 1994, Chapter 297
- 113 **19-6-417**, as last amended by Laws of Utah 1997, Chapter 172
- 114 **19-6-418**, as last amended by Laws of Utah 1998, Chapter 255
- 115 **19-6-419**, as last amended by Laws of Utah 2010, Chapter 186
- 116 **19-6-420**, as last amended by Laws of Utah 1998, Chapter 255
- 117 **19-6-421**, as last amended by Laws of Utah 1997, Chapter 172
- 118 **19-6-423**, as last amended by Laws of Utah 2010, Chapter 186

- 119 **19-6-424**, as last amended by Laws of Utah 1997, Chapter 172
- 120 **19-6-424.5**, as last amended by Laws of Utah 1998, Chapter 255
- 121 **19-6-425**, as last amended by Laws of Utah 1997, Chapter 172
- 122 **19-6-428**, as last amended by Laws of Utah 2006, Chapter 107
- 123 **19-6-601**, as enacted by Laws of Utah 1991, Chapter 122 and renumbered and amended
- 124 by Laws of Utah 1991, Chapter 112
- 125 **19-6-606**, as last amended by Laws of Utah 1996, Chapter 79
- 126 **19-6-703**, as last amended by Laws of Utah 2010, Chapter 324
- 127 **19-6-704**, as last amended by Laws of Utah 2009, Chapter 377
- 128 **19-6-705**, as last amended by Laws of Utah 1997, Chapter 186
- 129 **19-6-706**, as last amended by Laws of Utah 2010, Chapter 324
- 130 **19-6-710**, as last amended by Laws of Utah 1997, Chapter 186
- 131 **19-6-711**, as enacted by Laws of Utah 1993, Chapter 283
- 132 **19-6-712**, as last amended by Laws of Utah 2009, Chapter 388
- 133 **19-6-717**, as enacted by Laws of Utah 1993, Chapter 283
- 134 **19-6-718**, as enacted by Laws of Utah 1993, Chapter 283
- 135 **19-6-721**, as last amended by Laws of Utah 2008, Chapter 382
- 136 **19-6-803**, as last amended by Laws of Utah 2008, Chapter 382
- 137 **19-6-804**, as last amended by Laws of Utah 2002, Chapter 256
- 138 **19-6-806**, as last amended by Laws of Utah 2009, Chapter 183
- 139 **19-6-811**, as last amended by Laws of Utah 2002, Chapter 256
- 140 **19-6-817**, as last amended by Laws of Utah 2002, Chapter 256
- 141 **19-6-819**, as last amended by Laws of Utah 2008, Chapter 382
- 142 **19-6-820**, as last amended by Laws of Utah 2001, Chapter 165
- 143 **19-6-821**, as last amended by Laws of Utah 2008, Chapter 382
- 144 **19-6-1002**, as enacted by Laws of Utah 2006, Chapter 187
- 145 **19-6-1003**, as last amended by Laws of Utah 2009, Chapter 183
- 146 **19-6-1004**, as enacted by Laws of Utah 2006, Chapter 187
- 147 **19-6-1005**, as enacted by Laws of Utah 2006, Chapter 187
- 148 **19-6-1102**, as enacted by Laws of Utah 2009, Chapter 340
- 149 **19-6-1104**, as enacted by Laws of Utah 2009, Chapter 340

- 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.

181 (2) Each division is under the immediate direction and control of a division director
182 appointed by the executive director.

183 (3) ~~(a) [Each] A~~ division director shall possess the ~~[necessary]~~ administrative skills and
184 training ~~[to adequately qualify him for his position]~~ necessary to perform the duties of division
185 director. ~~[He]~~

186 (b) A division director shall ~~[have graduated]~~ hold one of the following degrees from
187 an accredited college or university ~~[with]:~~

188 ~~[(a)]~~ (i) a four-year degree in physical or biological science or engineering;

189 ~~[(b)]~~ (ii) a related degree; or

190 ~~[(c)]~~ (iii) a degree in law.

191 (4) ~~[Each director may be removed at the will of the]~~ The executive director may
192 remove a division director at will.

193 (5) A division director shall serve as the executive secretary to the policymaking board,
194 created in Section 19-1-106, that has rulemaking authority over the division director's division.

195 Section 2. Section **19-1-201** is amended to read:

196 **19-1-201. Powers and duties of department -- Rulemaking authority.**

197 (1) The department shall:

198 (a) enter into cooperative agreements with the Department of Health to delineate
199 specific responsibilities to assure that assessment and management of risk to human health
200 from the environment are properly administered;

201 (b) consult with the Department of Health and enter into cooperative agreements, as
202 needed, to ensure efficient use of resources and effective response to potential health and safety
203 threats from the environment, and to prevent gaps in protection from potential risks from the
204 environment to specific individuals or population groups; ~~[and]~~

205 (c) coordinate implementation of environmental programs to maximize efficient use of
206 resources by developing, with local health departments, a Comprehensive Environmental
207 Service Delivery Plan that:

208 (i) recognizes that the department and local health departments are the foundation for
209 providing environmental health programs in the state;

210 (ii) delineates the responsibilities of the department and each local health department
211 for the efficient delivery of environmental programs using federal, state, and local authorities,

212 responsibilities, and resources;

213 (iii) provides for the delegation of authority and pass through of funding to local health
214 departments for environmental programs, to the extent allowed by applicable law, identified in
215 the plan, and requested by the local health department; and

216 (iv) is reviewed and updated annually[-]; and

217 (d) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
218 Rulemaking Act, as follows:

219 (i) for a board created in Section 19-1-106, rules regarding:

220 (A) board meeting attendance; and

221 (B) conflicts of interest procedures; and

222 (ii) rules that govern an adjudicative proceeding, consistent with Section 19-1-301 and
223 Title 63G, Chapter 4, Administrative Procedures Act.

224 (2) The department may:

225 (a) investigate matters affecting the environment;

226 (b) investigate and control matters affecting the public health when caused by
227 environmental hazards;

228 (c) prepare, publish, and disseminate information to inform the public concerning
229 issues involving environmental quality;

230 (d) establish and operate programs, as authorized by this title, necessary for protection
231 of the environment and public health from environmental hazards;

232 (e) use local health departments in the delivery of environmental health programs to
233 the extent provided by law;

234 (f) enter into contracts with local health departments or others to meet responsibilities
235 established under this title;

236 (g) acquire real and personal property by purchase, gift, devise, and other lawful
237 means;

238 (h) prepare and submit to the governor a proposed budget to be included in the budget
239 submitted by the governor to the Legislature;

240 (i) (i) establish a schedule of fees that may be assessed for actions and services of the
241 department according to the procedures and requirements of Section 63J-1-504; and

242 (ii) in accordance with Section 63J-1-504, all fees shall be reasonable, fair, and reflect

243 the cost of services provided;

244 (j) prescribe by rule reasonable requirements not inconsistent with law relating to
245 environmental quality for local health departments;

246 (k) perform the administrative functions of the boards established by Section 19-1-106,
247 including the acceptance and administration of grants from the federal government and from
248 other sources, public or private, to carry out the board's functions;

249 (l) upon the request of any board or [~~the executive secretary~~] a division director,
250 provide professional, technical, and clerical staff and field and laboratory services, the extent of
251 which are limited by the funds available to the department for the staff and services; and

252 (m) establish a supplementary fee, not subject to Section 63J-1-504, to provide service
253 that the person paying the fee agrees by contract to be charged for the service in order to
254 efficiently utilize department resources, protect department permitting processes, address
255 extraordinary or unanticipated stress on permitting processes, or make use of specialized
256 expertise.

257 (3) In providing service under Subsection (2)(m), the department may not provide
258 service in a manner that impairs any other person's service from the department.

259 Section 3. Section **19-1-301** is amended to read:

260 **19-1-301. Adjudicative proceedings.**

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

262 (a) [~~a board~~] the executive director takes following an adjudicative proceeding on a
263 request for agency action; and

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

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

267 (b) The procedures for an adjudicative proceeding conducted by an administrative law
268 judge are governed by:

269 (i) Title 63G, Chapter 4, Administrative Procedures Act;

270 (ii) rules adopted by [~~a board~~] the department as authorized by:

271 (A) Subsection 63G-4-102(6); and

272 (B) this title; and

273 (iii) the Utah Rules of Civil Procedure, in the absence of a procedure established under

274 Subsection (2)(b)(i) or (ii).

275 (3) ~~[An]~~ Except as provided in Section 19-2-113, an administrative law judge shall
276 hear a party's request for agency action ~~[made to a board created in Section 19-1-106].~~

277 (4) The executive director shall appoint an administrative law judge who:

278 (a) is a member in good standing of the Utah State Bar;

279 (b) has a minimum of:

280 (i) 10 years of experience practicing law; and

281 (ii) five years of experience practicing in the field of:

282 (A) environmental compliance;

283 (B) natural resources;

284 (C) regulation by an administrative agency; or

285 (D) a field related to a field listed in Subsections (4)(b)(ii)(A) through (C); and

286 (c) has a working knowledge of the federal laws and regulations and state statutes and
287 rules applicable to a request for agency action.

288 (5) In appointing an administrative law judge who meets the qualifications listed in
289 Subsection (4), the executive director may:

290 (a) compile a list of persons who may be engaged as an administrative law judge pro
291 tempore by mutual consent of the parties to an adjudicative proceeding;

292 (b) appoint an assistant attorney general as an administrative law judge pro tempore; or

293 (c) (i) appoint an administrative law judge as an employee of the department; and

294 (ii) assign the administrative law judge responsibilities in addition to conducting an
295 adjudicative proceeding.

296 (6) (a) An administrative law judge ~~[shall]~~:

297 (i) shall conduct an adjudicative proceeding;

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

299 (iii) shall submit to the ~~[board]~~ executive director a proposed dispositive action,

300 including:

301 (A) written findings of fact;

302 (B) written conclusions of law; and

303 (C) a recommended order.

304 (b) ~~[A board]~~ The executive director may:

305 (i) approve, approve with modifications, or disapprove a proposed dispositive action
306 submitted to the [~~board~~] executive director under Subsection (6)(a); or

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

309 (c) In making a decision regarding a dispositive action, the executive director may seek
310 the advice of, and consult with:

311 (i) the assistant attorney general assigned to the department; or

312 (ii) a special master who:

313 (A) is appointed by the executive director; and

314 (B) is an expert in the subject matter of the proposed dispositive action.

315 (d) The executive director shall base a final dispositive action on the record of the
316 proceeding before the administrative law judge.

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

318 (a) compel:

319 (i) the attendance of a witness; and

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

321 (b) administer an oath;

322 (c) take testimony; and

323 (d) receive evidence as necessary.

324 (8) A party may appear before an administrative law judge in person, through an agent
325 or employee, or as provided by [~~a board~~] department rule.

326 (9) (a) An administrative law judge [~~or board member~~] or the executive director may
327 not [~~communicate~~] participate in an ex parte communication with a party to an adjudicative
328 proceeding regarding the merits of the adjudicative proceeding unless notice and an
329 opportunity to be heard are afforded to all parties.

330 (b) [~~An~~] If an administrative law judge or [~~board member who~~] the executive director
331 receives an ex parte communication, the person who receives the ex parte communication shall
332 place the communication into the public record of the proceedings and afford all parties an
333 opportunity to comment on the information.

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

336 Section 4. Section **19-2-102** is amended to read:

337 **19-2-102. Definitions.**

338 As used in this chapter:

339 (1) "Air contaminant" means any particulate matter or any gas, vapor, suspended solid,
340 or any combination of them, excluding steam and water vapors.

341 (2) "Air contaminant source" means all sources of emission of air contaminants
342 whether privately or publicly owned or operated.

343 (3) "Air pollution" means the presence in the ambient air of one or more air
344 contaminants in the quantities and duration and under conditions and circumstances as is or
345 tends to be injurious to human health or welfare, animal or plant life, or property, or would
346 unreasonably interfere with the enjoyment of life or use of property, as determined by the rules
347 adopted by the board.

348 (4) "Ambient air" means the surrounding or outside air.

349 (5) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite
350 (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

351 (6) "Asbestos-containing material" means any material containing more than 1%
352 asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M, National
353 Emission Standard for Asbestos.

354 (7) "Asbestos inspection" means an activity undertaken to determine the presence or
355 location, or to assess the condition of, asbestos-containing material or suspected
356 asbestos-containing material, whether by visual or physical examination, or by taking samples
357 of the material.

358 (8) (a) "Board" means the Air Quality Board.

359 (b) "Board" means, as used in Sections 19-2-123 through 19-2-126, the Air Quality
360 Board or the Water Quality Board.

361 (9) "Clean school bus" has the same meaning as defined in 42 U.S.C. Sec. 16091.

362 (10) [~~Executive secretary~~] "Director" means the [~~executive secretary of the board~~]
363 director of the Division of Air Quality.

364 (11) "Division" means the Division of Air Quality, created in Subsection
365 19-1-105(1)(a).

366 [(H)] (12) (a) "Facility" means machinery, equipment, structures, or any part or

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) ~~11~~ **→ the following non-voting member, except that the member may vote to break a**
397a **tie vote between the voting members: ←1**

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;

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

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

433 (3) No more than five of the appointed members of the board shall belong to the same
434 political party.

435 (4) ~~[The]~~ A majority of the members of the board may not derive any significant
436 portion of their income from persons subject to permits or orders under this chapter. ~~[Any~~
437 ~~potential conflict of interest of any member or the executive secretary, relevant to the interests~~
438 ~~of the board, shall be adequately disclosed.]~~

439 ~~[(5) Members serving on the Air Conservation Committee created by Laws of Utah~~
440 ~~1981, Chapter 126, as amended, shall serve as members of the board throughout the terms for~~
441 ~~which they were appointed.]~~

442 ~~[(6)]~~ (5) (a) ~~[Except as required by Subsection (6)(b), members]~~ Members shall be
443 appointed for a term of four years.

444 (b) Notwithstanding the requirements of Subsection ~~[(6)]~~ (5)(a), the governor shall, at
445 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
446 board members are staggered so that ~~[approximately]~~ half of the appointed board is appointed
447 every two years.

448 (c) (i) Notwithstanding Subsection (5)(a), the term of a board member who is
449 appointed before March 1, 2013 shall expire on February 28, 2013.

450 (ii) On March 1, 2013, the governor shall appoint or reappoint board members in
451 accordance with this section.

452 ~~[(7)]~~ (6) A member may serve more than one term.

453 ~~[(8)]~~ (7) A member shall hold office until the expiration of the member's term and until
454 the member's successor is appointed, but not more than 90 days after the expiration of the
455 member's term.

456 ~~[(9)]~~ (8) When a vacancy occurs in the membership for any reason, the replacement
457 shall be appointed for the unexpired term.

458 ~~[(10)]~~ (9) The board shall elect annually a chair and a vice chair from its members.

459 ~~[(11)]~~ (10) (a) The board shall meet at least quarterly~~[-, and special].~~

460 (b) Special meetings may be called by the chair upon [~~his~~] the chair's own initiative,
461 upon the request of the [~~executive secretary~~] director, or upon the request of three members of
462 the board.

463 [~~(b)~~] (c) Three days' notice shall be given to each member of the board [~~prior to~~] before
464 any meeting.

465 [~~(12)~~] (11) [~~Six~~] Five members constitute a quorum at any meeting, and the action of a
466 majority of members present is the action of the board.

467 [~~(13)~~] (12) A member may not receive compensation or benefits for the member's
468 service, but may receive per diem and travel expenses in accordance with:

469 (a) Section 63A-3-106;

470 (b) Section 63A-3-107; and

471 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
472 63A-3-107.

473 Section 6. Section **19-2-104** is amended to read:

474 **19-2-104. Powers of board.**

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

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

480 (b) establishing air quality standards;

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

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

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

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

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

490 (e) establishing a requirement for a diesel emission opacity inspection and maintenance

491 program for diesel-powered motor vehicles;

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

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

497 (h) with the approval of the governor, implementing in air quality nonattainment areas
498 employer-based trip reduction programs applicable to businesses having more than 100
499 employees at a single location and applicable to federal, state, and local governments to the
500 extent necessary to attain and maintain ambient air quality standards consistent with the state
501 implementation plan and federal requirements under the standards set forth in Subsection (2);
502 and

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

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

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

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

510 (3) (a) The board may:

511 ~~[(a)]~~ (i) hold a hearing that is not an adjudicative proceeding relating to any aspect of,
512 or matter in, the administration of this chapter ~~[and compel the attendance of witnesses and the~~
513 ~~production of documents and other evidence, administer oaths and take testimony, and receive~~
514 ~~evidence as necessary];~~

515 ~~[(ii) receive a proposed dispositive action from an administrative law judge as provided~~
516 ~~by Section 19-1-301; and]~~

517 ~~[(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~
518 ~~action; or]~~

519 ~~[(B) return the proposed dispositive action to the administrative law judge for further~~
520 ~~action as directed;]~~

521 (ii) order the director to:

522 ~~[(b)]~~ (A) issue orders necessary to enforce the provisions of this chapter[;];

523 (B) enforce the orders by appropriate administrative and judicial proceedings[~~;~~and]; or

524 (C) institute judicial proceedings to secure compliance with this chapter; or

525 ~~[(c) settle or compromise any civil action initiated to compel compliance with this~~

526 ~~chapter and the rules made under this chapter;]~~

527 ~~[(d) secure necessary scientific, technical, administrative, and operational services;~~

528 ~~including laboratory facilities, by contract or otherwise;]~~

529 ~~[(e) prepare and develop a comprehensive plan or plans for the prevention, abatement,~~

530 ~~and control of air pollution in this state;]~~

531 (iii) advise, consult, contract, and cooperate with other agencies of the state, local

532 governments, industries, other states, interstate or interlocal agencies, the federal government,

533 or interested persons or groups.

534 (b) The board shall:

535 (i) to ensure compliance with applicable statutes and regulations:

536 (A) review a settlement negotiated by the director in accordance with Subsection

537 19-2-107(2)(b)(viii) that requires a civil penalty of \$25,000 or more; and

538 (B) approve or disapprove the settlement;

539 ~~[(f)]~~ (ii) encourage voluntary cooperation by persons and affected groups to achieve the

540 purposes of this chapter;

541 ~~[(g) encourage local units of government to handle air pollution within their respective~~

542 ~~jurisdictions on a cooperative basis and provide technical and consultative assistance to them;]~~

543 ~~[(h) encourage and conduct studies, investigations, and research relating to air~~

544 ~~contamination and air pollution and their causes, effects, prevention, abatement, and control;]~~

545 ~~[(i) determine by means of field studies and sampling the degree of air contamination~~

546 ~~and air pollution in all parts of the state;]~~

547 ~~[(j) monitor the effects of the emission of air contaminants from motor vehicles on the~~

548 ~~quality of the outdoor atmosphere in all parts of this state and take appropriate action with~~

549 ~~respect to them;]~~

550 ~~[(k) collect and disseminate information and conduct educational and training~~

551 ~~programs relating to air contamination and air pollution;]~~

552 ~~[(l) advise, consult, contract, and cooperate with other agencies of the state, local~~

553 ~~governments, industries, other states, interstate or interlocal agencies, the federal government,~~
554 ~~and with interested persons or groups;]~~

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

560 ~~[(n) accept, receive, and administer grants or other funds or gifts from public and~~
561 ~~private agencies, including the federal government, for the purpose of carrying out any of the~~
562 ~~functions of this chapter;]~~

563 ~~[(o) (iii) require the owner and operator of each new source which directly emits or~~
564 ~~has the potential to emit 100 tons per year or more of any air contaminant or the owner or~~
565 ~~operator of each existing source which by modification will increase emissions or have the~~
566 ~~potential of increasing emissions by 100 tons per year or more of any air contaminant, to pay a~~
567 ~~fee sufficient to cover the reasonable costs of:~~

568 ~~[(i) (A) reviewing and acting upon the notice required under Section 19-2-108; and~~

569 ~~[(ii) (B) implementing and enforcing requirements placed on the sources by any~~
570 ~~approval order issued pursuant to notice, not including any court costs associated with any~~
571 ~~enforcement action;~~

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

574 ~~[(q) (iv) meet the requirements of federal air pollution laws;~~

575 ~~[(r) (v) establish work practice, certification, and clearance air sampling requirements~~
576 ~~for persons who:~~

577 ~~[(i) (A) contract for hire to conduct demolition, renovation, salvage, encapsulation~~
578 ~~work involving friable asbestos-containing materials, or asbestos inspections;~~

579 ~~[(ii) (B) conduct work described in Subsection (3)[(r)(i)(b)(v)(A) in areas to which~~
580 ~~the general public has unrestrained access or in school buildings that are subject to the federal~~
581 ~~Asbestos Hazard Emergency Response Act of 1986;~~

582 ~~[(iii) (C) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,~~
583 ~~Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or~~

584 ~~[(iv)]~~ (D) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et
585 seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

586 ~~[(v)]~~ (vi) establish certification requirements for persons required under 15 U.S.C.A.
587 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency
588 Response, to be accredited as inspectors, management planners, abatement project designers,
589 asbestos abatement contractors and supervisors, or asbestos abatement workers;

590 ~~[(vi)]~~ (vii) establish certification requirements for asbestos project monitors, which shall
591 provide for experience-based certification of persons who, prior to establishment of the
592 certification requirements, had received relevant asbestos training, as defined by rule, and had
593 acquired at least 1,000 hours of experience as project monitors;

594 ~~[(vii)]~~ (viii) establish certification procedures and requirements for certification of the
595 conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the
596 tax credit granted in Section 59-7-605 or 59-10-1009;

597 ~~[(viii)]~~ (ix) establish a program to certify private sector air quality permitting
598 professionals (AQPP), as described in Section 19-2-109.5;

599 ~~[(ix)]~~ (x) establish certification requirements for persons required under 15 U.S.C.A.
600 2601 et seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited
601 as inspectors, risk assessors, supervisors, project designers, or abatement workers; and

602 ~~[(x)]~~ (xi) assist the State Board of Education in adopting school bus idling reduction
603 standards and implementing an idling reduction program in accordance with Section
604 41-6a-1308.

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

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

611 (6) The board may not require testing for asbestos or related materials on a residential
612 property with four or fewer units.

613 (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the
614 following that are subject to the authority granted to the director under Section 19-2-107 or

615 19-2-108:

616 (a) a permit;

617 (b) a license;

618 (c) a registration;

619 (d) a certification; or

620 (e) another administrative authorization made by the director.

621 (8) A board member may not speak or act for the board unless the board member is
622 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

623 (9) Notwithstanding Subsection (7), the board may exercise all authority granted to the
624 board by a federally enforceable state implementation plan.

625 Section 7. Section **19-2-105** is amended to read:

626 **19-2-105. Duties of board.**

627 The board, in conjunction with the governing body of each county identified in Section
628 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the
629 inspection and maintenance program developed under Section 41-6a-1643 including issues
630 relating to:

631 (1) the implementation of a standardized inspection and maintenance program;

632 (2) out-of-state registration of vehicles used in Utah;

633 (3) out-of-county registration of vehicles used within the areas required to have an
634 inspection and maintenance program;

635 (4) use of the farm truck exemption;

636 (5) mechanic training programs;

637 (6) emissions standards; and

638 (7) emissions waivers.

639 Section 8. Section **19-2-107** is amended to read:

640 **19-2-107. Director -- Appointment -- Powers.**

641 (1) The executive [~~secretary~~] director shall [~~be appointed by the executive~~] appoint the
642 director [~~, with the approval of the board, and~~]. The director shall serve under the
643 administrative direction of the executive director.

644 (2) (a) The [~~executive secretary may~~] director shall:

645 [~~(a) develop programs for the prevention, control, and abatement of new or existing air~~]

646 ~~pollution resources of the state;]~~

647 (i) prepare and develop comprehensive plans for the prevention, abatement, and control
648 of air pollution in Utah;

649 ~~[(b)]~~ (ii) advise, consult, and cooperate with other agencies of the state, the federal
650 government, other states and interstate agencies, and [with] affected groups, political
651 subdivisions, and industries in furtherance of the purposes of this chapter;

652 (iii) review plans, specifications, or other data relative to pollution control systems or
653 any part of the systems provided in this chapter;

654 (iv) under the direction of the executive director, represent the state in all matters
655 relating to interstate air pollution, including interstate compacts and similar agreements;

656 (v) secure necessary scientific, technical, administrative, and operational services,
657 including laboratory facilities, by contract or otherwise;

658 (vi) encourage voluntary cooperation by persons and affected groups to achieve the
659 purposes of this chapter;

660 (vii) encourage local units of government to handle air pollution within their respective
661 jurisdictions on a cooperative basis and provide technical and consulting assistance to them;

662 (viii) determine by means of field studies and sampling the degree of air contamination
663 and air pollution in all parts of the state;

664 (ix) monitor the effects of the emission of air contaminants from motor vehicles on the
665 quality of the outdoor atmosphere in all parts of Utah and take appropriate responsive action;

666 (x) collect and disseminate information relating to air contamination and air pollution
667 and conduct educational and training programs relating to air contamination and air pollution;

668 (xi) assess and collect noncompliance penalties as required in Section 120 of the
669 federal Clean Air Act, 42 U.S.C. Section 7420;

670 (xii) comply with the requirements of federal air pollution laws;

671 (xiii) subject to the provisions of this chapter, enforce rules through the issuance of
672 orders, including:

673 (A) prohibiting or abating discharges of wastes affecting ambient air;

674 (B) requiring the construction of new control facilities or any parts of new control
675 facilities or the modification, extension, or alteration of existing control facilities or any parts
676 of new control facilities; or

677 (C) adopting other remedial measures to prevent, control, or abate air pollution; and
678 (xiv) as authorized by the board and subject to the provisions of this chapter, act as
679 executive secretary of the board under the direction of the chairman of the board.

680 (b) The director may:

681 ~~[(e)]~~ (i) employ full-time employees necessary to carry out this chapter;

682 ~~[(d)]~~ (ii) [as authorized by the board,] subject to the provisions of this chapter,
683 authorize any employee or representative of the department to enter at reasonable time and
684 upon reasonable notice in or upon public or private property for the purposes of inspecting and
685 investigating conditions and plant records concerning possible air pollution;

686 ~~[(e)]~~ (iii) encourage, participate in, or conduct studies, investigations, research, and
687 demonstrations relating to air pollution and its causes [of it], effects, prevention, abatement,
688 and control, as advisable and necessary for the discharge of duties assigned under this chapter,
689 including the establishment of inventories of pollution sources;

690 ~~[(f)]~~ (iv) collect and disseminate information relating to air pollution and the
691 prevention, control, and abatement of it;

692 ~~[(g) as authorized by the board subject to the provisions of this chapter, enforce rules~~
693 ~~through the issuance of orders, including:]~~

694 ~~[(i) prohibiting or abating discharges of wastes affecting ambient air;]~~

695 ~~[(ii) requiring the construction of new control facilities or any parts of new control~~
696 ~~facilities or the modification, extension, or alteration of existing control facilities or any parts~~
697 ~~of new control facilities; or]~~

698 ~~[(iii) the adoption of other remedial measures to prevent, control, or abate air~~
699 ~~pollution;]~~

700 ~~[(h) review plans, specifications, or other data relative to pollution control systems or~~
701 ~~any part of the systems provided in this chapter;]~~

702 (v) cooperate with studies and research relating to air pollution and its control,
703 abatement, and prevention;

704 (vi) subject to Subsection (3), upon request, consult concerning the following with any
705 person proposing to construct, install, or otherwise acquire an air contaminant source in Utah:

706 (A) the efficacy of any proposed control device or proposed control system for the
707 source; or

708 (B) the air pollution problem that may be related to the source, device, or system;
709 (vii) accept, receive, and administer grants or other funds or gifts from public and
710 private agencies, including the federal government, for the purpose of carrying out any of the
711 functions of this chapter;

712 (viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise any civil action
713 initiated by the division to compel compliance with this chapter or the rules made under this
714 chapter; or

715 [(i)] (ix) as authorized by the board[;] and subject to the provisions of this chapter,
716 exercise all incidental powers necessary to carry out the purposes of this chapter, including
717 certification to any state or federal authorities for tax purposes the fact of construction,
718 installation, or acquisition of any facility, land, building, machinery, or equipment or any part
719 of them, in conformity with this chapter[;].

720 [(j)] cooperate with any person in studies and research regarding air pollution, its
721 control, abatement, and prevention; and]

722 [(k)] represent the state with the specific concurrence of the executive director in all
723 matters pertaining to interstate air pollution, including interstate compacts and similar
724 agreements.]

725 (3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the
726 requirements of this chapter, the rules adopted under this chapter, or any other provision of
727 law.

728 Section 9. Section **19-2-108** is amended to read:

729 **19-2-108. Notice of construction or modification of installations required --**
730 **Authority of director to prohibit construction -- Hearings -- Limitations on authority of**
731 **director -- Inspections authorized.**

732 (1) ~~[The board shall require that notice]~~ Notice shall be given to the ~~[executive~~
733 ~~secretary]~~ director by any person planning to construct a new installation which will or might
734 reasonably be expected to be a source or indirect source of air pollution or to make
735 modifications to an existing installation which will or might reasonably be expected to increase
736 the amount of or change the character or effect of air contaminants discharged, so that the
737 installation may be expected to be a source or indirect source of air pollution, or by any person
738 planning to install an air cleaning device or other equipment intended to control emission of air

739 contaminants.

740 (2) (a) (i) The ~~[executive secretary]~~ director may require, as a condition precedent to
741 the construction, modification, installation, or establishment of the air contaminant source or
742 indirect source, the submission of plans, specifications, and other information as he finds
743 necessary to determine whether the proposed construction, modification, installation, or
744 establishment will be in accord with applicable rules in force under this chapter.

745 (ii) Plan approval for an indirect source may be delegated by the ~~[executive secretary]~~
746 director to a local authority when requested and upon assurance that the local authority has and
747 will maintain sufficient expertise to insure that the planned installation will meet the
748 requirements established by law.

749 (b) If within 90 days after the receipt of plans, specifications, or other information
750 required under this subsection, the ~~[executive secretary]~~ director determines that the proposed
751 construction, installation, or establishment or any part of it will not be in accord with the
752 requirements of this chapter or applicable rules or that further time, not exceeding three
753 extensions of 30 days each, is required by the ~~[board]~~ director to adequately review the plans,
754 specifications, or other information, he shall issue an order prohibiting the construction,
755 installation, or establishment of the air contaminant source or sources in whole or in part.

756 (3) In addition to any other remedies, any person aggrieved by the issuance of an order
757 either granting or denying a request for the construction of a new installation, and prior to
758 invoking any such other remedies shall, upon request, in accordance with the rules of the
759 ~~[board]~~ department, be entitled to a hearing conducted by an administrative law judge as
760 provided by Section 19-1-301. ~~[Following the hearing and the receipt by the board of the~~
761 ~~proposed dispositive action from the administrative law judge, the board may affirm, modify,~~
762 ~~or withdraw the permit.]~~

763 (4) Any features, machines, and devices constituting parts of or called for by plans,
764 specifications, or other information submitted under Subsection (1) shall be maintained in good
765 working order.

766 (5) This section does not authorize the ~~[board]~~ director to require the use of machinery,
767 devices, or equipment from a particular supplier or produced by a particular manufacturer if the
768 required performance standards may be met by machinery, devices, or equipment otherwise
769 available.

770 (6) (a) Any authorized officer, employee, or representative of the [~~board~~] director may
771 enter and inspect any property, premise, or place on or at which an air contaminant source is
772 located or is being constructed, modified, installed, or established at any reasonable time for
773 the purpose of ascertaining the state of compliance with this chapter and the rules adopted
774 under it.

775 (b) (i) A person may not refuse entry or access to any authorized representative of the
776 [~~board~~] director who requests entry for purposes of inspection and who presents appropriate
777 credentials.

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

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

781 Section 10. Section **19-2-109** is amended to read:

782 **19-2-109. Air quality standards -- Hearings on adoption -- Orders of director --**
783 **Adoption of emission control requirements.**

784 (1) (a) The board, in adopting standards of quality for ambient air, shall conduct public
785 hearings.

786 (b) Notice of any public hearing for the consideration, adoption, or amendment of air
787 quality standards shall specify the locations to which the proposed standards apply and the
788 time, date, and place of the hearing.

789 (c) The notice shall be:

790 (i) (A) published at least twice in any newspaper of general circulation in the area
791 affected; and

792 (B) published on the Utah Public Notice Website created in Section 63F-1-701, at least
793 20 days before the public hearing; and

794 (ii) mailed at least 20 days before the public hearing to the chief executive of each
795 political subdivision of the area affected and to other persons the [~~executive secretary~~] director
796 has reason to believe will be affected by the standards.

797 (d) The adoption of air quality standards or any modification or changes to air quality
798 standards shall be by order of the [~~executive secretary~~] director following formal action of the
799 board with respect to the standards.

800 (e) The order shall be published:

801 (i) in a newspaper of general circulation in the area affected; and

802 (ii) as required in Section 45-1-101.

803 (2) (a) The board may establish emission control requirements by rule that in its
804 judgment may be necessary to prevent, abate, or control air pollution that may be statewide or
805 may vary from area to area, taking into account varying local conditions.

806 (b) In adopting these requirements, the board shall give notice and conduct public
807 hearings in accordance with the requirements in Subsection (1).

808 Section 11. Section **19-2-109.1** is amended to read:

809 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

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

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

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

813 (c) "Operating permit" means a permit issued by the [~~executive secretary~~] director to
814 sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air
815 Act.

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

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

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

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

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

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

832 (b) The ~~[executive secretary]~~ director may issue, modify, or renew an operating permit
833 only after providing public notice, an opportunity for public comment, and an opportunity for a
834 public hearing.

835 (c) The ~~[executive secretary]~~ director shall, in conformity with the 1990 Clean Air Act
836 and implementing federal regulations, revise the conditions of issued operating permits to
837 incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990
838 Clean Air Act, if the remaining period of the permit is three or more years.

839 (d) The ~~[executive secretary]~~ director may terminate, modify, revoke, or reissue an
840 operating permit for cause.

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

845 (b) In establishing the fee the board shall comply with the provisions of Section
846 63J-1-504 that require a public hearing and require the established fee to be submitted to the
847 Legislature for its approval as part of the department's annual appropriations request.

848 (c) The fee shall cover all reasonable direct and indirect costs required to develop and
849 administer the program and the small business assistance program established under Section
850 19-2-109.2. The ~~[board]~~ director shall prepare an annual report of the emissions fees collected
851 and the costs covered by those fees under this Subsection (4).

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

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

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

858 (5) Emissions fees ~~[for the period: (a) of July 1, 1992, through June 30, 1993, shall be
859 based on the most recent emissions inventory prepared by the executive secretary; and (b)]~~
860 accrued on and after July 1, 1993, but before issuance of an operating permit, shall be based on
861 the most recent emissions inventory, unless a source elects prior to July 1, 1992, to base the fee
862 on allowable emissions, if applicable for a regulated pollutant.

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

867 (7) If the owner or operator of a source subject to this section fails to timely pay an
868 annual emissions fee, the [~~executive secretary~~] director may:

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

871 (b) revoke the operating permit.

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

875 (a) The owner or operator shall pay the fee under protest prior to being entitled to a
876 hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to
877 contest the fee or penalty under this section.

878 (b) A request for a hearing under this Subsection (8) shall be made after payment of the
879 emissions fee and within six months after the emissions fee was due.

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

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

888 (11) Failure of the [~~executive secretary~~] director to act on any operating permit
889 application or renewal is a final administrative action only for the purpose of obtaining judicial
890 review by any of the following persons to require the [~~executive secretary~~] director to take
891 action on the permit or its renewal without additional delay:

892 (a) the applicant;

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

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

896 Section 12. Section **19-2-109.2** is amended to read:

897 **19-2-109.2. Small business assistance program.**

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

901 (2) There is created the Compliance Advisory Panel to advise and monitor the program
902 created in Subsection (1). The seven panel members are:

903 (a) two members who are not owners or representatives of owners of small business
904 stationary air pollution sources, selected by the governor to represent the general public;

905 (b) four members who are owners or who represent owners of small business stationary
906 sources selected by leadership of the Utah Legislature as follows:

907 (i) one member selected by the majority leader of the Senate;

908 (ii) one member selected by the minority leader of the Senate;

909 (iii) one member selected by the majority leader of the House of Representatives; and

910 (iv) one member selected by the minority leader of the House of Representatives; and

911 (c) one member selected by the executive director to represent the Division of Air
912 Quality, Department of Environmental Quality.

913 (3) (a) Except as required by Subsection (3)(b), as terms of current panel members
914 expire, the department shall appoint each new member or reappointed member to a four-year
915 term.

916 (b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the
917 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
918 panel members are staggered so that approximately half of the panel is appointed every two
919 years.

920 (4) Members may serve more than one term.

921 (5) Members shall hold office until the expiration of their terms and until their
922 successors are appointed, but not more than 90 days after the expiration of their terms.

923 (6) When a vacancy occurs in the membership for any reason, the replacement shall be
924 appointed for the unexpired term.

925 (7) Every two years, the panel shall elect a chair from its members.

926 (8) (a) The panel shall meet as necessary to carry out its duties. Meetings may be
927 called by the chair, the [~~executive secretary~~] director, or upon written request of three of the
928 members of the panel.

929 (b) Three days' notice shall be given to each member of the panel prior to a meeting.

930 (9) Four members constitute a quorum at any meeting, and the action of the majority of
931 members present is the action of the panel.

932 (10) A member may not receive compensation or benefits for the member's service, but
933 may receive per diem and travel expenses in accordance with:

934 (a) Section 63A-3-106;

935 (b) Section 63A-3-107; and

936 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
937 63A-3-107.

938 Section 13. Section **19-2-110** is amended to read:

939 **19-2-110. Violations -- Notice to violator -- Corrective action orders --**

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

941 (1) [~~(a)~~] Whenever the [~~executive secretary~~] director has reason to believe that a
942 violation of any provision of this chapter or any rule issued under it has occurred, [~~he~~] the
943 director may serve written notice of the violation upon the alleged violator. The notice shall
944 specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute
945 the violation, and may include an order that necessary corrective action be taken within a
946 reasonable time.

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

949 (2) Nothing in this chapter prevents the [~~board~~] director from making efforts to obtain
950 voluntary compliance through warning, conference, conciliation, persuasion, or other
951 appropriate means.

952 (3) Hearings may be held before an administrative law judge as provided by Section
953 19-1-301.

954 Section 14. Section **19-2-115** is amended to read:

955 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

956 (1) As used in this section, the terms "knowingly," "willfully," and "criminal
957 negligence" shall mean as defined in Section 76-2-103.

958 (2) (a) A person who violates this chapter, or any rule, order, or permit issued or made
959 under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for
960 each violation.

961 (b) Subsection (2)(a) also applies to rules made under the authority of Section
962 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
963 Subchapter II - Asbestos Hazard Emergency Response.

964 (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances
965 Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the
966 amounts specified in that section and shall be used in accordance with that section.

967 (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under
968 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person
969 knowingly violates any of the following under this chapter:

970 (a) an applicable standard or limitation;

971 (b) a permit condition; or

972 (c) a fee or filing requirement.

973 (4) A person is guilty of a third degree felony and is subject to imprisonment under
974 Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:

975 (a) makes any false material statement, representation, or certification, in any notice or
976 report required by permit; or

977 (b) renders inaccurate any monitoring device or method required to be maintained by
978 this chapter or applicable rules made under this chapter.

979 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty
980 under Section 19-2-109.1.

981 (6) A person who willfully violates Section 19-2-120 is guilty of a class A
982 misdemeanor.

983 (7) A person who knowingly violates any requirement of an applicable implementation
984 plan adopted by the board, more than 30 days after having been notified in writing by the
985 [~~executive secretary~~] director that the person is violating the requirement, knowingly violates
986 an order issued under Subsection 19-2-110(1)[~~(a)~~], or knowingly handles or disposes of

987 asbestos in violation of a rule made under this chapter is guilty of a third degree felony and
988 subject to imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of
989 violation in the case of the first offense, and not more than \$50,000 per day of violation in the
990 case of subsequent offenses.

991 (8) (a) As used in this section:

992 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C.
993 7412 or any extremely hazardous substance listed under 42 U.S.C. 11002(a)(2).

994 (ii) "Organization" means a legal entity, other than a government, established or
995 organized for any purpose, and includes a corporation, company, association, firm, partnership,
996 joint stock company, foundation, institution, trust, society, union, or any other association of
997 persons.

998 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of
999 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
1000 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

1001 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under
1002 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with
1003 criminal negligence:

1004 (A) releases into the ambient air any hazardous air pollutant; and

1005 (B) places another person in imminent danger of death or serious bodily injury.

1006 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is
1007 carrying out the employee's normal activities and who is not a part of senior management
1008 personnel or a corporate officer.

1009 (c) A person is guilty of a second degree felony and is subject to imprisonment under
1010 Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:

1011 (i) knowingly releases into the ambient air any hazardous air pollutant; and

1012 (ii) knows at the time that the person is placing another person in imminent danger of
1013 death or serious bodily injury.

1014 (d) If a person is an organization, it shall, upon conviction of violating Subsection
1015 (8)(c), be subject to a fine of not more than \$1,000,000.

1016 (e) (i) A defendant who is an individual is considered to have acted knowingly under
1017 Subsections (8)(c) and (d), if:

1018 (A) the defendant's conduct placed another person in imminent danger of death or
1019 serious bodily injury; and

1020 (B) the defendant was aware of or believed that there was an imminent danger of death
1021 or serious bodily injury to another person.

1022 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
1023 the defendant.

1024 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
1025 knowledge, including evidence that the defendant took affirmative steps to be shielded from
1026 receiving relevant information.

1027 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the
1028 conduct charged was freely consented to by the person endangered and that the danger and
1029 conduct charged were reasonably foreseeable hazards of:

1030 (A) an occupation, a business, a profession; or

1031 (B) medical treatment or medical or scientific experimentation conducted by
1032 professionally approved methods and the other person was aware of the risks involved prior to
1033 giving consent.

1034 (ii) The defendant has the burden of proof to establish any affirmative defense under
1035 this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.

1036 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law,
1037 all penalties assessed and collected under the authority of this section shall be deposited in the
1038 General Fund.

1039 (b) The department may reimburse itself and local governments from money collected
1040 from civil penalties for extraordinary expenses incurred in environmental enforcement
1041 activities.

1042 (c) The department shall regulate reimbursements by making rules in accordance with
1043 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

1044 (i) define qualifying environmental enforcement activities; and

1045 (ii) define qualifying extraordinary expenses.

1046 Section 15. Section **19-2-116** is amended to read:

1047 **19-2-116. Injunction or other remedies to prevent violations -- Civil actions not**
1048 **abridged.**

1049 (1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of
1050 the rules adopted under it or any orders made under it by injunction or other appropriate
1051 remedy. The ~~[board]~~ director has the power to institute and maintain in the name of the state
1052 any and all enforcement proceedings.

1053 (2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect
1054 substantively or procedurally the right of any person to damages or other relief on account of
1055 injury to persons or property and to maintain any action or other appropriate proceeding for this
1056 purpose.

1057 (3) (a) In addition to any other remedy created in this chapter, the director may initiate
1058 an action for appropriate injunctive relief:

1059 (i) upon failure of any person to comply with:

1060 (A) any provision of this chapter ~~[or]~~;

1061 (B) any rule adopted under ~~[it]~~ this chapter; or

1062 (C) any final order made by the board, the ~~[executive secretary]~~ director, or the
1063 executive director; and

1064 (ii) when it appears necessary for the protection of health and welfare~~[-the board may~~
1065 ~~initiate through its executive secretary an action for appropriate injunctive relief].~~

1066 (b) The attorney general shall bring injunctive relief actions on request.

1067 (c) A bond is not required.

1068 Section 16. Section **19-2-117** is amended to read:

1069 **19-2-117. Attorney general as legal advisor to board -- Duties of attorney general**
1070 **and county attorneys.**

1071 (1) The attorney general is the legal advisor to the board and ~~[its executive secretary]~~
1072 the director and shall defend them or any of them in all actions or proceedings brought against
1073 them or any of them.

1074 (2) The county attorney in the county in which a cause of action arises may, upon
1075 request of the board or ~~[its executive secretary]~~ the director, bring any action, civil or criminal,
1076 to abate a condition which exists in violation of, or to prosecute for the violation of or to
1077 enforce, this chapter or the standards, orders, or rules of the board or the ~~[executive secretary]~~
1078 director issued under this chapter.

1079 (3) The ~~[board or its executive secretary]~~ director may bring any action and be

1080 represented by the attorney general.

1081 (4) In the event any person fails to comply with a cease and desist order of the board or
1082 [~~its executive secretary~~] the director that is not subject to a stay pending administrative or
1083 judicial review, the [board] director may[, ~~through its executive secretary,~~] initiate an action
1084 for, and is entitled to, injunctive relief to prevent any further or continued violation of the
1085 order.

1086 Section 17. Section **19-2-120** is amended to read:

1087 **19-2-120. Information required of owners or operators of air contaminant**
1088 **sources.**

1089 The owner or operator of any stationary air contaminant source in the state shall furnish
1090 to the [board] director the reports required [~~under~~] by rules made in accordance with Section
1091 19-2-104 and any other information the [board] director finds necessary to determine whether
1092 the source is in compliance with state and federal regulations and standards. The information
1093 shall be correlated with applicable emission standards or limitations and shall be available to
1094 the public during normal business hours at the office of the [~~department~~] division.

1095 Section 18. Section **19-3-102** is amended to read:

1096 **19-3-102. Definitions.**

1097 As used in this chapter:

1098 (1) "Board" means the Radiation Control Board created under Section 19-1-106.

1099 (2) (a) "Broker" means a person who performs one or more of the following functions
1100 for a generator:

1101 (i) arranges for transportation of the radioactive waste;

1102 (ii) collects or consolidates shipments of radioactive waste; or

1103 (iii) processes radioactive waste in some manner.

1104 (b) "Broker" does not include a carrier whose sole function is to transport the
1105 radioactive waste.

1106 (3) "Byproduct material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).

1107 (4) "Class B and class C low-level radioactive waste" has the same meaning as in 10
1108 CFR 61.55.

1109 [~~(5) "Executive secretary" means the executive secretary of the board.~~]

1110 (5) "Director" means the director of the Division of Radiation Control.

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;

- 1173 (c) attend board meetings in accordance with the attendance rules made by the
1174 department under Subsection 19-1-201(1)(d)(i)(A); and
- 1175 (d) comply with all applicable statutes, rules, and policies, including the conflict of
1176 interest rules made by the department under Subsection 19-1-201(1)(d)(ii)(B).
- 1177 (3) No more than five appointed members shall be from the same political party.
- 1178 (4) (a) [~~Except as required by Subsection (4)(b), as terms of current board members~~
1179 ~~expire, the] The governor shall appoint each new member or reappointed member to a
1180 four-year term.~~
- 1181 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
1182 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1183 board members are staggered so that [~~approximately~~] half of the appointed board is appointed
1184 every two years.
- 1185 (c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is
1186 appointed before July 1, 2012 shall expire on June 30, 2012.
- 1187 (ii) On July 1, 2012, the governor shall appoint or reappoint board members in
1188 accordance with this section.
- 1189 (5) Each board member is eligible for reappointment to more than one term.
- 1190 (6) Each board member shall continue in office until the expiration of his term and
1191 until a successor is appointed, but not more than 90 days after the expiration of his term.
- 1192 (7) When a vacancy occurs in the membership for any reason, the replacement shall be
1193 appointed for the unexpired term by the governor, after considering recommendations by the
1194 department and with the consent of the Senate.
- 1195 (8) The board shall annually elect a chair and vice chair from its members.
- 1196 (9) The board shall meet at least quarterly. Other meetings may be called by the chair,
1197 by the [~~executive secretary~~] director, or upon the request of three members of the board.
- 1198 (10) Reasonable notice shall be given each member of the board prior to any meeting.
- 1199 (11) [~~Seven~~] Five members constitute a quorum. The action of a majority of the
1200 members present is the action of the board.
- 1201 (12) A member may not receive compensation or benefits for the member's service, but
1202 may receive per diem and travel expenses in accordance with:
- 1203 (a) Section 63A-3-106;

1204 (b) Section 63A-3-107; and
1205 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1206 63A-3-107.

1207 Section 20. Section **19-3-103.5** is amended to read:

1208 **19-3-103.5. Board authority and duties.**

1209 (1) The board may:

1210 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
1211 Rulemaking Act, that are necessary to implement the provisions of the Radiation Control Act;
1212 ~~[(a) require submittal of specifications or other information relating to licensing~~
1213 ~~applications for radioactive materials or registration of radiation sources for review, approval,~~
1214 ~~disapproval, or termination;]~~

1215 (b) recommend that the director:

1216 ~~[(b)]~~ (i) issue orders necessary to enforce the provisions of this part[-];
1217 (ii) enforce the orders by appropriate administrative and judicial proceedings[-, and]; or
1218 (iii) institute judicial proceedings to secure compliance with this part;

1219 (c) (i) hold a hearing that is not an adjudicative proceeding ~~[and compel the attendance~~
1220 ~~of witnesses, the production of documents, and other evidence, administer oaths and take~~
1221 ~~testimony, and receive evidence it finds proper, or]; or~~

1222 (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding[
1223 ~~and authorize them to exercise the powers under this Subsection (1)];~~

1224 ~~[(ii) receive a proposed dispositive action from an administrative law judge as provided~~
1225 ~~by Section 19-1-301; and]~~

1226 ~~[(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~
1227 ~~action; or]~~

1228 ~~[(B) return the proposed dispositive action to the administrative law judge for further~~
1229 ~~action as directed;]~~

1230 ~~[(d) settle or compromise any administrative or civil action initiated to compel~~
1231 ~~compliance with this part or any rules adopted under this part;]~~

1232 ~~[(e) advise, consult, cooperate with, and provide technical assistance to other agencies~~
1233 ~~of the state and federal government, other states, interstate agencies, and affected groups,~~
1234 ~~political subdivisions, industries, and other persons in carrying out the provisions of this part;]~~

1235 ~~[(f) promote the planning and application of pollution prevention and radioactive waste~~
1236 ~~minimization measures to prevent the unnecessary waste and depletion of natural resources;]~~

1237 ~~[(g) cooperate with any persons in studies, research, or demonstration projects~~
1238 ~~regarding radioactive waste management or control of radiation sources;]~~

1239 ~~[(h)] (d) accept, receive, and administer grants or other funds or gifts from public and~~
1240 ~~private agencies, including the federal government, for the purpose of carrying out any of the~~
1241 ~~functions of this part; or~~

1242 ~~[(i) exercise all incidental powers necessary to carry out the purposes of this part;]~~

1243 ~~[(j) submit an application to the U.S. Food and Drug Administration for approval as an~~
1244 ~~accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of~~
1245 ~~1992;]~~

1246 ~~[(k) accredit mammography facilities, pursuant to approval as an accrediting body from~~
1247 ~~the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography~~
1248 ~~Quality Standards Act of 1992; and]~~

1249 ~~[(l) review the qualifications of and issue certificates of approval to individuals who~~
1250 ~~survey mammography equipment and oversee quality assurance practices at mammography~~
1251 ~~facilities;]~~

1252 (e) order the director to impound radioactive material in accordance with Section
1253 19-3-111.

1254 (2) The board shall:

1255 ~~[(a) receive a proposed dispositive action from an administrative law judge on an~~
1256 ~~appeal of final decisions made by the executive secretary as provided by Section 19-1-301;]~~

1257 ~~[(b)] (a) prepare a radioactive waste management plan in compliance with Section~~
1258 ~~19-3-107 as soon as practicable; [and]~~

1259 ~~[(c) impound radioactive material as authorized in Section 19-3-111;]~~

1260 ~~[(3) Representatives of the board upon presentation of appropriate credentials may~~
1261 ~~enter at reasonable times upon the premises of public and private properties subject to~~
1262 ~~regulation under this part to perform inspections to insure compliance with this part and rules~~
1263 ~~made by the board;]~~

1264 (b) promote the planning and application of pollution prevention and radioactive waste
1265 minimization measures to prevent the unnecessary waste and depletion of natural resources;

- 1266 (c) to ensure compliance with applicable statutes and regulations:
1267 (i) review a settlement negotiated by the director in accordance with Subsection
1268 19-3-108(3)(b) that requires a civil penalty of \$25,000 or more; and
1269 (ii) approve or disapprove the settlement;
1270 (d) submit an application to the U.S. Food and Drug Administration for approval as an
1271 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of
1272 1992;
1273 (e) accredit mammography facilities, pursuant to approval as an accrediting body from
1274 the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography
1275 Quality Standards Act of 1992; and
1276 (f) review the qualifications of, and issue certificates of approval to, individuals who:
1277 (i) survey mammography equipment; or
1278 (ii) oversee quality assurance practices at mammography facilities.
1279 (3) The board may not issue, amend, renew, modify, revoke, or terminate any of the
1280 following that are subject to the authority granted to the director under Section 19-3-108:
1281 (a) a permit;
1282 (b) a license;
1283 (c) a registration;
1284 (d) a certification; or
1285 (e) another administrative authorization made by the director.
1286 (4) A board member may not speak or act for the board unless the board member is
1287 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

1288 Section 21. Section **19-3-104** is amended to read:

1289 **19-3-104. Registration and licensing of radiation sources by department --**
1290 **Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.**

- 1291 (1) As used in this section:
1292 (a) "Decommissioning" includes financial assurance.
1293 (b) "Source material" and "byproduct material" have the same definitions as in 42
1294 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.
1295 (2) The [board] division may require the registration or licensing of radiation sources
1296 that constitute a significant health hazard.

1297 (3) All sources of ionizing radiation, including ionizing radiation producing machines,
1298 shall be registered or licensed by the department.

1299 (4) The board may make rules:

1300 (a) necessary for controlling exposure to sources of radiation that constitute a
1301 significant health hazard;

1302 (b) to meet the requirements of federal law relating to radiation control to ensure the
1303 radiation control program under this part is qualified to maintain primacy from the federal
1304 government;

1305 (c) to establish:

1306 (i) board accreditation requirements and procedures for mammography facilities; and

1307 (ii) certification procedure and qualifications for persons who survey mammography
1308 equipment and oversee quality assurance practices at mammography facilities; and

1309 (d) as necessary regarding the possession, use, transfer, or delivery of source and
1310 byproduct material and the disposal of byproduct material to establish requirements for:

1311 (i) the licensing, operation, decontamination, and decommissioning, including financial
1312 assurances; and

1313 (ii) the reclamation of sites, structures, and equipment used in conjunction with the
1314 activities described in this Subsection (4).

1315 (5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and
1316 byproduct material and the disposal of byproduct material at uranium mills or commercial
1317 waste facilities, as provided in this Subsection (5).

1318 (b) On and after January 1, 2003 through March 30, 2003:

1319 (i) \$6,667 per month for uranium mills or commercial sites disposing of or
1320 reprocessing byproduct material; and

1321 (ii) \$4,167 per month for those uranium mills the ~~[executive secretary]~~ director has
1322 determined are on standby status.

1323 (c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection
1324 (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an
1325 amendment for agreement state status for uranium recovery regulation on or before March 30,
1326 2003.

1327 (d) If the Nuclear Regulatory Commission does not grant the amendment for state

1328 agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and
1329 are not required to be paid until on and after the later date of:

1330 (i) October 1, 2003; or

1331 (ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for
1332 agreement state status for uranium recovery regulation.

1333 (e) For the payment periods beginning on and after July 1, 2003, the department shall
1334 establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the
1335 restrictions under Subsection (5)(d).

1336 (f) The [~~department~~] division shall deposit fees it receives under this Subsection (5)
1337 into the Environmental Quality Restricted Account created in Section 19-1-108.

1338 (6) (a) The [~~department~~] division shall assess fees for registration, licensing, and
1339 inspection of radiation sources under this section.

1340 (b) The [~~department~~] division shall comply with the requirements of Section 63J-1-504
1341 in assessing fees for licensure and registration.

1342 (7) The [~~department~~] division shall coordinate its activities with the Department of
1343 Health rules made under Section 26-21a-203.

1344 (8) (a) Except as provided in Subsection (9), the board may not adopt rules, for the
1345 purpose of the state assuming responsibilities from the United States Nuclear Regulatory
1346 Commission with respect to regulation of sources of ionizing radiation, that are more stringent
1347 than the corresponding federal regulations which address the same circumstances.

1348 (b) In adopting those rules, the board may incorporate corresponding federal
1349 regulations by reference.

1350 (9) (a) The board may adopt rules more stringent than corresponding federal
1351 regulations for the purpose described in Subsection (8) only if it makes a written finding after
1352 public comment and hearing and based on evidence in the record that corresponding federal
1353 regulations are not adequate to protect public health and the environment of the state.

1354 (b) Those findings shall be accompanied by an opinion referring to and evaluating the
1355 public health and environmental information and studies contained in the record which form
1356 the basis for the board's conclusion.

1357 (10) (a) The board shall by rule:

1358 (i) authorize independent qualified experts to conduct inspections required under this

1359 chapter of x-ray facilities registered with the division; and

1360 (ii) establish qualifications and certification procedures necessary for independent
1361 experts to conduct these inspections.

1362 (b) Independent experts under this Subsection (10) are not considered employees or
1363 representatives of the division or the state when conducting the inspections.

1364 (11) (a) The board may by rule establish criteria for siting commercial low-level
1365 radioactive waste treatment or disposal facilities, subject to the prohibition imposed by Section
1366 19-3-103.7.

1367 (b) Subject to Subsection 19-3-105(10), any facility under Subsection (11)(a) for which
1368 a radioactive material license is required by this section shall comply with those criteria.

1369 (c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive
1370 material license until siting criteria have been established by the board. The criteria also apply
1371 to facilities that have applied for but not received a radioactive material license.

1372 (12) The board shall by rule establish financial assurance requirements for closure and
1373 postclosure care of radioactive waste land disposal facilities, taking into account existing
1374 financial assurance requirements.

1375 Section 22. Section **19-3-105** is amended to read:

1376 **19-3-105. Definitions -- Legislative and gubernatorial approval required for**
1377 **radioactive waste license -- Exceptions -- Application for new, renewed, or amended**
1378 **license.**

1379 (1) As used in this section:

1380 (a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

1381 (b) (i) "Class A low-level radioactive waste" means:

1382 (A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

1383 (B) radium-226 up to a maximum radionuclide concentration level of 10,000
1384 picocuries per gram.

1385 (ii) "Class A low-level radioactive waste" does not include:

1386 (A) uranium mill tailings;

1387 (B) naturally occurring radioactive materials; or

1388 (C) the following radionuclides if classified as "special nuclear material" under the
1389 Atomic Energy Act of 1954, 42 U.S.C. 2014:

1390 (I) uranium-233; and
1391 (II) uranium-235 with a radionuclide concentration level greater than the concentration
1392 limits for specific conditions and enrichments established by an order of the Nuclear
1393 Regulatory Commission:

1394 (Aa) to ensure criticality safety for a radioactive waste facility in the state; and
1395 (Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive
1396 waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special
1397 nuclear material exemption order.

1398 (c) (i) "Radioactive waste facility" or "facility" means a facility that receives, transfers,
1399 stores, decays in storage, treats, or disposes of radioactive waste:

1400 (A) commercially for profit; or

1401 (B) generated at locations other than the radioactive waste facility.

1402 (ii) "Radioactive waste facility" does not include a facility that receives:

1403 (A) alternate feed material for reprocessing; or

1404 (B) radioactive waste from a location in the state designated as a processing site under
1405 42 U.S.C. 7912(f).

1406 (d) "Radioactive waste license" or "license" means a radioactive material license issued
1407 by the [~~executive secretary~~] director under Subsection 19-3-108(2)[~~(c)(i)~~](d), to own, construct,
1408 modify, or operate a radioactive waste facility.

1409 (2) The provisions of this section are subject to the prohibition under Section
1410 19-3-103.7.

1411 (3) Subject to Subsection (10), a person may not own, construct, modify, or operate a
1412 radioactive waste facility without:

1413 (a) having received a radioactive waste license for the facility;

1414 (b) meeting the requirements established by rule under Section 19-3-104;

1415 (c) the approval of the governing body of the municipality or county responsible for
1416 local planning and zoning where the radioactive waste is or will be located; and

1417 (d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the
1418 approval of the governor and the Legislature.

1419 (4) Subject to Subsection (10), a new radioactive waste license application, or an
1420 application to renew or amend an existing radioactive waste license, is subject to the

1421 requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

1422 (a) specifies a different geographic site than a previously submitted application;

1423 (b) would cost 50% or more of the cost of construction of the original radioactive
1424 waste facility or the modification would result in an increase in capacity or throughput of a
1425 cumulative total of 50% of the total capacity or throughput which was approved in the facility
1426 license as of January 1, 1990, or the initial approval facility license if the initial license
1427 approval is subsequent to January 1, 1990; or

1428 (c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of
1429 radioactive waste having a higher radionuclide concentration limit than allowed, under an
1430 existing approved license held by the facility, for the specific type of waste to be received,
1431 transferred, stored, decayed in storage, treated, or disposed of.

1432 (5) The requirements of Subsection (4)(c) do not apply to an application to renew or
1433 amend an existing radioactive waste license if:

1434 (a) the radioactive waste facility requesting the renewal or amendment has received a
1435 license prior to January 1, 2004; and

1436 (b) the application to renew or amend its license is limited to a request to approve the
1437 receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level
1438 radioactive waste.

1439 (6) A radioactive waste facility which receives a new radioactive waste license after
1440 May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license
1441 application, renewal, or amendment that requests approval to receive, transfer, store, decay in
1442 storage, treat, or dispose of radioactive waste not previously approved under an existing license
1443 held by the facility.

1444 (7) If the board finds that approval of additional radioactive waste license applications,
1445 renewals, or amendments will result in inadequate oversight, monitoring, or licensure
1446 compliance and enforcement of existing and any additional radioactive waste facilities, the
1447 board shall suspend acceptance of further applications for radioactive waste licenses. The
1448 board shall report the suspension to the Legislative Management Committee.

1449 (8) The ~~[board]~~ director shall review each proposed radioactive waste license
1450 application to determine whether the application complies with the provisions of this chapter
1451 and the rules of the board.

1452 (9) (a) If the radioactive waste license application is determined to be complete, the
1453 ~~[board]~~ director shall issue a notice of completeness.

1454 (b) If the ~~[board]~~ director determines that the radioactive waste license application is
1455 incomplete, the ~~[board]~~ director shall issue a notice of deficiency, listing the additional
1456 information to be provided by the applicant to complete the application.

1457 (10) The requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(11) do
1458 not apply to:

1459 (a) a radioactive waste license that is in effect on December 31, 2006, including all
1460 amendments to the license that have taken effect as of December 31, 2006;

1461 (b) a license application for a facility in existence as of December 31, 2006, unless the
1462 license application includes an area beyond the facility boundary approved in the license
1463 described in Subsection (10)(a); or

1464 (c) an application to renew or amend a license described in Subsection (10)(a), unless
1465 the renewal or amendment includes an area beyond the facility boundary approved in the
1466 license described in Subsection (10)(a).

1467 Section 23. Section **19-3-106.4** is amended to read:

1468 **19-3-106.4. Generator site access permits.**

1469 (1) A generator or broker may not transfer radioactive waste to a commercial
1470 radioactive waste treatment or disposal facility in the state without first obtaining a generator
1471 site access permit from the ~~[executive secretary]~~ director.

1472 (2) The board may make rules pursuant to Section 19-3-104 governing a generator site
1473 access permit program.

1474 (3) (a) Except as provided in Subsection (3)(b), the ~~[department]~~ division shall
1475 establish fees for generator site access permits in accordance with Section 63J-1-504.

1476 (b) On and after July 1, 2001 through June 30, 2002, the fees are:

1477 (i) \$1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per
1478 year;

1479 (ii) \$500 for generators transferring less than 1,000 cubic feet of radioactive waste per
1480 year; and

1481 (iii) \$5,000 for brokers.

1482 (c) The ~~[department]~~ division shall deposit fees received under this section into the

1483 Environmental Quality Restricted Account created in Section 19-1-108.

1484 (4) This section does not apply to a generator or broker transferring radioactive waste
1485 to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

1486 Section 24. Section **19-3-108** is amended to read:

1487 **19-3-108. Powers and duties of director.**

1488 (1) The executive director shall appoint [~~an executive secretary, with the approval of~~
1489 ~~the board, to~~] the director. The director shall serve under the administrative direction of the
1490 executive director.

1491 (2) The [~~executive secretary may~~] director shall:

1492 (a) develop programs to promote and protect the public from radiation sources in the
1493 state;

1494 (b) advise, consult, [~~and~~] cooperate with, and provide technical assistance to other
1495 agencies, states, the federal government, political subdivisions, industries, and other [~~groups to~~
1496 ~~further the purposes of this chapter~~] persons in carrying out the provisions of the Radiation
1497 Control Act;

1498 [~~(c) as authorized by the board:~~]

1499 (c) receive specifications or other information relating to licensing applications for
1500 radioactive materials or registration of radiation sources for review, approval, disapproval, or
1501 termination;

1502 [(i)] (d) issue permits, licenses, registrations, [~~and~~] certifications, and other
1503 administrative authorizations;

1504 [(ii)] (e) review and approve plans;

1505 [(iii)] [~~enforce rules through the issuance of orders and~~]

1506 (f) assess penalties in accordance with Section 19-3-109;

1507 [(iv)] (g) impound radioactive material under Section 19-3-111; [~~and~~]

1508 [~~(v) authorize employees or representatives of the department to enter at reasonable~~
1509 ~~times and upon reasonable notice in and upon public or private property for the purpose of~~
1510 ~~inspecting and investigating conditions and records concerning radiation sources.~~]

1511 (h) issue orders necessary to enforce the provisions of this part, enforce the orders by
1512 appropriate administrative and judicial proceedings, or institute judicial proceedings to secure
1513 compliance with this part; and

1514 (i) as authorized by the board and subject to the provisions of this chapter, act as
1515 executive secretary of the board under the direction of the chairman of the board.

1516 (3) The director may:

1517 (a) cooperate with any person in studies, research, or demonstration projects regarding
1518 radioactive waste management or control of radiation sources;

1519 (b) subject to Subsection 19-3-103.5(2)(c), settle or compromise any civil action
1520 initiated by the division to compel compliance with this chapter or the rules made under this
1521 chapter; or

1522 (c) authorize employees or representatives of the department to enter, at reasonable
1523 times and upon reasonable notice, in and upon public or private property for the purpose of
1524 inspecting and investigating conditions and records concerning radiation sources.

1525 Section 25. Section **19-3-109** is amended to read:

1526 **19-3-109. Civil penalties -- Appeals.**

1527 (1) A person who violates any provision of Sections 19-3-104 through 19-3-113, any
1528 rule or order issued under the authority of those sections, or the terms of a license, permit, or
1529 registration certificate issued under the authority of those sections is subject to a civil penalty
1530 not to exceed \$5,000 for each violation.

1531 (2) The ~~[board]~~ director may assess and make a demand for payment of a penalty under
1532 this section and may compromise or remit that penalty.

1533 (3) In order to make demand for payment of a penalty assessed under this section, the
1534 ~~[board]~~ director shall issue a notice of agency action, specifying, in addition to the
1535 requirements for notices of agency action contained in Title 63G, Chapter 4, Administrative
1536 Procedures Act:

1537 (a) the date, facts, and nature of each act or omission charged;

1538 (b) the provision of the statute, rule, order, license, permit, or registration certificate
1539 that is alleged to have been violated;

1540 (c) each penalty that the ~~[bureau]~~ director proposes to impose, together with the
1541 amount and date of effect of that penalty; and

1542 (d) that failure to pay the penalty or respond may result in a civil action for collection.

1543 (4) A person notified according to Subsection (3) may request an adjudicative
1544 proceeding.

1545 (5) Upon request by the ~~[board]~~ director, the attorney general may institute a civil
1546 action to collect a penalty imposed under this section.

1547 (6) (a) Except as provided in Subsection (6)(b), the department shall deposit all money
1548 collected from civil penalties imposed under this section into the General Fund.

1549 (b) The department may reimburse itself and local governments from money collected
1550 from civil penalties for extraordinary expenses incurred in environmental enforcement
1551 activities.

1552 (c) The department shall regulate reimbursements by making rules that:

1553 (i) define qualifying environmental enforcement activities; and

1554 (ii) define qualifying extraordinary expenses.

1555 Section 26. Section **19-3-111** is amended to read:

1556 **19-3-111. Impounding of radioactive material.**

1557 (1) The ~~[board]~~ director may impound the radioactive material of any person if:

1558 (a) the material poses an imminent threat or danger to the public health or safety; or

1559 (b) that person is violating:

1560 (i) any provision of Sections 19-3-104 through 19-3-113;

1561 (ii) any rules or orders enacted or issued under the authority of those sections; or

1562 (iii) the terms of a license, permit, or registration certificate issued under the authority
1563 of those sections.

1564 (2) Before any dispositive action may be taken with regard to impounded radioactive
1565 materials, the ~~[board]~~ director shall comply with the procedures and requirements of Title 63G,
1566 Chapter 4, Administrative Procedures Act and Section 19-1-301.

1567 Section 27. Section **19-4-102** is amended to read:

1568 **19-4-102. Definitions.**

1569 As used in this chapter:

1570 (1) "Board" means the Drinking Water Board appointed under Section 19-4-103.

1571 (2) "Contaminant" means a physical, chemical, biological, or radiological substance or
1572 matter in water.

1573 ~~[(3) "Executive secretary" means the executive secretary of the board.]~~

1574 (3) "Director" means the director of the Division of Drinking Water.

1575 (4) "Division" means the Division of Drinking Water, created in Subsection

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:]~~

1638 ~~[(a) two elected officials of municipal government or their representatives involved in~~
1639 ~~management or operation of public water systems;]~~

1640 ~~[(b) two representatives of improvement districts, water conservancy districts, or~~
1641 ~~metropolitan water districts;]~~

1642 ~~[(c) one representative from an industry which manages or operates a public water~~
1643 ~~system;]~~

1644 ~~[(d) one registered professional engineer with expertise in civil or sanitary~~
1645 ~~engineering;]~~

1646 ~~[(e) one representative from the state water research community or from an institution~~
1647 ~~of higher education which has comparable expertise in water research;]~~

1648 ~~[(f) two representatives of the public who do not represent other interests named in this~~
1649 ~~section and who do not receive, and have not received during the past two years, a significant~~
1650 ~~portion of their income, directly or indirectly, from suppliers; and]~~

1651 ~~[(g) one representative from a local health department.]~~

1652 ~~[(5)(a) Members of the Utah Safe Drinking Water Committee created by Laws of Utah~~
1653 ~~1981, Chapter 126, shall serve as members of the board throughout the terms for which they~~
1654 ~~were appointed.]~~

1655 ~~[(b) Except as required by Subsection (5)(c), as]~~

1656 ~~(4)(a) As terms of current board members expire, the governor shall appoint each new~~
1657 ~~member or reappointed member to a four-year term.~~

1658 ~~[(e)] (b) Notwithstanding the requirements of Subsection [(5)(b)] (4)(a), the governor~~
1659 ~~shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the~~
1660 ~~terms of board members are staggered so that [approximately] half of the appointed board is~~
1661 ~~appointed every two years.~~

1662 ~~(c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is~~
1663 ~~appointed before May 1, 2013 shall expire on April 30, 2013.~~

1664 ~~(ii) On May 1, 2013, the governor shall appoint or reappoint board members in~~
1665 ~~accordance with this section.~~

1666 ~~[(6)] (5) When a vacancy occurs in the membership for any reason, the replacement~~
1667 ~~shall be appointed for the unexpired term.~~

1668 ~~[(7)] (6) Each member holds office until the expiration of the member's term, and until~~

1669 a successor is appointed, but not for more than 90 days after the expiration of the term.

1670 ~~[(8)]~~ (7) The board shall elect annually a chair and a vice chair from its members.

1671 ~~[(9)]~~ (8) (a) The board shall meet at least quarterly.

1672 (b) Special meetings may be called by the chair upon ~~[his]~~ the chair's own initiative,
1673 upon the request of the ~~[executive secretary]~~ director, or upon the request of three members of
1674 the board.

1675 (c) Reasonable notice shall be given to each member of the board ~~[prior to]~~ before any
1676 meeting.

1677 ~~[(10) Six]~~ (9) Five members constitute a quorum at any meeting and the action of the
1678 majority of the members present is the action of the board.

1679 ~~[(H)]~~ (10) A member may not receive compensation or benefits for the member's
1680 service, but may receive per diem and travel expenses in accordance with:

1681 (a) Section 63A-3-106;

1682 (b) Section 63A-3-107; and

1683 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1684 63A-3-107.

1685 Section 29. Section **19-4-104** is amended to read:

1686 **19-4-104. Powers of board.**

1687 (1) (a) The board may~~[-(a)]~~ make rules in accordance with Title 63G, Chapter 3, Utah
1688 Administrative Rulemaking Act:

1689 (i) establishing standards that prescribe the maximum contaminant levels in any public
1690 water system and provide for monitoring, record-keeping, and reporting of water quality related
1691 matters;

1692 (ii) governing design, construction, operation, and maintenance of public water
1693 systems;

1694 (iii) granting variances and exemptions to the requirements established under this
1695 chapter that are not less stringent than those allowed under federal law;

1696 (iv) protecting watersheds and water sources used for public water systems; and

1697 (v) governing capacity development in compliance with Section 1420 of the federal
1698 Safe Drinking Water Act, 42 U.S.C.A. 300f et seq.;

1699 (b) The board may:

1700 (i) order the director to:
1701 ~~[(b)]~~ (A) issue orders necessary to enforce the provisions of this chapter[;];
1702 (B) enforce the orders by appropriate administrative and judicial proceedings[~~, and~~]; or
1703 (C) institute judicial proceedings to secure compliance with this chapter;
1704 ~~[(c)-(i)]~~ (ii) (A) hold a hearing that is not an adjudicative proceeding relating to the
1705 administration of this chapter [~~and compel the attendance of witnesses, the production of~~
1706 ~~documents and other evidence, administer oaths and take testimony, and receive evidence as~~
1707 ~~necessary~~]; or
1708 ~~[(ii)]~~ (B) appoint hearing officers to conduct a hearing that is not an adjudicative
1709 proceeding [~~and authorize them to exercise powers under Subsection (1)(c)(i)]~~; or
1710 ~~[(iii) receive a proposed dispositive action from an administrative law judge as~~
1711 ~~provided by Section 19-1-301; and]~~
1712 ~~[(iv) (A) approve, approve with modifications, or disapprove a proposed dispositive~~
1713 ~~action; or]~~
1714 ~~[(B) return the proposed dispositive action to the administrative law judge for further~~
1715 ~~action as directed;]~~
1716 ~~[(d) require the submission to the executive secretary of plans and specifications for~~
1717 ~~construction of, substantial addition to, or alteration of public water systems for review and~~
1718 ~~approval by the board before that action begins and require any modifications or impose any~~
1719 ~~conditions that may be necessary to carry out the purposes of this chapter;]~~
1720 ~~[(e) advise, consult, cooperate with, provide technical assistance to, and enter into~~
1721 ~~agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,~~
1722 ~~municipalities, local health departments, educational institutions, or others necessary to carry~~
1723 ~~out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of~~
1724 ~~local jurisdictions;]~~
1725 ~~[(f)]~~ (iii) request and accept financial assistance from other public agencies, private
1726 entities, and the federal government to carry out the purposes of this chapter[;].
1727 ~~[(g) develop and implement an emergency plan to protect the public when declining~~
1728 ~~drinking water quality or quantity creates a serious health risk and issue emergency orders if a~~
1729 ~~health risk is imminent;]~~
1730 ~~[(h) authorize employees or agents of the department, after reasonable notice and~~

1731 ~~presentation of credentials, to enter any part of a public water system at reasonable times to~~
1732 ~~inspect the facilities and water quality records required by board rules, conduct sanitary~~
1733 ~~surveys, take samples, and investigate the standard of operation and service delivered by public~~
1734 ~~water systems;]~~

1735 ~~[(i) meet the requirements of federal law related or pertaining to drinking water; and]~~
1736 ~~[(j) exercise all other incidental powers necessary to carry out the purpose of this~~
1737 ~~chapter.]~~

1738 (c) The board shall:

1739 (i) require the submission to the director of plans and specifications for construction of,
1740 substantial addition to, or alteration of public water systems for review and approval by the
1741 board before that action begins and require any modifications or impose any conditions that
1742 may be necessary to carry out the purposes of this chapter;

1743 (ii) advise, consult, cooperate with, provide technical assistance to, and enter into
1744 agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,
1745 municipalities, local health departments, educational institutions, and others necessary to carry
1746 out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of
1747 local jurisdictions;

1748 (iii) develop and implement an emergency plan to protect the public when declining
1749 drinking water quality or quantity creates a serious health risk and issue emergency orders if a
1750 health risk is imminent; and

1751 (iv) meet the requirements of federal law related or pertaining to drinking water.

1752 (2) (a) The board may adopt and enforce standards and establish fees for certification
1753 of operators of any public water system.

1754 (b) The board may not require certification of operators for a water system serving a
1755 population of 800 or less except:

1756 (i) to the extent required for compliance with Section 1419 of the federal Safe Drinking
1757 Water Act, 42 U.S.C.A. 300f et seq.; and

1758 (ii) for a system that is required to treat its drinking water.

1759 (c) The certification program shall be funded from certification and renewal fees.

1760 (3) Routine extensions or repairs of existing public water systems that comply with the
1761 rules and do not alter the system's ability to provide an adequate supply of water are exempt

1762 from the provisions of Subsection (1)~~(d)~~(c)(i).

1763 (4) (a) The board may adopt and enforce standards and establish fees for certification
1764 of persons engaged in administering cross connection control programs or backflow prevention
1765 assembly training, repair, and maintenance testing.

1766 (b) The certification program shall be funded from certification and renewal fees.

1767 (5) A board member may not speak or act for the board unless the board member is
1768 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

1769 Section 30. Section **19-4-106** is amended to read:

1770 **19-4-106. Director -- Appointment -- Authority.**

1771 [~~An executive secretary to the board shall be appointed by the executive director, with~~
1772 ~~the approval of the board, and serve under the direction of the executive director. The~~
1773 ~~executive secretary may:]~~

1774 (1) The executive director shall appoint the director. The director shall serve under the
1775 administrative direction of the executive director.

1776 (2) The director shall:

1777 [~~(1)~~ (a) develop programs to promote and protect the quality of the public drinking
1778 water supplies of the state;

1779 [~~(2)~~ (b) advise, consult, and cooperate with other agencies of this and other states, the
1780 federal government, and with other groups, political subdivisions, and industries in furtherance
1781 of the purpose of this chapter;

1782 [~~(3)~~ (c) review plans, specifications, and other data pertinent to proposed or expanded
1783 water supply systems to [~~insure~~] ensure proper design and construction; and

1784 [~~(4) as authorized by the board and]~~

1785 (d) subject to the provisions of this chapter, enforce rules made by the board through
1786 the issuance of orders which may be subsequently revoked, which rules may require:

1787 [~~(a)~~ (i) discontinuance of use of unsatisfactory sources of drinking water;

1788 [~~(b)~~ (ii) suppliers to notify the public concerning the need to boil water; [~~and~~] or

1789 [~~(c)~~ (iii) suppliers in accordance with existing rules, to take remedial actions necessary
1790 to protect or improve an existing water system~~[-]~~; and

1791 (e) as authorized by the board and subject to the provisions of this chapter, act as
1792 executive secretary of the board under the direction of the chairman of the board.

1793 (3) The director may authorize employees or agents of the department, after reasonable
1794 notice and presentation of credentials, to enter any part of a public water system at reasonable
1795 times to inspect the facilities and water quality records required by board rules, conduct
1796 sanitary surveys, take samples, and investigate the standard of operation and service delivered
1797 by public water systems.

1798 Section 31. Section **19-4-107** is amended to read:

1799 **19-4-107. Notice of violation of rule or order -- Action by attorney general.**

1800 (1) Upon discovery of any violation of a rule or order of the board, the board or [~~its~~
1801 ~~executive secretary~~] the director shall promptly notify the supplier of the violation, state the
1802 nature of the violation, and issue an order requiring correction of that violation or the filing of a
1803 request for variance or exemption by a specific date.

1804 (2) The attorney general shall, upon request of the [~~board~~] director, commence an
1805 action for an injunction or other relief relative to the order.

1806 Section 32. Section **19-4-109** is amended to read:

1807 **19-4-109. Violations -- Penalties -- Reimbursement for expenses.**

1808 (1) Any person that violates any rule or order made or issued pursuant to this chapter is
1809 subject to a civil penalty of not more than \$1,000 per day for each day of violation. The board
1810 may assess and make a demand for payment of a penalty under this section by directing the
1811 [~~executive secretary~~] director to issue a notice of agency action under Title 63G, Chapter 4,
1812 Administrative Procedures Act.

1813 (2) (a) Any person that willfully violates any rule or order made or issued pursuant to
1814 this chapter, or that willfully fails to take any corrective action required by such an order, is
1815 guilty of a class B misdemeanor and subject to a fine of not more than \$5,000 per day for each
1816 day of violation.

1817 (b) In addition, the person is subject, in a civil proceeding, to a penalty of not more
1818 than \$5,000 per day for each day of violation.

1819 (3) (a) Except as provided in Subsection (3)(b), all penalties assessed and collected
1820 under the authority of this section shall be deposited in the General Fund.

1821 (b) The department may reimburse itself and local governments from money collected
1822 from civil penalties for extraordinary expenses incurred in environmental enforcement
1823 activities.

1824 (c) The department shall regulate reimbursements by making rules that:

1825 (i) define qualifying environmental enforcement activities; and

1826 (ii) define qualifying extraordinary expenses.

1827 Section 33. Section **19-5-102 (Effective 07/01/12)** is amended to read:

1828 **19-5-102 (Effective 07/01/12). Definitions.**

1829 As used in this chapter:

1830 (1) "Agriculture discharge":

1831 (a) means the release of agriculture water from the property of a farm, ranch, or feed lot

1832 that:

1833 (i) pollutes a surface body of water, including a stream, lake, pond, marshland,

1834 watercourse, waterway, river, ditch, and other water conveyance system of the state;

1835 (ii) pollutes the ground water of the state; or

1836 (iii) constitutes a significant nuisance on urban land; and

1837 (b) does not include:

1838 (i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land

1839 that is not part of a body of water; or

1840 (ii) a release into a normally dry water conveyance to an active body of water, unless

1841 the release reaches the water of a lake, pond, stream, marshland, river, or other active body of

1842 water.

1843 (2) "Agriculture water" means:

1844 (a) water used by a farmer, rancher, or feed lot for the production of food, fiber, or fuel;

1845 (b) return flows from irrigated agriculture; and

1846 (c) agricultural storm water runoff.

1847 (3) "Board" means the Water Quality Board created in Section 19-1-106.

1848 (4) "Commission" means the Conservation Commission created in Section 4-18-4.

1849 (5) "Contaminant" means any physical, chemical, biological, or radiological substance

1850 or matter in water.

1851 (6) "Director" means the director of the Division of Water Quality or, for purposes of

1852 groundwater quality at a facility licensed by and under the jurisdiction of the Division of

1853 Radiation Control, the director of the Division of Radiation Control.

1854 [~~(6)~~ (7) "Discharge" means the addition of any pollutant to any waters of the state.

- 1855 [~~(7)~~] (8) "Discharge permit" means a permit issued to a person who:
- 1856 (a) discharges or whose activities would probably result in a discharge of pollutants
- 1857 into the waters of the state; or
- 1858 (b) generates or manages sewage sludge.
- 1859 [~~(8)~~] (9) "Disposal system" means a system for disposing of wastes, and includes
- 1860 sewerage systems and treatment works.
- 1861 (10) "Division" means the Division of Water Quality, created in Subsection
- 1862 19-1-105(1)(f).
- 1863 [~~(9)~~] (11) "Effluent limitations" means any restrictions, requirements, or prohibitions,
- 1864 including schedules of compliance established under this chapter which apply to discharges.
- 1865 [~~(10)~~] "~~Executive secretary~~" means the ~~executive secretary of the board.~~]
- 1866 [~~(11)~~] (12) "Point source":
- 1867 (a) means any discernible, confined, and discrete conveyance, including any pipe,
- 1868 ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated
- 1869 animal feeding operation, or vessel or other floating craft, from which pollutants are or may be
- 1870 discharged; and
- 1871 (b) does not include return flows from irrigated agriculture.
- 1872 [~~(12)~~] (13) "Pollution" means any man-made or man-induced alteration of the
- 1873 chemical, physical, biological, or radiological integrity of any waters of the state, unless the
- 1874 alteration is necessary for the public health and safety.
- 1875 [~~(13)~~] (14) "Publicly owned treatment works" means any facility for the treatment of
- 1876 pollutants owned by the state, its political subdivisions, or other public entity.
- 1877 [~~(14)~~] (15) "Schedule of compliance" means a schedule of remedial measures,
- 1878 including an enforceable sequence of actions or operations leading to compliance with this
- 1879 chapter.
- 1880 [~~(15)~~] (16) "Sewage sludge" means any solid, semisolid, or liquid residue removed
- 1881 during the treatment of municipal wastewater or domestic sewage.
- 1882 [~~(16)~~] (17) "Sewerage system" means pipelines or conduits, pumping stations, and all
- 1883 other constructions, devices, appurtenances, and facilities used for collecting or conducting
- 1884 wastes to a point of ultimate disposal.
- 1885 [~~(17)~~] (18) "Total maximum daily load" means a calculation of the maximum amount

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

1948 interest rules made by the department under Subsection 19-1-201(1)(d)(ii)(B).

1949 (3) No more than five of the appointed members may be from the same political party.

1950 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
1951 appointed for the unexpired term with the consent of the Senate.

1952 (5) (a) [~~Except as required by Subsection (5)(b), a~~] A member shall be appointed for a
1953 term of four years and is eligible for reappointment.

1954 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the
1955 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1956 board members are staggered so that [~~approximately~~] half of the appointed board is appointed
1957 every two years.

1958 (c) (i) Notwithstanding Subsection (5)(a), the term of a board member who is
1959 appointed before March 1, 2013 shall expire on February 28, 2013.

1960 (ii) On March 1, 2013, the governor shall appoint or reappoint board members in
1961 accordance with this section.

1962 (6) A member shall hold office until the expiration of the member's term and until the
1963 member's successor is appointed, not to exceed 90 days after the formal expiration of the term.

1964 (7) The board shall:

1965 (a) organize and annually select one of its members as chair and one of its members as
1966 vice chair;

1967 (b) hold at least four regular meetings each calendar year; and

1968 (c) keep minutes of its proceedings which are open to the public for inspection.

1969 (8) The chair may call a special meeting upon the request of three or more members of
1970 the board.

1971 (9) Each member of the board and the [~~executive secretary~~] director shall be notified of
1972 the time and place of each meeting.

1973 (10) [~~Seven~~] Five members of the board constitute a quorum for the transaction of
1974 business, and the action of a majority of members present is the action of the board.

1975 (11) A member may not receive compensation or benefits for the member's service, but
1976 may receive per diem and travel expenses in accordance with:

1977 (a) Section 63A-3-106;

1978 (b) Section 63A-3-107; and

1979 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1980 63A-3-107.

1981 Section 35. Section **19-5-104 (Effective 07/01/12)** is amended to read:

1982 **19-5-104 (Effective 07/01/12). Powers and duties of board.**

1983 [~~(1) The board has the following powers and duties:~~]

1984 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1985 board may make rules that:

1986 (a) taking into account Subsection (6):

1987 (i) implement the awarding of construction loans to political subdivisions and
1988 municipal authorities under Section 11-8-2, including:

1989 (A) requirements pertaining to applications for loans;

1990 (B) requirements for determination of eligible projects;

1991 (C) requirements for determination of the costs upon which loans are based, which
1992 costs may include engineering, financial, legal, and administrative expenses necessary for the
1993 construction, reconstruction, and improvement of sewage treatment plants, including major
1994 interceptors, collection systems, and other facilities appurtenant to the plant;

1995 (D) a priority schedule for awarding loans, in which the board may consider, in
1996 addition to water pollution control needs, any financial needs relevant, including per capita
1997 cost, in making a determination of priority; and

1998 (E) requirements for determination of the amount of the loan;

1999 (ii) implement the awarding of loans for nonpoint source projects pursuant to Section
2000 73-10c-4.5;

2001 (iii) set effluent limitations and standards subject to Section 19-5-116;

2002 (iv) implement or effectuate the powers and duties of the board; and

2003 (v) protect the public health for the design, construction, operation, and maintenance of
2004 underground wastewater disposal systems, liquid scavenger operations, and vault and earthen
2005 pit privies;

2006 (b) govern inspection, monitoring, recordkeeping, and reporting requirements for
2007 underground injections and require permits for underground injections, to protect drinking
2008 water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and
2009 oil, recognizing that underground injection endangers drinking water sources if:

2010 (i) injection may result in the presence of any contaminant in underground water that
2011 supplies or can reasonably be expected to supply any public water system, as defined in Section
2012 19-4-102; and

2013 (ii) the presence of the contaminant may:

2014 (A) result in the public water system not complying with any national primary drinking
2015 water standards; or

2016 (B) otherwise adversely affect the health of persons;

2017 (c) govern sewage sludge management, including permitting, inspecting, monitoring,
2018 recordkeeping, and reporting requirements; and

2019 (d) notwithstanding the provisions of Section 19-4-112, govern design and construction
2020 of irrigation systems that:

2021 (i) convey sewage treatment facility effluent of human origin in pipelines under
2022 pressure, unless contained in surface pipes wholly on private property and for agricultural
2023 purposes; and

2024 (ii) are constructed after May 4, 1998.

2025 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
2026 the board shall adopt and enforce rules and establish fees to cover the costs of testing for
2027 certification of operators of treatment works and sewerage systems operated by political
2028 subdivisions.

2029 (b) In establishing certification rules under Subsection (2)(a), the board shall:

2030 (i) base the requirements for certification on the size, treatment process type, and
2031 complexity of the treatment works and sewerage systems operated by political subdivisions;

2032 (ii) allow operators until three years after the date of adoption of the rules to obtain
2033 initial certification;

2034 (iii) allow a new operator one year from the date the operator is hired by a treatment
2035 plant or sewerage system or three years after the date of adoption of the rules, whichever occurs
2036 later, to obtain certification;

2037 (iv) issue certification upon application and without testing, at a grade level
2038 comparable to the grade of current certification to operators who are currently certified under
2039 the voluntary certification plan for wastewater works operators as recognized by the board; and

2040 (v) issue a certification upon application and without testing that is valid only at the

2041 treatment works or sewerage system where that operator is currently employed if the operator:

2042 (A) is in charge of and responsible for the treatment works or sewerage system on

2043 March 16, 1991;

2044 (B) has been employed at least 10 years in the operation of that treatment works or

2045 sewerage system before March 16, 1991; and

2046 (C) demonstrates to the board the operator's capability to operate the treatment works

2047 or sewerage system at which the operator is currently employed by providing employment

2048 history and references as required by the board.

2049 (3) The board shall:

2050 (a) develop programs for the prevention, control, and abatement of new or existing

2051 pollution of the waters of the state;

2052 [~~(b) advise, consult, and cooperate with other agencies of the state, the federal~~

2053 ~~government, other states, and interstate agencies, and with affected groups, political~~

2054 ~~subdivisions, and industries to further the purposes of this chapter;]~~

2055 [~~(c) encourage, participate in, or conduct studies, investigations, research, and~~

2056 ~~demonstrations relating to water pollution and causes of water pollution as the board finds~~

2057 ~~necessary to discharge its duties;]~~

2058 [~~(d) collect and disseminate information relating to water pollution and the prevention,~~

2059 ~~control, and abatement of water pollution;]~~

2060 [~~(e)~~] (b) adopt, modify, or repeal standards of quality of the waters of the state and

2061 classify those waters according to their reasonable uses in the interest of the public under

2062 conditions the board may prescribe for the prevention, control, and abatement of pollution;

2063 [~~(f) make rules in accordance with Title 63G, Chapter 3, Utah Administrative~~

2064 ~~Rulemaking Act, taking into account Subsection (3), to:]~~

2065 [~~(i) implement the awarding of construction loans to political subdivisions and~~

2066 ~~municipal authorities under Section 11-8-2, including:]~~

2067 [~~(A) requirements pertaining to applications for loans;]~~

2068 [~~(B) requirements for determination of eligible projects;]~~

2069 [~~(C) requirements for determination of the costs upon which loans are based, which~~

2070 ~~costs may include engineering, financial, legal, and administrative expenses necessary for the~~

2071 ~~construction, reconstruction, and improvement of sewage treatment plants, including major~~

2072 interceptors, collection systems, and other facilities appurtenant to the plant;]
2073 [~~(D)~~ a priority schedule for awarding loans, in which the board may consider in
2074 addition to water pollution control needs any financial needs relevant, including per capita cost,
2075 in making a determination of priority, and]
2076 [~~(E)~~ requirements for determination of the amount of the loan;]
2077 [(ii) implement the awarding of loans for nonpoint source projects pursuant to Section
2078 ~~73-10c-4.5;~~]
2079 [(iii) set effluent limitations and standards subject to Section ~~19-5-116;~~]
2080 [(iv) implement or effectuate the powers and duties of the board, and]
2081 [(v) protect the public health for the design, construction, operation, and maintenance
2082 of underground wastewater disposal systems, liquid scavenger operations, and vault and
2083 earthen-pit privies;]
2084 (c) give reasonable consideration in the exercise of its powers and duties to the
2085 economic impact of water pollution control on industry and agriculture;
2086 (d) meet the requirements of federal law related to water pollution;
2087 (e) establish and conduct a continuing planning process for control of water pollution,
2088 including the specification and implementation of maximum daily loads of pollutants;
2089 (f) (i) approve, approve in part, approve with conditions, or deny, in writing, an
2090 application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;
2091 (ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater
2092 Reuse Act;
2093 (g) (i) review all total daily maximum load reports and recommendations for water
2094 quality end points and implementation strategies developed by the division before submission
2095 of the report, recommendation, or implementation strategy to the EPA;
2096 (ii) disapprove, approve, or approve with conditions all staff total daily maximum load
2097 recommendations; and
2098 (iii) provide suggestions for further consideration to the Division of Water Quality in
2099 the event a total daily maximum load strategy is rejected; and
2100 (h) to ensure compliance with applicable statutes and regulations;
2101 (i) review a settlement negotiated by the director in accordance with Subsection
2102 19-5-106(2)(k) that requires a civil penalty of \$25,000 or more; and

2103 (ii) approve or disapprove the settlement.

2104 (4) The board may:

2105 ~~[(g)]~~ (a) order the director to issue, modify, or revoke orders:

2106 (i) prohibiting or abating discharges;

2107 (ii) requiring the construction of new treatment works or any parts of them, or requiring

2108 the modification, extension, or alteration of existing treatment works as specified by board rule

2109 or any parts of them, or the adoption of other remedial measures to prevent, control, or abate

2110 pollution;

2111 (iii) setting standards of water quality, classifying waters or evidencing any other

2112 determination by the board under this chapter; ~~[and]~~ or

2113 (iv) requiring compliance with this chapter and with rules made under this chapter;

2114 ~~[(h) (i) review plans, specifications, or other data relative to disposal systems or any~~

2115 ~~part of disposal systems;]~~

2116 ~~[(ii) issue construction or operating permits for the installation or modification of~~

2117 ~~treatment works or any parts of the treatment works; and]~~

2118 (b) advise, consult, and cooperate with other agencies of the state, the federal

2119 government, other states, or interstate agencies, or with affected groups, political subdivisions,

2120 or industries to further the purposes of this chapter; or

2121 ~~[(iii)]~~ (c) delegate the authority to issue an operating permit to a local health

2122 department[;].

2123 ~~[(i) after public notice and opportunity for a public hearing, issue, continue in effect,~~

2124 ~~revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe~~

2125 ~~to:]~~

2126 ~~[(i) control the management of sewage sludge; or]~~

2127 ~~[(ii) prevent or control the discharge of pollutants, including effluent limitations for the~~

2128 ~~discharge of wastes into the waters of the state;]~~

2129 ~~[(j) give reasonable consideration in the exercise of its powers and duties to the~~

2130 ~~economic impact of water pollution control on industry and agriculture;]~~

2131 ~~[(k) exercise all incidental powers necessary to carry out the purposes of this chapter,~~

2132 ~~including delegation to the department of its duties as appropriate to improve administrative~~

2133 ~~efficiency;]~~

2134 ~~[(t) meet the requirements of federal law related to water pollution;]~~
2135 ~~[(m) establish and conduct a continuing planning process for control of water pollution~~
2136 ~~including the specification and implementation of maximum daily loads of pollutants;]~~
2137 ~~[(n) make rules governing inspection, monitoring, recordkeeping, and reporting~~
2138 ~~requirements for underground injections and require permits for them, to protect drinking water~~
2139 ~~sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil,~~
2140 ~~recognizing that underground injection endangers drinking water sources if:]~~
2141 ~~[(i) injection may result in the presence of any contaminant in underground water that~~
2142 ~~supplies or can reasonably be expected to supply any public water system, as defined in Section~~
2143 ~~19-4-102; and]~~
2144 ~~[(ii) the presence of the contaminant may:]~~
2145 ~~[(A) result in the public water system not complying with any national primary~~
2146 ~~drinking water standards; or]~~
2147 ~~[(B) otherwise adversely affect the health of persons;]~~
2148 ~~[(o) make rules governing sewage sludge management, including permitting,~~
2149 ~~inspecting, monitoring, recordkeeping, and reporting requirements;]~~
2150 ~~[(p) adopt and enforce rules and establish fees to cover the costs of testing for~~
2151 ~~certification of operators of treatment works and sewerage systems operated by political~~
2152 ~~subdivisions;]~~
2153 ~~[(q) notwithstanding the provisions of Section 19-4-112, make rules governing design~~
2154 ~~and construction of irrigation systems that:]~~
2155 ~~[(i) convey sewage treatment facility effluent of human origin in pipelines under~~
2156 ~~pressure, unless contained in surface pipes wholly on private property and for agricultural~~
2157 ~~purposes; and]~~
2158 ~~[(ii) are constructed after May 4, 1998;]~~
2159 ~~[(r) (i) approve, approve in part, approve with conditions, or deny, in writing, an~~
2160 ~~application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;]~~
2161 ~~[(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater~~
2162 ~~Reuse Act; and]~~
2163 ~~[(s) (i) review all total daily maximum load reports and recommendations for water~~
2164 ~~quality end points and implementation strategies developed by the division before submission~~

2165 of the report, recommendation, or implementation strategy to the EPA;]
2166 ~~[(ii) disapprove, approve, or approve with conditions all staff total daily maximum load~~
2167 ~~recommendations; and]~~
2168 ~~[(iii) provide suggestions for further consideration to the Division of Water Quality in~~
2169 ~~the event a total daily maximum load strategy is rejected.]~~
2170 ~~[(2)]~~ (5) In performing the duties listed in ~~[Subsection]~~ Subsections (1) through (4), the
2171 board shall give priority to pollution that results in a hazard to the public health.
2172 ~~[(3)]~~ (6) The board shall take into consideration the availability of federal grants:
2173 (a) in determining eligible project costs; and
2174 (b) in establishing priorities pursuant to Subsection ~~[(1)(f)(i)]~~ (1)(a)(i).
2175 ~~[(4) In establishing certification rules under Subsection (1)(p), the board shall:]~~
2176 ~~[(a) base the requirements for certification on the size, treatment process type, and~~
2177 ~~complexity of the treatment works and sewerage systems operated by political subdivisions;]~~
2178 ~~[(b) allow operators until three years after the date of adoption of the rules to obtain~~
2179 ~~initial certification;]~~
2180 ~~[(c) allow a new operator one year from the date the operator is hired by a treatment~~
2181 ~~plant or sewerage system or three years after the date of adoption of the rules, whichever occurs~~
2182 ~~later, to obtain certification;]~~
2183 ~~[(d) issue certification upon application and without testing, at a grade level~~
2184 ~~comparable to the grade of current certification to operators who are currently certified under~~
2185 ~~the voluntary certification plan for wastewater works operators as recognized by the board;~~
2186 ~~and]~~
2187 ~~[(e) issue a certification upon application and without testing that is valid only at the~~
2188 ~~treatment works or sewerage system where that operator is currently employed if the operator:]~~
2189 ~~[(i) is in charge of and responsible for the treatment works or sewerage system on~~
2190 ~~March 16, 1991;]~~
2191 ~~[(ii) has been employed at least 10 years in the operation of that treatment works or~~
2192 ~~sewerage system prior to March 16, 1991; and]~~
2193 ~~[(iii) demonstrates to the board the operator's capability to operate the treatment works~~
2194 ~~or sewerage system at which the operator is currently employed by providing employment~~
2195 ~~history and references as required by the board.]~~

2196 (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the
2197 following that are subject to the authority granted to the director under Section 19-5-106:

2198 (a) a permit;

2199 (b) a license;

2200 (c) a registration;

2201 (d) a certification; or

2202 (e) another administrative authorization made by the director.

2203 (8) A board member may not speak or act for the board unless the board member is
2204 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

2205 Section 36. Section **19-5-105.5** is amended to read:

2206 **19-5-105.5. Agriculture water.**

2207 (1) (a) The board shall draft any rules relating to agriculture water in cooperation with
2208 the commission.

2209 (b) The commission shall advise the board before the board may adopt rules relating to
2210 agriculture water.

2211 (2) A program or rule adopted by the board for agriculture production or irrigation
2212 water shall:

2213 (a) be consistent with the federal Clean Water Act; and

2214 (b) if possible, be developed in a voluntary cooperative program with the agriculture
2215 producer associations and the commission.

2216 (3) (a) The board's authority to regulate a discharge is subject to Subsection (3)(b)
2217 relating to an agriculture discharge.

2218 (b) (i) A person responsible for an agriculture discharge shall mitigate the resulting
2219 damage in a reasonable manner, as approved by the [~~executive secretary~~] director after
2220 consulting with the commission chair.

2221 (ii) A penalty imposed on an agriculture discharge shall be proportionate to the
2222 seriousness of the resulting harm, as determined by the [~~executive secretary~~] director in
2223 consultation with the commission chair.

2224 (iii) An agriculture producer may not be held liable for an agriculture discharge
2225 resulting from a large weather event if the agriculture producer has taken reasonable measures,
2226 as the board defines by rule, to prevent an agriculture discharge.

2227 Section 37. Section **19-5-106** is amended to read:

2228 **19-5-106. Director -- Appointment -- Duties.**

2229 ~~[The executive secretary shall be appointed by the executive director with the approval~~
2230 ~~of the board, shall serve under the administrative direction of the executive director, and has~~
2231 ~~the following duties:]~~

2232 (1) The executive director shall appoint the director. The director shall serve under the
2233 administrative direction of the executive director.

2234 (2) The director shall:

2235 ~~[(1) to]~~ (a) develop programs for the prevention, control, and abatement of new or
2236 existing pollution of the waters of the state;

2237 ~~[(2) to]~~ (b) advise, consult, and cooperate with other agencies of the state, the federal
2238 government, other states and interstate agencies, and with affected groups, political
2239 subdivisions, and industries in furtherance of the purposes of this chapter;

2240 ~~[(3) to employ full-time employees as necessary to carry out the provisions of this~~
2241 ~~chapter;]~~

2242 ~~[(4) as authorized by the board and subject to the provisions of this chapter, to~~
2243 ~~authorize any employee or representative of the department to enter at reasonable times and~~
2244 ~~upon reasonable notice in or upon public or private property for the purposes of inspecting and~~
2245 ~~investigating conditions and plant records concerning possible water pollution;]~~

2246 ~~[(5) to encourage, participate in, or conduct studies, investigations, research, and~~
2247 ~~demonstrations relating to water pollution and causes of water pollution as necessary for the~~
2248 ~~discharge of duties assigned under this chapter, including the establishment of inventories of~~
2249 ~~pollution sources;]~~

2250 ~~[(6) to collect and disseminate information relating to water pollution and the~~
2251 ~~prevention, control, and abatement of water pollution;]~~

2252 ~~[(7) to]~~ (c) develop programs for the management of sewage sludge;

2253 ~~[(8) as authorized by the board and]~~

2254 (d) subject to the provisions of this chapter, ~~[(to)]~~ enforce rules made by the board
2255 through the issuance of orders ~~[which may be subsequently amended or revoked by the board],~~
2256 which orders may include:

2257 ~~[(a)]~~ (i) prohibiting or abating discharges of wastes into the waters of the state;

2258 ~~[(b)]~~ (ii) requiring the construction of new control facilities or any parts of them or the
2259 modification, extension, or alteration of existing control facilities or any parts of them, or the
2260 adoption of other remedial measures to prevent, control, or abate water pollution; ~~[and] or~~

2261 ~~[(c)]~~ (iii) prohibiting any other violation of this chapter or rules made under this
2262 chapter;

2263 ~~[(9) to]~~ (e) review plans, specifications, or other data relative to pollution control
2264 systems or any part of the systems provided for in this chapter;

2265 (f) issue construction or operating permits for the installation or modification of
2266 treatment works or any parts of the treatment works;

2267 (g) after public notice and opportunity for public hearing, issue, continue in effect,
2268 renew, revoke, modify, or deny discharge permits under reasonable conditions the board may
2269 prescribe to:

2270 (i) control the management of sewage sludge; or

2271 (ii) prevent or control the discharge of pollutants, including effluent limitations for the
2272 discharge of wastes into the waters of the state;

2273 (h) meet the requirements of federal law related to water pollution;

2274 ~~[(10) as authorized by the board and subject to the provisions of this chapter, to~~
2275 ~~exercise all incidental powers necessary to carry out the purposes of this chapter, including~~
2276 ~~certification to any state or federal authorities for tax purposes only if the fact of construction,~~
2277 ~~installation, or acquisition of any facility, land, or building, machinery, or equipment, or any~~
2278 ~~part of them conforms with this chapter;]~~

2279 ~~[(11) to cooperate, where the board finds appropriate, with any person in studies and~~
2280 ~~research regarding water pollution and its control, abatement, and prevention; and]~~

2281 ~~[(12) to]~~ (i) under the direction of the executive director, represent the state ~~[with the~~
2282 specific concurrence of the executive director] in all matters pertaining to water pollution,
2283 including interstate compacts and other similar agreements[-];

2284 (j) collect and disseminate information relating to water pollution and the prevention,
2285 control, and abatement of water pollution; and

2286 (k) subject to Subsection 19-5-104(3)(i), settle or compromise any civil action initiated
2287 by the division to compel compliance with this chapter or the rules made under this chapter.

2288 (3) The director may:

2289 (a) employ full-time employees as necessary to carry out the provisions of this chapter;

2290 (b) subject to the provisions of this chapter, authorize any employee or representative
2291 of the department to enter, at reasonable times and upon reasonable notice, in or upon public or
2292 private property for the purposes of inspecting and investigating conditions and plant records
2293 concerning possible water pollution;

2294 (c) encourage, participate in, or conduct studies, investigations, research, and
2295 demonstrations relating to water pollution and causes of water pollution as necessary for the
2296 discharge of duties assigned under this chapter, including the establishment of inventories of
2297 pollution sources;

2298 (d) collect and disseminate information relating to water pollution and the prevention,
2299 control, and abatement of water pollution;

2300 (e) subject to the provisions of this chapter, exercise all incidental powers necessary to
2301 carry out the purposes of this chapter, including certification to any state or federal authorities
2302 for tax purposes only if the construction, installation, or acquisition of any facility, land,
2303 building, machinery, equipment, or any part of them conforms with this chapter;

2304 (f) cooperate with any person in studies and research regarding water pollution and its
2305 control, abatement, and prevention;

2306 (g) encourage, participate in, or conduct studies, investigations, research, and
2307 demonstrations relating to water pollution and causes of water pollution; or

2308 (h) as authorized by the board and subject to the provisions of this chapter, act as
2309 executive secretary of the board under the direction of the chairman of the board.

2310 Section 38. Section **19-5-107** is amended to read:

2311 **19-5-107. Discharge of pollutants unlawful -- Discharge permit required.**

2312 (1) (a) Except as provided in this chapter or rules made under it, it is unlawful for any
2313 person to discharge a pollutant into waters of the state or to cause pollution which constitutes a
2314 menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs
2315 domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or
2316 cause to be placed any wastes in a location where there is probable cause to believe it will
2317 cause pollution.

2318 (b) For purposes of injunctive relief, any violation of this subsection is a public
2319 nuisance.

2320 (2) (a) A person may not generate, store, treat, process, use, transport, dispose, or
2321 otherwise manage sewage sludge, except in compliance with this chapter and rules made under
2322 it.

2323 (b) For purposes of injunctive relief, any violation of this subsection is a public
2324 nuisance.

2325 (3) It is unlawful for any person, without first securing a permit from the [~~executive~~
2326 ~~secretary as authorized by the board~~] director, to:

2327 (a) make any discharge or manage sewage sludge not authorized under an existing
2328 valid discharge permit; or

2329 (b) construct, install, modify, or operate any treatment works or part of any treatment
2330 works or any extension or addition to any treatment works, or construct, install, or operate any
2331 establishment or extension or modification of or addition to any treatment works, the operation
2332 of which would probably result in a discharge.

2333 Section 39. Section **19-5-108** is amended to read:

2334 **19-5-108. Discharge permits -- Requirements and procedure for issuance.**

2335 (1) The board may [~~prescribe conditions~~] make rules, in accordance with Title 63G,
2336 Chapter 3, Utah Administrative Rulemaking Act, for and require the submission of plans,
2337 specifications, and other information to the [~~executive secretary~~] director in connection with
2338 the issuance of discharge permits.

2339 (2) Each discharge permit shall have a fixed term not exceeding five years. Upon
2340 expiration of a discharge permit, a new permit may be issued by the [~~executive secretary~~]
2341 director as authorized by the board after notice and an opportunity for public hearing and upon
2342 condition that the applicant meets or will meet all applicable requirements of this chapter,
2343 including the conditions of any permit granted by the board.

2344 (3) The board may require notice to the [~~executive secretary~~] director of the
2345 introduction of pollutants into publicly-owned treatment works and identification to the
2346 [~~executive secretary~~] director of the character and volume of any pollutant of any significant
2347 source subject to pretreatment standards under Subsection 307(b) of the federal Clean Water
2348 Act. The [~~executive secretary~~] director shall provide in the permit for compliance with
2349 pretreatment standards.

2350 (4) The [~~board~~] director may impose as conditions in permits for the discharge of

2351 pollutants from publicly-owned treatment works appropriate measures to establish and insure
 2352 compliance by industrial users with any system of user charges required under this chapter or
 2353 the rules adopted under it.

2354 (5) The ~~[board]~~ director may apply and enforce against industrial users of
 2355 publicly-owned treatment works, toxic effluent standards and pretreatment standards for the
 2356 introduction into the treatment works of pollutants which interfere with, pass through, or
 2357 otherwise are incompatible with the treatment works.

2358 Section 40. Section **19-5-111** is amended to read:

2359 **19-5-111. Notice of violations -- Hearings.**

2360 (1) Whenever the ~~[board]~~ director determines there are reasonable grounds to believe
 2361 that there has been a violation of this chapter or any order of the director or the board, ~~[it] the~~
 2362 director may give written notice to the alleged violator specifying the provisions that have been
 2363 violated and the facts that constitute the violation.

2364 (2) The notice shall require that the matters complained of be corrected.

2365 (3) The notice may order the alleged violator to appear before an administrative law
 2366 judge as provided by Section 19-1-301 at a time and place specified in the notice and answer
 2367 the charges.

2368 Section 41. Section **19-5-112** is amended to read:

2369 **19-5-112. Hearings conducted by an administrative law judge -- Decisions on**
 2370 **denial or revocation of permit conducted by executive director.**

2371 (1) ~~[(a)]~~ Except as provided by Subsection (2), an administrative law judge shall
 2372 conduct hearings authorized by Section 19-5-111 in accordance with Section 19-1-301.

2373 ~~[(b) All decisions shall be rendered by a majority of the board.]~~

2374 (2) (a) An administrative law judge shall conduct, on the executive director's behalf, a
 2375 hearing regarding an appeal of a permit decision for which the state has assumed primacy under
 2376 the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

2377 ~~[(b) Notwithstanding Subsection 19-1-301(6), the administrative law judge shall~~
 2378 ~~submit to the executive director a proposed dispositive action.]~~

2379 ~~[(c) The executive director may:]~~

2380 ~~[(i) approve, approve with modifications, or disapprove a proposed dispositive action~~
 2381 ~~submitted to the executive director under Subsection (2)(b); or]~~

2382 [~~(ii)~~] return the proposed dispositive action to the administrative law judge for further
2383 action as directed.]

2384 [~~(d)~~] (b) The decision of the executive director is final and binding on all parties [~~as a~~
2385 final determination of the board] unless stayed or overturned on appeal.

2386 Section 42. Section **19-5-113** is amended to read:

2387 **19-5-113. Power of director to enter property for investigation -- Records and**
2388 **reports required of owners or operators.**

2389 (1) The [~~board~~] director or [~~its~~] the director's authorized representative has, after
2390 presentation of credentials, the authority to enter at reasonable times upon any private or public
2391 property for the purpose of:

2392 (a) sampling, inspecting, or investigating matters or conditions relating to pollution or
2393 the possible pollution of any waters of the state, effluents or effluent sources, monitoring
2394 equipment, or sewage sludge; and

2395 (b) reviewing and copying records required to be maintained under this chapter.

2396 (2) (a) The board may make rules, in accordance with Title 63G, Chapter 3, Utah
2397 Administrative Rulemaking Act, that require a person managing sewage sludge, or the owner
2398 or operator of a disposal system, including a system discharging into publicly owned treatment
2399 works, to:

2400 (i) establish and maintain reasonable records and make reports relating to the operation
2401 of the system or the management of the sewage sludge;

2402 (ii) install, use, and maintain monitoring equipment or methods;

2403 (iii) sample, and analyze effluents or sewage sludges; and

2404 (iv) provide other information reasonably required.

2405 (b) The records, reports, and information shall be available to the public except as
2406 provided in Subsection 19-1-306(2) or Subsections 63G-2-305(1) and (2), Government
2407 Records Access and Management Act, as appropriate, for other than effluent information.

2408 Section 43. Section **19-5-114** is amended to read:

2409 **19-5-114. Spills or discharges of oil or other substance -- Notice to director.**

2410 Any person who spills or discharges any oil or other substance which may cause the
2411 pollution of the waters of the state shall immediately notify the [~~executive secretary~~] director of
2412 the spill or discharge, any containment procedures undertaken, and a proposed procedure for

2413 cleanup and disposal, in accordance with rules of the board.

2414 Section 44. Section **19-5-115** is amended to read:

2415 **19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and**
2416 **rules of political subdivisions.**

2417 (1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in
2418 Section 76-2-103.

2419 (2) Any person who violates this chapter, or any permit, rule, or order adopted under it,
2420 upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not
2421 to exceed \$10,000 per day of violation.

2422 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment
2423 under Section 76-3-204 and a fine not exceeding \$25,000 per day who with criminal
2424 negligence:

2425 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
2426 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2427 (ii) violates Section 19-5-113;

2428 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
2429 treatment works; or

2430 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2431 (b) A person is guilty of a third degree felony and is subject to imprisonment under
2432 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

2433 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
2434 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2435 (ii) violates Section 19-5-113;

2436 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
2437 treatment works; or

2438 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2439 (4) A person is guilty of a third degree felony and subject to imprisonment under
2440 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if
2441 that person knowingly:

2442 (a) makes a false material statement, representation, or certification in any application,
2443 record, report, plan, or other document filed or required to be maintained under this chapter, or

2444 by any permit, rule, or order issued under it; or

2445 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or
2446 method required to be maintained under this chapter.

2447 (5) (a) As used in this section:

2448 (i) "Organization" means a legal entity, other than a government, established or
2449 organized for any purpose, and includes a corporation, company, association, firm, partnership,
2450 joint stock company, foundation, institution, trust, society, union, or any other association of
2451 persons.

2452 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of
2453 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
2454 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

2455 (b) A person is guilty of a second degree felony and, upon conviction, is subject to
2456 imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

2457 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

2458 (ii) knows at that time that he is placing another person in imminent danger of death or
2459 serious bodily injury.

2460 (c) If a person is an organization, it shall, upon conviction of violating Subsection
2461 (5)(b), be subject to a fine of not more than \$1,000,000.

2462 (d) (i) A defendant who is an individual is considered to have acted knowingly if:

2463 (A) the defendant's conduct placed another person in imminent danger of death or
2464 serious bodily injury; and

2465 (B) the defendant was aware of or believed that there was an imminent danger of death
2466 or serious bodily injury to another person.

2467 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
2468 the defendant.

2469 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
2470 knowledge, including evidence that the defendant took affirmative steps to be shielded from
2471 receiving relevant information.

2472 (e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the
2473 conduct charged was consented to by the person endangered and that the danger and conduct
2474 charged were reasonably foreseeable hazards of:

2475 (A) an occupation, a business, or a profession; or

2476 (B) medical treatment or medical or scientific experimentation conducted by
2477 professionally approved methods and the other person was aware of the risks involved prior to
2478 giving consent.

2479 (ii) The defendant has the burden of proof to establish any affirmative defense under
2480 this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.

2481 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset
2482 which leads to simultaneous violations of more than one pollutant parameter shall be treated as
2483 a single violation.

2484 (7) (a) The [~~board~~] director may begin a civil action for appropriate relief, including a
2485 permanent or temporary injunction, for any violation or threatened violation for which it is
2486 authorized to issue a compliance order under Section 19-5-111.

2487 (b) Actions shall be brought in the district court where the violation or threatened
2488 violation occurs.

2489 (8) (a) The attorney general is the legal advisor for the board and [~~its executive~~
2490 ~~secretary~~] the director and shall defend them in all actions or proceedings brought against them.

2491 (b) The county attorney or district attorney as appropriate under Sections 17-18-1,
2492 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action,
2493 civil or criminal, requested by the [~~board~~] director, to abate a condition that exists in violation
2494 of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules
2495 of the board or the [~~executive secretary~~] director issued under this chapter.

2496 (c) The [~~board~~] director may [~~itself~~] initiate any action under this section and be
2497 represented by the attorney general.

2498 (9) If any person fails to comply with a cease and desist order that is not subject to a
2499 stay pending administrative or judicial review, the [~~board~~] director may[~~, through its executive~~
2500 ~~secretary,~~] initiate an action for and be entitled to injunctive relief to prevent any further or
2501 continued violation of the order.

2502 (10) Any political subdivision of the state may enact and enforce ordinances or rules
2503 for the implementation of this chapter that are not inconsistent with this chapter.

2504 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected
2505 under the authority of this section shall be deposited in the General Fund.

2506 (b) The department may reimburse itself and local governments from money collected
2507 from civil penalties for extraordinary expenses incurred in environmental enforcement
2508 activities.

2509 (c) The department shall regulate reimbursements by making rules that:

2510 (i) define qualifying environmental enforcement activities; and

2511 (ii) define qualifying extraordinary expenses.

2512 Section 45. Section **19-6-102** is amended to read:

2513 **19-6-102. Definitions.**

2514 As used in this part:

2515 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section
2516 19-1-106.

2517 (2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at
2518 which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or
2519 disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the
2520 facility or site.

2521 (3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"
2522 means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or
2523 disposal.

2524 (b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"
2525 does not include a facility that:

2526 (i) receives waste for recycling;

2527 (ii) receives waste to be used as fuel, in compliance with federal and state
2528 requirements; or

2529 (iii) is solely under contract with a local government within the state to dispose of
2530 nonhazardous solid waste generated within the boundaries of the local government.

2531 (4) "Construction waste or demolition waste":

2532 (a) means waste from building materials, packaging, and rubble resulting from
2533 construction, demolition, remodeling, and repair of pavements, houses, commercial buildings,
2534 and other structures, and from road building and land clearing; and

2535 (b) does not include: asbestos; contaminated soils or tanks resulting from remediation
2536 or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar

2537 hazardous or potentially hazardous materials.

2538 (5) "Demolition waste" has the same meaning as the definition of construction waste in
2539 this section.

2540 (6) "Director" means the director of the Division of Solid and Hazardous Waste.

2541 [~~(6)~~] (7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking,
2542 or placing of any solid or hazardous waste into or on any land or water so that the waste or any
2543 constituent of the waste may enter the environment, be emitted into the air, or discharged into
2544 any waters, including groundwaters.

2545 (8) "Division" means the Division of Solid and Hazardous Waste, created in
2546 Subsection 19-1-105(1)(e).

2547 [~~(7)~~] "Executive secretary" means the executive secretary of the board.]

2548 [~~(8)~~] (9) "Generation" or "generated" means the act or process of producing
2549 nonhazardous solid or hazardous waste.

2550 [~~(9)~~] (10) "Hazardous waste" means a solid waste or combination of solid wastes other
2551 than household waste which, because of its quantity, concentration, or physical, chemical, or
2552 infectious characteristics may cause or significantly contribute to an increase in mortality or an
2553 increase in serious irreversible or incapacitating reversible illness or may pose a substantial
2554 present or potential hazard to human health or the environment when improperly treated,
2555 stored, transported, disposed of, or otherwise managed.

2556 [~~(10)~~] (11) "Health facility" means hospitals, psychiatric hospitals, home health
2557 agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care
2558 facilities for people with an intellectual disability, residential health care facilities, maternity
2559 homes or birthing centers, free standing ambulatory surgical centers, facilities owned or
2560 operated by health maintenance organizations, and state renal disease treatment centers
2561 including free standing hemodialysis units, the offices of private physicians and dentists
2562 whether for individual or private practice, veterinary clinics, and mortuaries.

2563 [~~(11)~~] (12) "Household waste" means any waste material, including garbage, trash, and
2564 sanitary wastes in septic tanks, derived from households, including single-family and
2565 multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters,
2566 campgrounds, picnic grounds, and day-use recreation areas.

2567 [~~(12)~~] (13) "Infectious waste" means a solid waste that contains or may reasonably be

2568 expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by
2569 a susceptible host could result in an infectious disease.

2570 ~~[(13)]~~ (14) "Manifest" means the form used for identifying the quantity, composition,
2571 origin, routing, and destination of hazardous waste during its transportation from the point of
2572 generation to the point of disposal, treatment, or storage.

2573 ~~[(14)]~~ (15) "Mixed waste" means any material that is a hazardous waste as defined in
2574 this chapter and is also radioactive as defined in Section 19-3-102.

2575 ~~[(15)]~~ (16) "Modification plan" means a plan under Section 19-6-108 to modify a
2576 facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or
2577 disposing of hazardous waste.

2578 ~~[(16)]~~ (17) "Operation plan" or "nonhazardous solid or hazardous waste operation
2579 plan" means a plan or approval under Section 19-6-108, including:

2580 (a) a plan to own, construct, or operate a facility or site for the purpose of disposing of
2581 nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

2582 (b) a closure plan;

2583 (c) a modification plan; or

2584 (d) an approval that the ~~[executive secretary]~~ director is authorized to issue.

2585 ~~[(17)]~~ (18) "Permittee" means a person who is obligated under an operation plan.

2586 ~~[(18)]~~ (19) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from
2587 a waste treatment plant, water supply treatment plant, or air pollution control facility, or other
2588 discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting
2589 from industrial, commercial, mining, or agricultural operations and from community activities
2590 but does not include solid or dissolved materials in domestic sewage or in irrigation return
2591 flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality
2592 Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

2593 (b) "Solid waste" does not include any of the following wastes unless the waste causes
2594 a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

2595 (i) certain large volume wastes, such as inert construction debris used as fill material;

2596 (ii) drilling muds, produced waters, and other wastes associated with the exploration,
2597 development, or production of oil, gas, or geothermal energy;

2598 (iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste

2599 generated primarily from the combustion of coal or other fossil fuels;

2600 (iv) solid wastes from the extraction, beneficiation, and processing of ores and
2601 minerals; or

2602 (v) cement kiln dust.

2603 ~~[(19)]~~ (20) "Storage" means the actual or intended containment of solid or hazardous
2604 waste either on a temporary basis or for a period of years in such a manner as not to constitute
2605 disposal of the waste.

2606 ~~[(20)]~~ (21) "Transportation" means the off-site movement of solid or hazardous waste
2607 to any intermediate point or to any point of storage, treatment, or disposal.

2608 ~~[(21)]~~ (22) "Treatment" means a method, technique, or process designed to change the
2609 physical, chemical, or biological character or composition of any solid or hazardous waste so as
2610 to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for
2611 recovery, amenable to storage, or reduced in volume.

2612 ~~[(22)]~~ (23) "Underground storage tank" means a tank which is regulated under Subtitle
2613 I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

2614 Section 46. Section **19-6-102.1** is amended to read:

2615 **19-6-102.1. Treatment and disposal -- Exclusions.**

2616 As used in Subsections 19-6-104~~[(1)(j)(ii)(B)]~~ (1)(e)(ii)(B), 19-6-108(3)(b) and
2617 (3)(c)(ii)(B), and 19-6-119(1)(a), the term "treatment and disposal" specifically excludes the
2618 recycling, use, reuse, or reprocessing of fly ash waste, bottom ash waste, slag waste, or flue gas
2619 emission control waste generated primarily from the combustion of coal or other fossil fuels;
2620 waste from the extraction, beneficiation, and processing of ores and minerals; or cement kiln
2621 dust, including recycle, reuse, use, or reprocessing for road sanding, sand blasting, road
2622 construction, railway ballast, construction fill, aggregate, and other construction-related
2623 purposes.

2624 Section 47. Section **19-6-102.6** is amended to read:

2625 **19-6-102.6. Legislative participation in landfill siting disputes.**

2626 (1) (a) Upon the Legislature's receipt of a written request by a county governing body
2627 or a member of the Legislature whose district is involved in a landfill siting dispute, the
2628 president of the Senate and the speaker of the House shall appoint a committee as described
2629 under Subsection (2) and volunteers under Subsection (3) to actively seek an acceptable

2630 location for a municipal landfill if there is a dispute between two or more counties regarding
2631 the proposed site of a municipal landfill.

2632 (b) The president and the speaker shall consult with the legislators appointed under this
2633 subsection regarding their appointment of members of the committee under Subsection (2), and
2634 volunteers under Subsection (3).

2635 (2) The committee shall consist of the following members, appointed jointly by the
2636 president and the speaker:

2637 (a) two members from the Senate:

2638 (i) one member from the county where the proposed landfill site is located; and

2639 (ii) one member from the other county involved in the dispute, but if more than one
2640 other county is involved, still only one senator from one of those counties;

2641 (b) two members from the House:

2642 (i) one member from the county where the proposed landfill site is located; and

2643 (ii) one member from the other county involved in the dispute, but if more than one
2644 other county is involved, still only one representative from one of those counties;

2645 (c) one individual whose current principal residence is within a community located
2646 within 20 miles of any exterior boundary of the proposed landfill site, but if no community is
2647 located within 20 miles of the community, then an individual whose current residence is in the
2648 community nearest the proposed landfill site;

2649 (d) two resident citizens from the county where the proposed landfill site is located;
2650 and

2651 (e) three resident citizens from the other county involved in the dispute, but if more
2652 than one other county is involved, still only three citizen representatives from those counties.

2653 (3) Two volunteers shall be appointed under Subsection (1). The volunteers shall be
2654 individuals who agree to assist, as requested, the committee members who represent the
2655 interests of the county where the proposed landfill site is located.

2656 (4) (a) Funding and staffing for the committee shall be provided jointly and equally by
2657 the Senate and the House.

2658 (b) The Department of Environmental Quality shall, at the request of the committee
2659 and as funds are available within the department's existing budget, provide support in arranging
2660 for committee hearings to receive public input and secretarial staff to make a record of those

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

2723 department under Subsection 19-1-201(1)(d)(i)(A); and

2724 (d) comply with all applicable statutes, rules, and policies, including the conflict of
2725 interest rules made by the department in accordance with Subsection 19-1-201(1)(d)(ii)(B).

2726 (3) ~~[Not]~~ No more than ~~[six]~~ five of the appointed members may be from the same
2727 political party.

2728 (4) (a) ~~[Except as required by Subsection (4)(b), members]~~ Members shall be
2729 appointed for terms of four years each.

2730 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
2731 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
2732 board members are staggered so that ~~[approximately]~~ half of the appointed board is appointed
2733 every two years.

2734 (c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is
2735 appointed before March 1, 2013 shall expire on February 28, 2013.

2736 (ii) On March 1, 2013, the governor shall appoint or reappoint board members in
2737 accordance with this section.

2738 (5) Each member is eligible for reappointment.

2739 (6) Board members shall continue in office until the expiration of their terms and until
2740 their successors are appointed, but not more than 90 days after the expiration of their terms.

2741 (7) When a vacancy occurs in the membership for any reason, the replacement shall be
2742 appointed for the unexpired term by the governor, after considering recommendations of the
2743 board and with the consent of the Senate.

2744 (8) The board shall elect a chair and vice chair on or before April 1 of each year from
2745 its membership.

2746 (9) A member may not receive compensation or benefits for the member's service, but
2747 may receive per diem and travel expenses in accordance with:

2748 (a) Section 63A-3-106;

2749 (b) Section 63A-3-107; and

2750 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
2751 63A-3-107.

2752 (10) (a) The board shall hold a meeting at least once every three months including one
2753 meeting during each annual general session of the Legislature.

2754 (b) Meetings shall be held on the call of the chair, the ~~[executive secretary]~~ director, or
2755 any three of the members.

2756 (11) ~~[Seven]~~ Five members constitute a quorum at any meeting, and the action of the
2757 majority of members present is the action of the board.

2758 Section 49. Section **19-6-104** is amended to read:

2759 **19-6-104. Powers of board -- Creation of statewide solid waste management plan.**

2760 (1) The board shall:

2761 (a) survey solid and hazardous waste generation and management practices within this
2762 state and, after public hearing and after providing opportunities for comment by local
2763 governmental entities, industry, and other interested persons, prepare and revise, as necessary, a
2764 waste management plan for the state;

2765 ~~[(b) carry out inspections pursuant to Section 19-6-109;]~~

2766 ~~[(c) (i) hold a hearing that is not an adjudicative proceeding and compel the attendance
2767 of witnesses, the production of documents, and other evidence, administer oaths and take
2768 testimony, and receive evidence it finds proper, or appoint hearing officers to conduct a hearing
2769 that is not an adjudicative proceeding who shall be delegated these powers;]~~

2770 ~~[(ii) receive a proposed dispositive action from an administrative law judge as provided
2771 by Section 19-1-301; and]~~

2772 ~~[(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive
2773 action; or]~~

2774 ~~[(B) return the proposed dispositive action to the administrative law judge for further
2775 action as directed;]~~

2776 (b) order the director to:

2777 ~~[(d)]~~ (i) issue orders necessary to effectuate the provisions of this part and
2778 ~~[implementing]~~ rules ~~[and]~~ made under this part;

2779 (ii) enforce ~~[them]~~ the orders by administrative and judicial proceedings~~[-and cause
2780 the initiation of]; or~~

2781 (iii) initiate judicial proceedings to secure compliance with this part;

2782 ~~[(e) settle or compromise any administrative or civil action initiated to compel
2783 compliance with this part and any rules adopted under this part;]~~

2784 ~~[(f) require submittal of specifications or other information relating to hazardous waste~~

2785 ~~plans for review, and approve, disapprove, revoke, or review the plans;]~~

2786 ~~[(g) advise, consult, cooperate with, and provide technical assistance to other agencies~~
 2787 ~~of the state and federal government, other states, interstate agencies, and affected groups,~~
 2788 ~~political subdivisions, industries, and other persons in carrying out the purposes of this part;]~~

2789 ~~[(h)]~~ (c) promote the planning and application of resource recovery systems to prevent
 2790 the unnecessary waste and depletion of natural resources;

2791 ~~[(i)]~~ (d) meet the requirements of federal law related to solid and hazardous wastes to
 2792 insure that the solid and hazardous wastes program provided for in this part is qualified to
 2793 assume primacy from the federal government in control over solid and hazardous waste;

2794 ~~[(j)]~~ (e) (i) require any facility, including those listed in Subsection (1)~~[(j)](e)(ii)~~, that is
 2795 intended for disposing of nonhazardous solid waste or wastes listed in Subsection
 2796 (1)~~[(j)](e)(ii)(B)~~ to submit plans, specifications, and other information required by the board to
 2797 the board prior to construction, modification, installation, or establishment of a facility to allow
 2798 the board to determine whether the proposed construction, modification, installation, or
 2799 establishment of the facility will be in accordance with rules made under this part;

2800 (ii) facilities referred to in Subsection (1)~~[(j)](e)(i)~~ include:

2801 (A) any incinerator that is intended for disposing of nonhazardous solid waste; and

2802 (B) except for facilities that receive the following wastes solely for the purpose of
 2803 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,
 2804 and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas
 2805 emission control waste generated primarily from the combustion of coal or other fossil fuels;
 2806 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln
 2807 dust wastes; and

2808 ~~[(k) exercise all other incidental powers necessary to carry out the purposes of this~~
 2809 ~~part.]~~

2810 (f) to ensure compliance with applicable statutes and regulations:

2811 (i) review a settlement negotiated by the director in accordance with Subsection
 2812 19-6-107(3)(a) that requires a civil penalty of \$25,000 or more; and

2813 (ii) approve or disapprove the settlement.

2814 (2) The board may:

2815 (a) (i) hold a hearing that is not an adjudicative proceeding; or

2816 (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding;

2817 or

2818 (b) advise, consult, cooperate with, or provide technical assistance to other agencies of

2819 the state or federal government, other states, interstate agencies, or affected groups, political

2820 subdivisions, industries, or other persons in carrying out the purposes of this part.

2821 [~~2~~] (3) (a) The board shall establish a comprehensive statewide solid waste

2822 management plan by January 1, 1994.

2823 (b) The plan shall:

2824 (i) incorporate the solid waste management plans submitted by the counties;

2825 (ii) provide an estimate of solid waste capacity needed in the state for the next 20

2826 years;

2827 (iii) assess the state's ability to minimize waste and recycle;

2828 (iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste
2829 needs and existing capacity;

2830 (v) evaluate facility siting, design, and operation;

2831 (vi) review funding alternatives for solid waste management; and

2832 (vii) address other solid waste management concerns that the board finds appropriate
2833 for the preservation of the public health and the environment.

2834 (c) The board shall consider the economic viability of solid waste management
2835 strategies prior to incorporating them into the plan and shall consider the needs of population
2836 centers.

2837 (d) The board shall review and modify the comprehensive statewide solid waste
2838 management plan no less frequently than every five years.

2839 [~~3~~] (4) (a) The board shall determine the type of solid waste generated in the state and
2840 tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid
2841 waste management plan.

2842 (b) The board shall review and modify the inventory no less frequently than once every
2843 five years.

2844 [~~4~~] (5) Subject to the limitations contained in Subsection 19-6-102[~~(18)~~](19)(b), the
2845 board shall establish siting criteria for nonhazardous solid waste disposal facilities, including
2846 incinerators.

2847 (6) The board may not issue, amend, renew, modify, revoke, or terminate any of the
2848 following that are subject to the authority granted to the director under Section 19-6-107:

2849 (a) a permit;

2850 (b) a license;

2851 (c) a registration;

2852 (d) a certification; or

2853 (e) another administrative authorization made by the director.

2854 (7) A board member may not speak or act for the board unless the board member is
2855 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

2856 Section 50. Section **19-6-105** is amended to read:

2857 **19-6-105. Rules of board.**

2858 (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah
2859 Administrative Rulemaking Act:

2860 (a) establishing minimum standards for protection of human health and the
2861 environment, for the storage, collection, transport, recovery, treatment, and disposal of solid
2862 waste, including requirements for the approval by the director of plans for the construction,
2863 extension, operation, and closure of solid waste disposal sites;

2864 (b) identifying wastes which are determined to be hazardous, including wastes
2865 designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of
2866 1976, 42 U.S.C., Sec. 6921, et seq.;

2867 (c) governing generators and transporters of hazardous wastes and owners and
2868 operators of hazardous waste treatment, storage, and disposal facilities, including requirements
2869 for keeping records, monitoring, submitting reports, and using a manifest, without treating
2870 high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling
2871 muds, and oil production brines in a manner more stringent than they are treated under federal
2872 standards;

2873 (d) requiring an owner or operator of a treatment, storage, or disposal facility that is
2874 subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982,
2875 to take appropriate corrective action or other response measures for releases of hazardous waste
2876 or hazardous waste constituents from the facility, including releases beyond the boundaries of
2877 the facility;

2878 (e) specifying the terms and conditions under which the [board] director shall approve,
2879 disapprove, revoke, or review hazardous wastes operation plans;

2880 (f) governing public hearings and participation under this part;

2881 (g) establishing standards governing underground storage tanks, in accordance with
2882 Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

2883 (h) relating to the collection, transportation, processing, treatment, storage, and
2884 disposal of infectious waste in health facilities in accordance with the requirements of Section
2885 19-6-106;

2886 (i) defining closure plans as major or minor;

2887 (j) defining modification plans as major or minor; and

2888 (k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or
2889 organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch,
2890 canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or
2891 well.

2892 (2) If any of the following are determined to be hazardous waste and are therefore
2893 subjected to the provisions of this part, the board shall, in the case of landfills or surface
2894 impoundments that receive the solid wastes, take into account the special characteristics of the
2895 wastes, the practical difficulties associated with applying requirements for other wastes to the
2896 wastes, and site specific characteristics, including the climate, geology, hydrology, and soil
2897 chemistry at the site, if the modified requirements assure protection of human health and the
2898 environment and are no more stringent than federal standards applicable to wastes:

2899 (a) solid waste from the extraction, beneficiation, or processing of ores and minerals,
2900 including phosphate rock and overburden from the mining of uranium;

2901 (b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste
2902 generated primarily from the combustion of coal or other fossil fuels; and

2903 (c) cement kiln dust waste.

2904 (3) The board shall establish criteria for siting commercial hazardous waste treatment,
2905 storage, and disposal facilities, including commercial hazardous waste incinerators. Those
2906 criteria shall apply to any facility or incinerator for which plan approval is required under
2907 Section 19-6-108.

2908 Section 51. Section **19-6-107** is amended to read:

2909 **19-6-107. Director -- Appointment -- Powers.**

2910 [~~The executive secretary shall be appointed by the executive director with the approval~~
2911 ~~of the board and shall serve under the administrative direction of the executive director. The~~
2912 ~~executive secretary may:]~~

2913 (1) The executive director shall appoint the director. The director shall serve under the
2914 administrative direction of the executive director.

2915 (2) The director shall:

2916 (a) carry out inspections pursuant to Section 19-6-109;

2917 (b) require submittal of specifications or other information relating to hazardous waste
2918 plans for review, and approve, disapprove, revoke, or review the plans;

2919 ~~[(1)]~~ (c) develop programs for solid waste and hazardous waste management and
2920 control within the state;

2921 ~~[(2)]~~ (d) advise, consult, and cooperate with other agencies of the state, the federal
2922 government, other states and interstate agencies, and with affected groups, political
2923 subdivisions, and industries in furtherance of the purposes of this part;

2924 (e) subject to the provisions of this part, enforce rules made or revised by the board
2925 through the issuance of orders;

2926 (f) review plans, specifications or other data relative to solid waste and hazardous
2927 waste control systems or any part of the systems as provided in this part;

2928 (g) under the direction of the executive director, represent the state in all matters
2929 pertaining to interstate solid waste and hazardous waste management and control including,
2930 under the direction of the board, entering into interstate compacts and other similar agreements;
2931 and

2932 (h) as authorized by the board and subject to the provisions of this part, act as
2933 executive secretary of the board under the direction of the chairman of the board.

2934 (3) The director may:

2935 (a) subject to Subsection 19-6-104(1)(f), settle or compromise any administrative or
2936 civil action initiated to compel compliance with this part and any rules adopted under this part;

2937 ~~[(3)]~~ (b) employ full-time employees necessary to carry out this part;

2938 ~~[(4)]~~ (c) as authorized by the board pursuant to the provisions of this part, authorize
2939 any employee or representative of the department to conduct inspections as permitted in this

2940 part;

2941 ~~[(5)]~~ (d) encourage, participate in, or conduct studies, investigations, research, and
2942 demonstrations relating to solid waste and hazardous waste management and control necessary
2943 for the discharge of duties assigned under this part;

2944 ~~[(6)]~~ (e) collect and disseminate information relating to solid waste and hazardous
2945 waste management control; and

2946 ~~[(7) as authorized by the board pursuant to the provisions of this part, enforce rules~~
2947 ~~made or revised by the board through the issuance of orders which may be subsequently~~
2948 ~~amended or revoked by the board;]~~

2949 ~~[(8) review plans, specifications or other data relative to solid waste and hazardous~~
2950 ~~waste control systems or any part of the systems as provided in this part;]~~

2951 ~~[(9)]~~ (f) cooperate with any person in studies and research regarding solid waste and
2952 hazardous waste management and control[;].

2953 ~~[(10) represent the state with the specific concurrence of the executive director in all~~
2954 ~~matters pertaining to interstate solid waste and hazardous waste management and control~~
2955 ~~including, under the direction of the board, entering into interstate compacts and other similar~~
2956 ~~agreements; and]~~

2957 ~~[(11) as authorized by the board and subject to the provisions of this chapter, exercise~~
2958 ~~all incidental powers necessary to carry out the purposes of this chapter.]~~

2959 Section 52. Section **19-6-108** is amended to read:

2960 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**
2961 **facility or site -- Administrative and legislative approval required -- Exemptions from**
2962 **legislative and gubernatorial approval -- Time periods for review -- Information required**
2963 **-- Other conditions -- Revocation of approval -- Periodic review.**

2964 (1) For purposes of this section, the following items shall be treated as submission of a
2965 new operation plan:

2966 (a) the submission of a revised operation plan specifying a different geographic site
2967 than a previously submitted plan;

2968 (b) an application for modification of a commercial hazardous waste incinerator if the
2969 construction or the modification would increase the hazardous waste incinerator capacity above
2970 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in

2971 the operation plan application as of January 1, 1990, if no operation plan approval has been
2972 issued as of January 1, 1990;

2973 (c) an application for modification of a commercial nonhazardous solid waste
2974 incinerator if the construction of the modification would cost 50% or more of the cost of
2975 construction of the original incinerator or the modification would result in an increase in the
2976 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity
2977 or throughput that was approved in the operation plan as of January 1, 1990, or the initial
2978 approved operation plan if the initial approval is subsequent to January 1, 1990;

2979 (d) an application for modification of a commercial nonhazardous solid or hazardous
2980 waste treatment, storage, or disposal facility, other than an incinerator, if the modification
2981 would be outside the boundaries of the property owned or controlled by the applicant, as shown
2982 in the application or approved operation plan as of January 1, 1990, or the initial approved
2983 operation plan if the initial approval is subsequent to January 1, 1990; or

2984 (e) a submission of an operation plan to construct a facility, if previous approvals of the
2985 operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

2986 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput
2987 tonnage specified for the trial burn in the operation plan or the operation plan application if no
2988 operation plan approval has been issued as of January 1, 1990, and on annual operations of
2989 7,000 hours.

2990 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the
2991 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of
2992 hazardous waste without first submitting and receiving the approval of the [~~executive~~
2993 ~~secretary~~] director for an operation plan for that facility or site.

2994 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an
2995 operation plan may submit to the [~~executive secretary~~] director information, a report, a plan, or
2996 other request for approval for a proposed activity under an operation plan:

2997 (I) after obtaining the consent of any other permittee who is a current owner of the
2998 facility or site; and

2999 (II) without obtaining the consent of any other permittee who is not a current owner of
3000 the facility or site.

3001 (B) The [~~executive secretary~~] director may not:

3002 (I) withhold an approval of an operation plan requested by a permittee who is a current
3003 owner of the facility or site on the grounds that another permittee who is not a current owner of
3004 the facility or site has not consented to the request; or

3005 (II) give an approval of an operation plan requested by a permittee who is not a current
3006 owner before receiving consent of the current owner of the facility or site.

3007 (b) (i) Except for facilities that receive the following wastes solely for the purpose of
3008 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any
3009 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any
3010 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving
3011 the approval of the [~~executive secretary~~] director for an operation plan for that facility site.

3012 (ii) Wastes referred to in Subsection (3)(b)(i) are:

3013 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste
3014 generated primarily from the combustion of coal or other fossil fuels;

3015 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

3016 (C) cement kiln dust wastes.

3017 (c) (i) No person may construct a facility listed under Subsection (3)(c)(ii) until the
3018 person receives:

3019 (A) local government approval and the approval described in Subsection (3)(a);

3020 (B) approval from the Legislature; and

3021 (C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B),

3022 approval from the governor.

3023 (ii) A facility referred to in Subsection (3)(c)(i) is:

3024 (A) a commercial nonhazardous solid waste disposal facility;

3025 (B) except for facilities that receive the following wastes solely for the purpose of
3026 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,
3027 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas
3028 emission control waste generated primarily from the combustion of coal or other fossil fuels;
3029 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln
3030 dust wastes; or

3031 (C) a commercial hazardous waste treatment, storage, or disposal facility.

3032 (iii) The required approvals described in Subsection (3)(c)(i) for a facility described in

3033 Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

3034 (A) the governor's approval is received on or after May 10, 2011, and the facility is not
3035 operational within five years after the day on which the governor's approval is received; or

3036 (B) the governor's approval is received before May 10, 2011, and the facility is not
3037 operational on or before May 10, 2016.

3038 (iv) The required approvals described in Subsection (3)(c)(i) for a facility described in
3039 Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to
3040 another person for five years after the day on which the governor's approval is received.

3041 (d) No person need obtain gubernatorial or legislative approval for the construction of
3042 a hazardous waste facility for which an operating plan has been approved by or submitted for
3043 approval to the executive secretary of the board under this section before April 24, 1989, and
3044 which has been determined, on or before December 31, 1990, by the executive secretary of the
3045 board to be complete, in accordance with state and federal requirements for operating plans for
3046 hazardous waste facilities even if a different geographic site is subsequently submitted.

3047 (e) No person need obtain gubernatorial and legislative approval for the construction of
3048 a commercial nonhazardous solid waste disposal facility for which an operation plan has been
3049 approved by or submitted for approval to the executive secretary of the board under this section
3050 on or before January 1, 1990, and which, on or before December 31, 1990, the executive
3051 secretary of the board determines to be complete, in accordance with state and federal
3052 requirements applicable to operation plans for nonhazardous solid waste facilities.

3053 (f) Any person owning or operating a facility or site on or before November 19, 1980,
3054 who has given timely notification as required by Section 3010 of the Resource Conservation
3055 and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed
3056 hazardous waste plan under this section for that facility or site, may continue to operate that
3057 facility or site without violating this section until the plan is approved or disapproved under
3058 this section.

3059 (g) (i) The [~~executive secretary~~] director shall suspend acceptance of further
3060 applications for a commercial nonhazardous solid or hazardous waste facility upon a finding
3061 that the [~~executive secretary~~] director cannot adequately oversee existing and additional
3062 facilities for permit compliance, monitoring, and enforcement.

3063 (ii) The [~~executive secretary~~] director shall report any suspension to the Natural

3064 Resources, Agriculture, and Environment Interim Committee.

3065 (4) The ~~[executive secretary]~~ director shall review each proposed nonhazardous solid
3066 or hazardous waste operation plan to determine whether that plan complies with the provisions
3067 of this part and the applicable rules of the board.

3068 (5) (a) If the facility is a class I or class II facility, the ~~[executive secretary]~~ director
3069 shall approve or disapprove that plan within 270 days from the date it is submitted.

3070 (b) Within 60 days after receipt of the plans, specifications, or other information
3071 required by this section for a class I or II facility, the ~~[executive secretary]~~ director shall
3072 determine whether the plan is complete and contains all information necessary to process the
3073 plan for approval.

3074 (c) (i) If the plan for a class I or II facility is determined to be complete, the ~~[executive~~
3075 ~~secretary]~~ director shall issue a notice of completeness.

3076 (ii) If the plan is determined by the ~~[executive secretary]~~ director to be incomplete, the
3077 ~~[executive secretary]~~ director shall issue a notice of deficiency, listing the additional
3078 information to be provided by the owner or operator to complete the plan.

3079 (d) The ~~[executive secretary]~~ director shall review information submitted in response to
3080 a notice of deficiency within 30 days after receipt.

3081 (e) The following time periods may not be included in the 270 day plan review period
3082 for a class I or II facility:

3083 (i) time awaiting response from the owner or operator to requests for information
3084 issued by the ~~[executive secretary]~~ director;

3085 (ii) time required for public participation and hearings for issuance of plan approvals;
3086 and

3087 (iii) time for review of the permit by other federal or state government agencies.

3088 (6) (a) If the facility is a class III or class IV facility, the ~~[executive secretary]~~ director
3089 shall approve or disapprove that plan within 365 days from the date it is submitted.

3090 (b) The following time periods may not be included in the 365 day review period:

3091 (i) time awaiting response from the owner or operator to requests for information
3092 issued by the ~~[executive secretary]~~ director;

3093 (ii) time required for public participation and hearings for issuance of plan approvals;
3094 and

3095 (iii) time for review of the permit by other federal or state government agencies.

3096 (7) If, within 365 days after receipt of a modification plan or closure plan for any
3097 facility, the [~~executive secretary~~] director determines that the proposed plan, or any part of it,
3098 will not comply with applicable rules, the [~~executive secretary~~] director shall issue an order
3099 prohibiting any action under the proposed plan for modification or closure in whole or in part.

3100 (8) Any person who owns or operates a facility or site required to have an approved
3101 hazardous waste operation plan under this section and who has pending a permit application
3102 before the United States Environmental Protection Agency shall be treated as having an
3103 approved plan until final administrative disposition of the permit application is made under this
3104 section, unless the [~~board~~] director determines that final administrative disposition of the
3105 application has not been made because of the failure of the owner or operator to furnish any
3106 information requested, or the facility's interim status has terminated under Section 3005 (e) of
3107 the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

3108 (9) No proposed nonhazardous solid or hazardous waste operation plan may be
3109 approved unless it contains the information that the board requires, including:

3110 (a) estimates of the composition, quantities, and concentrations of any hazardous waste
3111 identified under this part and the proposed treatment, storage, or disposal of it;

3112 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or
3113 disposal of hazardous waste will not be done in a manner that may cause or significantly
3114 contribute to an increase in mortality, an increase in serious irreversible or incapacitating
3115 reversible illness, or pose a substantial present or potential hazard to human health or the
3116 environment;

3117 (c) consistent with the degree and duration of risks associated with the disposal of
3118 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,
3119 evidence of financial responsibility in whatever form and amount that the [~~executive secretary~~]
3120 director determines is necessary to insure continuity of operation and that upon abandonment,
3121 cessation, or interruption of the operation of the facility or site, all reasonable measures
3122 consistent with the available knowledge will be taken to insure that the waste subsequent to
3123 being treated, stored, or disposed of at the site or facility will not present a hazard to the public
3124 or the environment;

3125 (d) evidence that the personnel employed at the facility or site have education and

3126 training for the safe and adequate handling of nonhazardous solid or hazardous waste;

3127 (e) plans, specifications, and other information that the [~~executive secretary~~] director
3128 considers relevant to determine whether the proposed nonhazardous solid or hazardous waste
3129 operation plan will comply with this part and the rules of the board; and

3130 (f) compliance schedules, where applicable, including schedules for corrective action
3131 or other response measures for releases from any solid waste management unit at the facility,
3132 regardless of the time the waste was placed in the unit.

3133 (10) The [~~executive secretary~~] director may not approve a commercial nonhazardous
3134 solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it
3135 contains the information required by the board, including:

3136 (a) evidence that the proposed commercial facility has a proven market of
3137 nonhazardous solid or hazardous waste, including:

3138 (i) information on the source, quantity, and price charged for treating, storing, and
3139 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

3140 (ii) a market analysis of the need for a commercial facility given existing and potential
3141 generation of nonhazardous solid or hazardous waste in the state and regionally; and

3142 (iii) a review of other existing and proposed commercial nonhazardous solid or
3143 hazardous waste facilities regionally and nationally that would compete for the treatment,
3144 storage, or disposal of the nonhazardous solid or hazardous waste;

3145 (b) a description of the public benefits of the proposed facility, including:

3146 (i) the need in the state for the additional capacity for the management of nonhazardous
3147 solid or hazardous waste;

3148 (ii) the energy and resources recoverable by the proposed facility;

3149 (iii) the reduction of nonhazardous solid or hazardous waste management methods,
3150 which are less suitable for the environment, that would be made possible by the proposed
3151 facility; and

3152 (iv) whether any other available site or method for the management of hazardous waste
3153 would be less detrimental to the public health or safety or to the quality of the environment;
3154 and

3155 (c) compliance history of an owner or operator of a proposed commercial
3156 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be

3157 applied by the [~~executive secretary~~] director in a nonhazardous solid or hazardous waste
3158 operation plan decision, including any plan conditions.

3159 (11) The [~~executive secretary~~] director may not approve a commercial nonhazardous
3160 solid or hazardous waste facility operation plan unless based on the application, and in addition
3161 to the determination required in Subsections (9) and (10), the [~~executive secretary~~] director
3162 determines that:

3163 (a) the probable beneficial environmental effect of the facility to the state outweighs
3164 the probable adverse environmental effect; and

3165 (b) there is a need for the facility to serve industry within the state.

3166 (12) Approval of a nonhazardous solid or hazardous waste operation plan may be
3167 revoked, in whole or in part, if the person to whom approval of the plan has been given fails to
3168 comply with that plan.

3169 (13) The [~~executive secretary~~] director shall review all approved nonhazardous solid
3170 and hazardous waste operation plans at least once every five years.

3171 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste
3172 facilities in existence or to applications filed or pending in the department prior to April 24,
3173 1989, that are determined by the executive secretary of the board on or before December 31,
3174 1990, to be complete, in accordance with state and federal requirements applicable to operation
3175 plans for hazardous waste facilities.

3176 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous
3177 solid waste facility in existence or to an application filed or pending in the department prior to
3178 January 1, 1990, that is determined by the [~~executive secretary~~] director, on or before
3179 December 31, 1990, to be complete in accordance with state and federal requirements
3180 applicable to operation plans for nonhazardous solid waste facilities.

3181 (16) Nonhazardous solid waste generated outside of this state that is defined as
3182 hazardous waste in the state where it is generated and which is received for disposal in this
3183 state may not be disposed of at a nonhazardous waste disposal facility owned and operated by
3184 local government or a facility under contract with a local government solely for disposal of
3185 nonhazardous solid waste generated within the boundaries of the local government, unless
3186 disposal is approved by the [~~executive secretary~~] director.

3187 (17) This section may not be construed to exempt any facility from applicable

3188 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
3189 2114.

3190 Section 53. Section **19-6-108.3** is amended to read:

3191 **19-6-108.3. Director to issue written assurances, make determinations, and**
3192 **partition operation plans -- Board to make rules.**

3193 (1) Based upon risk to human health or the environment from potential exposure to
3194 hazardous waste, the [~~executive secretary~~] director may:

3195 (a) even if corrective action is incomplete, issue an enforceable written assurance to a
3196 person acquiring an interest in real property covered by an operation plan that the person to
3197 whom the assurance is issued:

3198 (i) is not a permittee under the operation plan; and

3199 (ii) will not be subject to an enforcement action under this part for contamination that
3200 exists or for violations under this part that occurred before the person acquired the interest in
3201 the real property covered by the operation plan;

3202 (b) determine that corrective action to the real property covered by the operation plan
3203 is:

3204 (i) complete;

3205 (ii) incomplete;

3206 (iii) unnecessary with an environmental covenant; or

3207 (iv) unnecessary without an environmental covenant; and

3208 (c) partition from an operation plan a portion of real property subject to the operation
3209 plan after determining that corrective action for that portion of real property is:

3210 (i) complete;

3211 (ii) unnecessary with an environmental covenant; or

3212 (iii) unnecessary without an environmental covenant.

3213 (2) If the [~~executive secretary~~] director determines that an environmental covenant is
3214 necessary under Subsection (1)(b) or (c), the [~~executive secretary~~] director shall require that the
3215 real property be subject to an environmental covenant according to Title 57, Chapter 25,
3216 Uniform Environmental Covenants Act.

3217 (3) An assurance issued under Subsection (1) protects the person to whom the
3218 assurance is issued from any cost recovery and contribution action under state law.

3219 (4) By following the procedures and requirements of Title 63G, Chapter 3, Utah
3220 Administrative Rulemaking Act, the board may adopt rules to administer this section.

3221 Section 54. Section **19-6-109** is amended to read:

3222 **19-6-109. Inspections authorized.**

3223 Any duly authorized officer, employee, or representative of the [board] director may, at
3224 any reasonable time and upon presentation of appropriate credentials, enter upon and inspect
3225 any property, premise, or place on or at which solid or hazardous wastes are generated,
3226 transported, stored, treated, or disposed of, and have access to and the right to copy any records
3227 relating to the wastes, for the purpose of ascertaining compliance with this part and the rules of
3228 the board. Those persons referred to in this section may also inspect any waste and obtain
3229 waste samples, including samples from any vehicle in which wastes are being transported or
3230 samples of any containers or labels. Any person obtaining samples shall give to the owner,
3231 operator, or agent a receipt describing the sample obtained and, if requested, a portion of each
3232 sample of waste equal in volume or weight to the portion retained. If any analysis is made of
3233 those samples, a copy of the results of that analysis shall be furnished promptly to the owner,
3234 operator, or agent in charge.

3235 Section 55. Section **19-6-112** is amended to read:

3236 **19-6-112. Notice of violations -- Order for correction -- Civil action to enforce.**

3237 (1) Whenever the [board] director determines that any person is in violation of any
3238 applicable approved hazardous wastes operation plan or solid waste plan, the requirements of
3239 this part, or any of the board's rules, [it] the director may cause written notice of that violation
3240 to be served upon the alleged violator. The notice shall specify the provisions of the plan, this
3241 part or rule alleged to have been violated, and the facts alleged to constitute the violation.

3242 (2) The [board] director may:

3243 (a) issue an order requiring that necessary corrective action be taken within a
3244 reasonable time; or

3245 (b) request the attorney general or the county attorney in the county in which the
3246 violation is taking place to bring a civil action for injunctive relief and enforcement of this part.

3247 (3) Pending promulgation of rules for corrective action under Section 19-6-105, the
3248 [board] director may issue corrective action orders on a case-by-case basis, as necessary to
3249 carry out the purposes of this part.

3250 Section 56. Section **19-6-117** is amended to read:

3251 **19-6-117. Action against insurer or guarantor.**

3252 (1) The state may assert a cause of action directly against an insurer or guarantor of an
3253 owner or operator if:

3254 (a) a cause of action exists against an owner or operator of a treatment, storage, or
3255 disposal facility, based upon conduct for which the [~~board~~] director requires evidence of
3256 financial responsibility under Section 19-6-108, and that owner or operator is in bankruptcy,
3257 reorganization, or arrangement pursuant to the federal Bankruptcy Code; or

3258 (b) jurisdiction over an owner or operator, who is likely to be solvent at the time of
3259 judgment, cannot be obtained in state or federal court.

3260 (2) In that action, the insurer or guarantor may assert all rights and defenses available
3261 to the owner or operator, in addition to rights and defenses that would be available to the
3262 insurer or guarantor in an action brought against him by the owner or operator.

3263 Section 57. Section **19-6-119** is amended to read:

3264 **19-6-119. Nonhazardous solid waste disposal fees.**

3265 (1) (a) Except as provided in Subsection (5), the owner or operator of a commercial
3266 nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste
3267 received for treatment or disposal at the facility if the facility or incinerator is required to have
3268 operation plan approval under Section 19-6-108 and primarily receives waste generated by
3269 off-site sources not owned, controlled, or operated by the facility or site owner or operator:

3270 (i) 13 cents per ton on all municipal waste and municipal incinerator ash;

3271 (ii) 50 cents per ton on the following wastes if the facility disposes of one or more of
3272 the following wastes in a cell exclusively designated for the waste being disposed:

3273 (A) construction waste or demolition waste;

3274 (B) yard waste, including vegetative matter resulting from landscaping, land
3275 maintenance, and land clearing operations;

3276 (C) dead animals;

3277 (D) waste tires and materials derived from waste tires disposed of in accordance with
3278 Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and

3279 (E) petroleum contaminated soils that are approved by the [~~executive secretary~~]
3280 director; and

- 3281 (iii) \$2.50 per ton on:
- 3282 (A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and
- 3283 (B) (I) fly ash waste;
- 3284 (II) bottom ash waste;
- 3285 (III) slag waste;
- 3286 (IV) flue gas emission control waste generated primarily from the combustion of coal
- 3287 or other fossil fuels;
- 3288 (V) waste from the extraction, beneficiation, and processing of ores and minerals; and
- 3289 (VI) cement kiln dust wastes.
- 3290 (b) A commercial nonhazardous solid waste disposal facility or incinerator subject to
- 3291 the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii)
- 3292 for those wastes described in Subsections (1)(a)(i) and (ii).
- 3293 (c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall
- 3294 pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.
- 3295 (2) (a) Except as provided in Subsections (2)(b) and (5), a waste facility that is owned
- 3296 by a political subdivision shall pay the following annual facility fee to the department by
- 3297 January 15 of each year:
- 3298 (i) \$800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal
- 3299 waste each year;
- 3300 (ii) \$1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of
- 3301 municipal waste each year;
- 3302 (iii) \$3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of
- 3303 municipal waste each year;
- 3304 (iv) \$12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of
- 3305 municipal waste each year;
- 3306 (v) \$14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of
- 3307 municipal waste each year;
- 3308 (vi) \$33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of
- 3309 municipal waste each year; and
- 3310 (vii) \$66,000 if the facility receives 500,000 or more tons of municipal waste each
- 3311 year.

3312 (b) Except as provided in Subsection (5), a waste facility that is owned by a political
3313 subdivision shall pay \$2.50 per ton for:

3314 (i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii)
3315 received for disposal if the waste is:

3316 (A) generated outside the boundaries of the political subdivision; and

3317 (B) received from a single generator and exceeds 500 tons in a calendar year; and

3318 (ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:

3319 (A) generated outside the boundaries of the political subdivision; and

3320 (B) received from a single generator and exceeds 500 tons in a calendar year.

3321 (c) Waste received at a facility owned by a political subdivision under Subsection

3322 (2)(b) may not be counted as part of the total tonnage received by the facility under Subsection

3323 (2)(a).

3324 (3) (a) As used in this Subsection (3):

3325 (i) "Recycling center" means a facility that extracts valuable materials from a waste
3326 stream or transforms or remanufactures the material into a usable form that has demonstrated
3327 or potential market value.

3328 (ii) "Transfer station" means a permanent, fixed, supplemental collection and
3329 transportation facility that is used to deposit collected solid waste from off-site into a transfer
3330 vehicle for transport to a solid waste handling or disposal facility.

3331 (b) Except as provided in Subsection (5), the owner or operator of a transfer station or
3332 recycling center shall pay to the department the following fees on waste sent for disposal to a
3333 nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this
3334 section:

3335 (i) \$1.25 per ton on:

3336 (A) all nonhazardous solid waste; and

3337 (B) waste described in Subsection (1)(a)(iii)(B);

3338 (ii) 10 cents per ton on all construction and demolition waste; and

3339 (iii) 5 cents per ton on all municipal waste or municipal incinerator ash.

3340 (c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee
3341 required under Subsection (3)(b)(i).

3342 (4) If a facility required to pay fees under this section receives nonhazardous solid

3343 waste for treatment or disposal, and the fee required under this section is paid for that treatment
3344 or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees
3345 under this section.

3346 (5) The owner or operator of a waste disposal facility that receives waste described in
3347 Subsection (1)(a)(iii)(B) is not required to pay any fee on those wastes if received solely for the
3348 purpose of recycling, reuse, or reprocessing.

3349 (6) Except as provided in Subsection (2)(a), a facility required to pay fees under this
3350 section shall:

3351 (a) calculate the fees by multiplying the total tonnage of waste received during the
3352 calendar month, computed to the first decimal place, by the required fee rate;

3353 (b) pay the fees imposed by this section to the department by the 15th day of the month
3354 following the month in which the fees accrued; and

3355 (c) with the fees required under Subsection (6)(b), submit to the department, on a form
3356 prescribed by the department, information that verifies the amount of waste received and the
3357 fees that the owner or operator is required to pay.

3358 (7) The department shall:

3359 (a) deposit all fees received under this section into the Environmental Quality
3360 Restricted Account created in Section 19-1-108; and

3361 (b) in preparing its budget for the governor and the Legislature, separately indicate the
3362 amount of the department's budget necessary to administer the solid and hazardous waste
3363 program established by this part.

3364 (8) The department may contract or agree with a county to assist in performing
3365 nonhazardous solid waste management activities, including agreements for:

3366 (a) the development of a solid waste management plan required under Section
3367 17-15-23; and

3368 (b) pass-through of available funding.

3369 (9) This section does not exempt any facility from applicable regulation under the
3370 Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

3371 Section 58. Section **19-6-120** is amended to read:

3372 **19-6-120. New hazardous waste operation plans -- Designation of hazardous**
3373 **waste facilities -- Fees for filing and plan review.**

3374 (1) For purposes of this section, the following items shall be treated as submission of a
3375 new hazardous waste operation plan:

3376 (a) the submission of a revised hazardous waste operation plan specifying a different
3377 geographic site than a previously submitted plan;

3378 (b) an application for modification of a commercial hazardous waste incinerator if the
3379 construction or the modification would increase the commercial hazardous waste incinerator
3380 capacity above the capacity specified in the operation plan as of January 1, 1990, or the
3381 capacity specified in the operation plan application as of January 1, 1990, if no operation plan
3382 approval has been issued as of January 1, 1990; or

3383 (c) an application for modification of a commercial hazardous waste treatment, storage,
3384 or disposal facility, other than an incinerator, if the modification would be outside the
3385 boundaries of the property owned or controlled by the applicant, as shown in the application or
3386 approved operation plan as of January 1, 1990, or the initial approved operation plan if initial
3387 approval is subsequent to January 1, 1990.

3388 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput
3389 tonnage specified for the trial burn in the operation plan or the operation plan application if no
3390 operation plan approval has been issued as of January 1, 1990, and on annual operations of
3391 7,000 hours.

3392 (3) (a) Hazardous waste facilities that are subject to payment of fees under this section
3393 or Section 19-1-201 for plan reviews under Section 19-6-108 shall be designated by the
3394 department as either class I, class II, class III, or class IV facilities.

3395 (b) The department shall designate commercial hazardous waste facilities containing
3396 either landfills, surface impoundments, land treatment units, thermal treatment units,
3397 incinerators, or underground injection wells, which primarily receive wastes generated by
3398 off-site sources not owned, controlled, or operated by the facility owner or operator, as class I
3399 facilities.

3400 (4) The maximum fee for filing and review of each class I facility operation plan is
3401 \$200,000, and is due and payable as follows:

3402 (a) The owner or operator of a class I facility shall, at the time of filing for plan review,
3403 pay to the department the nonrefundable sum of \$50,000.

3404 (b) Upon issuance by the ~~executive secretary~~ director of a notice of completeness

3405 under Section 19-6-108, the owner or operator of the facility shall pay to the department an
3406 additional nonrefundable sum of \$50,000.

3407 (c) The department shall bill the owner or operator of the facility for any additional
3408 actual costs of plan review, up to an additional \$100,000.

3409 (5) (a) The department shall designate hazardous waste incinerators that primarily
3410 receive wastes generated by sources owned, controlled, or operated by the facility owner or
3411 operator as class II facilities.

3412 (b) The maximum fee for filing and review of each class II facility operation plan is
3413 \$150,000, and shall be due and payable as follows:

3414 (i) The owner or operator of a class II facility shall, at the time of filing for plan review
3415 under Section 19-6-108, pay to the department the nonrefundable sum of \$50,000.

3416 (ii) The department shall bill the owner or operator of the facility for any additional
3417 actual costs of plan review, up to an additional \$100,000.

3418 (6) (a) The department shall designate hazardous waste facilities containing either
3419 landfills, surface impoundments, land treatment units, thermal treatment units, or underground
3420 injection wells, that primarily receive wastes generated by sources owned, controlled, or
3421 operated by the facility owner or operator, as class III facilities.

3422 (b) The maximum fee for filing and review of each class III facility operation plan is
3423 \$100,000 and is due and payable as follows:

3424 (i) The owner or operator shall, at the time of filing for plan review, pay to the
3425 department the nonrefundable sum of \$1,000.

3426 (ii) The department shall bill the owner or operator of each class III facility for actual
3427 costs of operation plan review, up to an additional \$99,000.

3428 (7) (a) All other hazardous waste facilities are designated as class IV facilities.

3429 (b) The maximum fee for filing and review of each class IV facility operation plan is
3430 \$50,000 and is due and payable as follows:

3431 (i) The owner or operator shall, at the time of filing for plan review, pay to the
3432 department the nonrefundable sum of \$1,000.

3433 (ii) The department shall bill the owner or operator of each class IV facility for actual
3434 costs of operation plan review, up to an additional \$49,000.

3435 (8) (a) The maximum fee for filing and review of each major modification plan and

3436 major closure plan for a class I, class II, or class III facility is \$50,000 and is due and payable as
3437 follows:

3438 (i) The owner or operator shall, at the time of filing for that review, pay to the
3439 department the nonrefundable sum of \$1,000.

3440 (ii) The department shall bill the owner or operator of the hazardous waste facility for
3441 actual costs of the review, up to an additional \$49,000.

3442 (b) The maximum fee for filing and review of each minor modification and minor
3443 closure plan for a class I, class II, or class III facility, and of any modification or closure plan
3444 for a class IV facility, is \$20,000, and is due and payable as follows:

3445 (i) The owner or operator shall, at the time of filing for that review, pay to the
3446 department the nonrefundable sum of \$1,000.

3447 (ii) The department shall bill the owner or operator of the hazardous waste facility for
3448 actual costs of review up to an additional \$19,000.

3449 (c) The owner or operator of a thermal treatment unit shall submit a trial or test burn
3450 schedule 90 days prior to any planned trial or test burn. At the time the schedule is submitted,
3451 the owner or operator shall pay to the department the nonrefundable fee of \$25,000. The
3452 department shall apply the fee to the costs of the review and processing of each trial or test
3453 burn plan, trial or test burn, and trial or test burn data report. The department shall bill the
3454 owner or operator of the facility for any additional actual costs of review and preparation.

3455 (9) (a) The owner or operator of a class III facility may obtain a plan review within the
3456 time periods for a class II facility operation plan by paying, at the time of filing for plan review,
3457 the maximum fee for a class II facility operation plan.

3458 (b) The owner or operator of a class IV facility may obtain a plan review within the
3459 time periods for a class II facility operation plan by paying, at the time of filing for plan review,
3460 the maximum fee for a class III facility operation plan.

3461 (c) An owner or operator of a class I, class II, or class III facility who submits a major
3462 modification plan or a major closure plan may obtain a plan review within the time periods for
3463 a class II facility operation plan by paying, at the time of filing for plan review, the maximum
3464 fee for a class II facility operation plan.

3465 (d) An owner or operator of a class I, class II, or class III facility who submits a minor
3466 modification plan or a minor closure plan, and an owner or operator of a class IV facility who

3467 submits a modification plan or a closure plan, may obtain a plan review within the time periods
3468 for a class II facility operation plan by paying, at the time of filing for plan review, the
3469 maximum fee for a class III facility operation plan.

3470 (10) All fees received by the department under this section shall be deposited in the
3471 General Fund as dedicated credits for hazardous waste plan reviews in accordance with
3472 Subsection (12) and Section 19-6-108.

3473 (11) (a) (i) The [~~executive secretary~~] director shall establish an accounting procedure
3474 that separately accounts for fees paid by each owner or operator who submits a hazardous
3475 waste operation plan for approval under Section 19-6-108 and pays fees for hazardous waste
3476 plan reviews under this section or Section 19-1-201.

3477 (ii) The [~~executive secretary~~] director shall credit all fees paid by the owner or operator
3478 to that owner or operator.

3479 (iii) The [~~executive secretary~~] director shall account for costs actually incurred in
3480 reviewing each operation plan and may only use the fees of each owner or operator for review
3481 of that owner or operator's plan.

3482 (b) If the costs actually incurred by the department in reviewing a hazardous waste
3483 operation plan of any facility are less than the nonrefundable fee paid by the owner or operator
3484 under this section, the department may, upon approval or disapproval of the plan by the board
3485 or upon withdrawal of the plan by the owner or operator, use any remaining funds that have
3486 been credited to that owner or operator for the purposes of administering provisions of the
3487 hazardous waste programs and activities authorized by this part.

3488 (12) (a) With regard to any review of a hazardous waste operation plan, modification
3489 plan, or closure plan that is pending on April 25, 1988, the [~~executive secretary~~] director may
3490 assess fees for that plan review.

3491 (b) The total amount of fees paid by an owner or operator of a hazardous waste facility
3492 whose plan review is affected by this subsection may not exceed the maximum fees allowable
3493 under this section for the appropriate class of facility.

3494 (13) (a) The department shall maintain accurate records of its actual costs for each plan
3495 review under this section.

3496 (b) Those records shall be available for public inspection.

3497 Section 59. Section **19-6-402** is amended to read:

3498 **19-6-402. Definitions.**

3499 As used in this part:

3500 (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a
3501 release from an underground storage tank or petroleum storage tank, or to limit or reduce,
3502 mitigate, or eliminate the damage caused by that release.

3503 (2) "Board" means the Solid and Hazardous Waste Control Board created in Section
3504 19-1-106.

3505 (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any
3506 person.

3507 (4) "Certificate of compliance" means a certificate issued to a facility by the [~~executive~~
3508 ~~secretary~~] director:

3509 (a) demonstrating that an owner or operator of a facility containing one or more
3510 petroleum storage tanks has met the requirements of this part; and

3511 (b) listing all tanks at the facility, specifying which tanks may receive petroleum and
3512 which tanks have not met the requirements for compliance.

3513 (5) "Certificate of registration" means a certificate issued to a facility by the [~~executive~~
3514 ~~secretary~~] director demonstrating that an owner or operator of a facility containing one or more
3515 underground storage tanks has:

3516 (a) registered the tanks; and

3517 (b) paid the annual underground storage tank fee.

3518 (6) (a) "Certified underground storage tank consultant" means any person who:

3519 (i) meets the education and experience standards established by the board under
3520 Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions,
3521 or advice relating to underground storage tank management, release abatement, investigation,
3522 corrective action, or evaluation for a fee, or in connection with the services for which a fee is
3523 charged; and

3524 (ii) has submitted an application to the [~~board~~] director and received a written
3525 statement of certification from the [~~board~~] director.

3526 (b) "Certified underground storage tank consultant" does not include:

3527 (i) an employee of the owner or operator of the underground storage tank, or an
3528 employee of a business operation that has a business relationship with the owner or operator of

3529 the underground storage tank, and that markets petroleum products or manages underground
3530 storage tanks; or

3531 (ii) persons licensed to practice law in this state who offer only legal advice on
3532 underground storage tank management, release abatement, investigation, corrective action, or
3533 evaluation.

3534 (7) "Closed" means an underground storage tank no longer in use that has been:

3535 (a) emptied and cleaned to remove all liquids and accumulated sludges; and

3536 (b) either removed from the ground or filled with an inert solid material.

3537 (8) "Corrective action plan" means a plan for correcting a release from a petroleum
3538 storage tank that includes provisions for all or any of the following:

3539 (a) cleanup or removal of the release;

3540 (b) containment or isolation of the release;

3541 (c) treatment of the release;

3542 (d) correction of the cause of the release;

3543 (e) monitoring and maintenance of the site of the release;

3544 (f) provision of alternative water supplies to persons whose drinking water has become
3545 contaminated by the release; or

3546 (g) temporary or permanent relocation, whichever is determined by the [~~executive~~
3547 ~~secretary~~] director to be more cost-effective, of persons whose dwellings have been determined
3548 by the [~~executive secretary~~] director to be no longer habitable due to the release.

3549 (9) "Costs" means any money expended for:

3550 (a) investigation;

3551 (b) abatement action;

3552 (c) corrective action;

3553 (d) judgments, awards, and settlements for bodily injury or property damage to third
3554 parties;

3555 (e) legal and claims adjusting costs incurred by the state in connection with judgments,
3556 awards, or settlements for bodily injury or property damage to third parties; or

3557 (f) costs incurred by the state risk manager in determining the actuarial soundness of
3558 the fund.

3559 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been

3560 met.

3561 (11) "Director" means the director of the Division of Environmental Response and
3562 Remediation.

3563 (12) "Division" means the Division of Environmental Response and Remediation,
3564 created in Subsection 19-1-105(1)(c).

3565 [~~(11)~~] (13) "Dwelling" means a building that is usually occupied by a person lodging
3566 there at night.

3567 [~~(12)~~] (14) "Enforcement proceedings" means a civil action or the procedures to
3568 enforce orders established by Section 19-6-425.

3569 [~~(13)~~] "Executive secretary" means the executive secretary of the board.]

3570 [~~(14)~~] (15) "Facility" means all underground storage tanks located on a single parcel of
3571 property or on any property adjacent or contiguous to that parcel.

3572 [~~(15)~~] (16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section
3573 19-6-409.

3574 [~~(16)~~] (17) "Loan fund" means the Petroleum Storage Tank Loan Fund created in
3575 Section 19-6-405.3.

3576 [~~(17)~~] (18) "Operator" means any person in control of or who is responsible on a daily
3577 basis for the maintenance of an underground storage tank that is in use for the storage, use, or
3578 dispensing of a regulated substance.

3579 [~~(18)~~] (19) "Owner" means:

3580 (a) in the case of an underground storage tank in use on or after November 8, 1984, any
3581 person who owns an underground storage tank used for the storage, use, or dispensing of a
3582 regulated substance; and

3583 (b) in the case of any underground storage tank in use before November 8, 1984, but
3584 not in use on or after November 8, 1984, any person who owned the tank immediately before
3585 the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

3586 [~~(19)~~] (20) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at
3587 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

3588 [~~(20)~~] (21) "Petroleum storage tank" means a tank that:

3589 (a) (i) is underground;

3590 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42

3591 U.S.C. Section 6991c, et seq.; and

3592 (iii) contains petroleum; or

3593 (b) is a tank that the owner or operator voluntarily submits for participation in the

3594 Petroleum Storage Tank Trust Fund under Section 19-6-415.

3595 [~~(21)~~] (22) "Petroleum Storage Tank Restricted Account" means the account created in

3596 Section 19-6-405.5.

3597 [~~(22)~~] (23) "Program" means the Environmental Assurance Program under Section

3598 19-6-410.5.

3599 [~~(23)~~] (24) "Property damage" means physical injury to or destruction of tangible

3600 property including loss of use of that property.

3601 [~~(24)~~] (25) "Regulated substance" means petroleum and petroleum-based substances

3602 comprised of a complex blend of hydrocarbons derived from crude oil through processes of

3603 separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate

3604 fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

3605 [~~(25)~~] (26) "Release" means any spilling, leaking, emitting, discharging, escaping,

3606 leaching, or disposing from an underground storage tank or petroleum storage tank. The entire

3607 release is considered a single release.

3608 [~~(26)~~] (27) (a) "Responsible party" means any person who:

3609 (i) is the owner or operator of a facility;

3610 (ii) owns or has legal or equitable title in a facility or an underground storage tank;

3611 (iii) owned or had legal or equitable title in the facility at the time any petroleum was

3612 received or contained at the facility;

3613 (iv) operated or otherwise controlled activities at the facility at the time any petroleum

3614 was received or contained at the facility; or

3615 (v) is an underground storage tank installation company.

3616 (b) "Responsible party" as defined in Subsections [~~(26)~~] (27)(a)(i), (ii), and (iii) does

3617 not include:

3618 (i) any person who is not an operator and, without participating in the management of a

3619 facility and otherwise not engaged in petroleum production, refining, and marketing, holds

3620 indicia of ownership:

3621 (A) primarily to protect his security interest in the facility; or

3622 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an
3623 employee benefit plan; or

3624 (ii) governmental ownership or control of property by involuntary transfers as provided
3625 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

3626 (c) The exemption created by Subsection [~~(26)~~](27)(b)(i)(B) does not apply to actions
3627 taken by the state or its officials or agencies under this part.

3628 (d) The terms and activities "indicia of ownership," "primarily to protect a security
3629 interest," "participation in management," and "security interest" under this part are in
3630 accordance with 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

3631 (e) The terms "participate in management" and "indicia of ownership" as defined in 40
3632 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the
3633 fiduciaries listed in Subsection [~~(26)~~](27)(b)(i)(B).

3634 [~~(27)~~](28) "Soil test" means a test, established or approved by board rule, to detect the
3635 presence of petroleum in soil.

3636 [~~(28)~~](29) "State cleanup appropriation" means the money appropriated by the
3637 Legislature to the department to fund the investigation, abatement, and corrective action
3638 regarding releases not covered by the fund.

3639 [~~(29)~~](30) "Underground storage tank" means any tank regulated under Subtitle I,
3640 Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

3641 (a) a petroleum storage tank;

3642 (b) underground pipes and lines connected to a storage tank; and

3643 (c) any underground ancillary equipment and containment system.

3644 [~~(30)~~](31) "Underground storage tank installation company" means any person, firm,
3645 partnership, corporation, governmental entity, association, or other organization who installs
3646 underground storage tanks.

3647 [~~(31)~~](32) "Underground storage tank installation company permit" means a permit
3648 issued to an underground storage tank installation company by the [~~executive secretary~~]
3649 director.

3650 [~~(32)~~](33) "Underground storage tank technician" means a person employed by and
3651 acting under the direct supervision of a certified underground storage tank consultant to assist
3652 in carrying out the functions described in Subsection (6)(a).

3653 Section 60. Section **19-6-403** is amended to read:

3654 **19-6-403. Powers and duties of board.**

3655 The board shall regulate an underground storage tank or petroleum storage tank by:

3656 (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

3657 making rules that:

3658 (a) provide for the:

3659 (i) certification of an installer, inspector, tester, or remover;

3660 (ii) registration of a tank;

3661 (iii) administration of the petroleum storage tank program;

3662 (iv) format of and required information in a record kept by a tank owner or operator

3663 who is participating in the fund;

3664 (v) voluntary participation in the fund for:

3665 (A) an above ground petroleum storage tank; and

3666 (B) a tank:

3667 (I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

3668 (II) specified in Section 19-6-415; and

3669 (vi) certification of an underground storage tank consultant including:

3670 (A) a minimum education or experience requirement; and

3671 (B) a recognition of the educational requirement of a professional engineer licensed

3672 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing

3673 Act, as meeting the education requirement for certification;

3674 (b) adopt the requirements for an underground storage tank contained in:

3675 (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may

3676 be amended in the future; and

3677 (ii) an applicable federal requirement authorized by the federal law referenced in

3678 Subsection (1)(b)(i); and

3679 (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42

3680 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of

3681 primacy in the regulation of an underground storage tank; and

3682 (2) applying the provisions of this part.

3683 Section 61. Section **19-6-404** is amended to read:

3684 **19-6-404. Powers and duties of director.**3685 (1) The [~~executive secretary~~] director shall:

3686 (a) administer the petroleum storage tank program established in this part[-]; and

3687 (b) as authorized by the board and subject to the provisions of this part, act as3688 executive secretary of the board under the direction of the chairman of the board.3689 (2) As necessary to meet the requirements or carry out the purposes of this part, the
3690 [~~executive secretary~~] director may:

3691 (a) advise, consult, and cooperate with other persons;

3692 (b) employ persons;

3693 (c) authorize a certified employee or a certified representative of the department to
3694 conduct facility inspections and reviews of records required to be kept by this part and by rules
3695 made under this part;3696 (d) encourage, participate in, or conduct studies, investigation, research, and
3697 demonstrations;

3698 (e) collect and disseminate information;

3699 (f) enforce rules made by the board and any requirement in this part by issuing notices
3700 and orders;

3701 (g) review plans, specifications, or other data;

3702 (h) under the direction of the executive director, represent the state in all matters
3703 pertaining to interstate underground storage tank management and control, including[~~, with the~~
3704 ~~concurrence of the executive director,~~] entering into interstate compacts and other similar
3705 agreements;3706 (i) enter into contracts or agreements with political subdivisions for the performance of
3707 any of the department's responsibilities under this part if:3708 (i) the contract or agreement is not prohibited by state or federal law and will not result
3709 in a loss of federal funding; and3710 (ii) the [~~executive secretary~~] director determines that:3711 (A) the political subdivision is willing and able to satisfactorily discharge its
3712 responsibilities under the contract or agreement; and

3713 (B) the contract or agreement will be practical and effective;

3714 (j) take any necessary enforcement action authorized under this part;

- 3715 (k) require an owner or operator of an underground storage tank to:
- 3716 (i) furnish information or records relating to the tank, its equipment, and contents;
- 3717 (ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils,
- 3718 air, or water; or
- 3719 (iii) provide access to the tank at reasonable times;
- 3720 (l) take any abatement, investigative, or corrective action as authorized in this part;

3721 [~~and~~] or

- 3722 (m) enter into agreements or issue orders to apportion percentages of liability of
- 3723 responsible parties under Section 19-6-424.5.

3724 [~~(3) Except as otherwise provided in Subsection 19-6-414(3), appeals of decisions~~

3725 ~~made by the executive secretary under this part shall be made to the board.]~~

3726 Section 62. Section **19-6-405.3** is amended to read:

3727 **19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan**

3728 **eligibility -- Loan restrictions -- Rulemaking.**

3729 (1) There is created a revolving loan fund known as the Petroleum Storage Tank Loan

3730 Fund.

3731 (2) The sources of money for the loan fund are:

3732 (a) appropriations to the loan fund;

3733 (b) principal and interest received from the repayment of loans made by the [~~executive~~

3734 ~~secretary~~] director under Subsection (3); and

3735 (c) all investment income derived from money in the fund.

3736 (3) The [~~executive secretary~~] director may loan, in accordance with this section, money

3737 available in the loan fund to a person to be used for:

3738 (a) upgrading a petroleum storage tank;

3739 (b) replacing an underground storage tank; or

3740 (c) permanently closing an underground storage tank.

3741 (4) A person may apply to the [~~executive secretary~~] director for a loan under

3742 Subsection (3) if all tanks owned or operated by that person are in substantial compliance with

3743 all state and federal requirements or will be brought into substantial compliance using money

3744 from the loan fund.

3745 (5) The [~~executive secretary~~] director shall consider loan applications under Subsection

3746 (4) to meet the following objectives:

3747 (a) support availability of gasoline in rural parts of the state;

3748 (b) support small businesses; and

3749 (c) reduce the threat of a petroleum release endangering the environment.

3750 (6) ~~[Loans]~~ (a) A loan made under this section may not be for more than:

3751 ~~[(a) be for more than]~~ (i) \$150,000 for all tanks at any one facility;

3752 ~~[(b) be for more than]~~ (ii) \$50,000 per tank; and

3753 ~~[(c) be for more than]~~ (iii) 80% of the total cost of:

3754 ~~[(i)]~~ (A) upgrading a tank;

3755 ~~[(ii)]~~ (B) replacing the underground storage tank; or

3756 ~~[(iii)]~~ (C) permanently closing the underground storage tank~~;~~.

3757 (b) A loan made under this section shall:

3758 ~~[(d)]~~ (i) have a fixed annual interest rate of 3%;

3759 ~~[(e)]~~ (ii) have a term no longer than 10 years;

3760 ~~[(f)]~~ (iii) be made on the condition the loan applicant obtains adequate security for the

3761 loan as established by board rule under Subsection (7); and

3762 ~~[(g)]~~ (iv) comply with rules made by the board under Subsection (7).

3763 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

3764 board shall make rules establishing:

3765 (a) form, content, and procedure for a loan application;

3766 (b) criteria and procedures for prioritizing a loan application;

3767 (c) requirements and procedures for securing a loan;

3768 (d) procedures for making a loan;

3769 (e) procedures for administering and ensuring repayment of a loan, including late

3770 payment penalties; and

3771 (f) procedures for recovering on a defaulted loan.

3772 (8) A decision by the ~~[executive secretary]~~ director to loan money from the loan fund

3773 and otherwise administer the loan fund is not subject to Title 63G, Chapter 4, Administrative

3774 Procedures Act.

3775 (9) The Legislature shall appropriate money from the loan fund to the department for

3776 the administration of the loan.

3777 (10) The [~~executive secretary~~] director may enter into an agreement with a public entity
3778 or private organization to perform a task associated with administration of the loan fund.

3779 Section 63. Section **19-6-405.7** is amended to read:

3780 **19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.**

3781 (1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank
3782 Cleanup Fund," which is referred to in this section as the cleanup fund.

3783 (2) The cleanup fund sources of revenue are:

3784 (a) any voluntary contributions received by the department for the cleanup of facilities;

3785 (b) legislative appropriations made to the cleanup fund; and

3786 (c) costs recovered under this part.

3787 (3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

3788 (4) The [~~executive secretary~~] director may use the cleanup fund money for
3789 administration, investigation, abatement action, and preparing and implementing a corrective
3790 action plan regarding releases not covered by the Petroleum Storage Tank Trust Fund created
3791 in Section 19-6-409.

3792 Section 64. Section **19-6-407** is amended to read:

3793 **19-6-407. Underground storage tank registration -- Change of ownership or**
3794 **operation -- Civil penalty.**

3795 (1) (a) Each owner or operator of an underground storage tank shall register the tank
3796 with the [~~executive secretary~~] director if the tank:

3797 (i) is in use; or

3798 (ii) was closed after January 1, 1974.

3799 (b) If a new person assumes ownership or operational responsibilities for an
3800 underground storage tank, that person shall inform the executive secretary of the change within
3801 30 days after the change occurs.

3802 (c) Each installer of an underground storage tank shall notify the [~~executive secretary~~]
3803 director of the completed installation within 60 days following the installation of an
3804 underground storage tank.

3805 (2) The [~~executive secretary~~] director may issue a notice of agency action assessing a
3806 civil penalty in the amount of \$1,000 if an owner, operator, or installer, of a petroleum or
3807 underground storage tank fails to register the tank or provide notice as required in Subsection

3808 (1).

3809 (3) The penalties collected under authority of this section shall be deposited in the
3810 Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

3811 Section 65. Section **19-6-408** is amended to read:

3812 **19-6-408. Underground storage tank registration fee -- Processing fee for tanks**
3813 **not in the program.**

3814 (1) The department may assess an annual underground storage tank registration fee
3815 against owners or operators of underground storage tanks that have not been closed. These fees
3816 shall be:

3817 (a) billed per facility;

3818 (b) due on July 1 annually;

3819 (c) deposited with the department as dedicated credits;

3820 (d) used by the department for the administration of the underground storage tank
3821 program outlined in this part; and

3822 (e) established under Section 63J-1-504.

3823 (2) (a) In addition to the fee under Subsection (1), an owner or operator who elects to
3824 demonstrate financial assurance through a mechanism other than the Environmental Assurance
3825 Program shall pay a processing fee of:

3826 (i) for fiscal year 1997-98, \$1,000 for each financial assurance mechanism document
3827 submitted to the division for review; and

3828 (ii) on and after July 1, 1998, a processing fee established under Section 63J-1-504.

3829 (b) If a combination of financial assurance mechanisms is used to demonstrate
3830 financial assurance, the fee under Subsection (2)(a) shall be paid for each document submitted.

3831 (c) As used in this Subsection (2), "financial assurance mechanism document" may be
3832 a single document that covers more than one facility through a single financial assurance
3833 mechanism.

3834 (3) Any funds provided for administration of the underground storage tank program
3835 under this section that are not expended at the end of the fiscal year lapse into the Petroleum
3836 Storage Tank Restricted Account created in Section 19-6-405.5.

3837 (4) The [~~executive secretary~~] director shall provide all owners or operators who pay the
3838 annual underground storage tank registration fee a certificate of registration.

3839 (5) (a) The [~~executive secretary~~] director may issue a notice of agency action assessing
3840 a civil penalty of \$1,000 per facility if an owner or operator of an underground storage tank
3841 facility fails to pay the required fee within 60 days after the July 1 due date.

3842 (b) The registration fee and late payment penalty accrue interest at 12% per annum.

3843 (c) If the registration fee, late payment penalty, and interest accrued under this
3844 Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of
3845 compliance issued prior to the July 1 due date lapses. The [~~executive secretary~~] director may
3846 not reissue the certificate of compliance until full payment under this Subsection (5) is made to
3847 the department.

3848 (d) The [~~executive secretary~~] director may waive any penalty assessed under this
3849 Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

3850 Section 66. Section **19-6-409** is amended to read:

3851 **19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.**

3852 (1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage
3853 Tank Trust Fund."

3854 (b) The sole sources of revenues for the fund are:

3855 (i) petroleum storage tank fees paid under Section 19-6-411;

3856 (ii) underground storage tank installation company permit fees paid under Section
3857 19-6-411;

3858 (iii) the environmental assurance fee and penalties paid under Section 19-6-410.5; and

3859 (iv) interest accrued on revenues listed in this Subsection (1)(b).

3860 (c) Interest earned on fund money is deposited into the fund.

3861 (2) The [~~executive secretary~~] director may expend money from the fund to pay costs:

3862 (a) covered by the fund under Section 19-6-419;

3863 (b) of administering the:

3864 (i) fund; and

3865 (ii) environmental assurance program and fee under Section 19-6-410.5;

3866 (c) incurred by the state for a legal service or claim adjusting service provided in
3867 connection with a claim, judgment, award, or settlement for bodily injury or property damage
3868 to a third party;

3869 (d) incurred by the state risk manager in determining the actuarial soundness of the

3870 fund;

3871 (e) incurred by a third party claiming injury or damages from a release reported on or
3872 after May 11, 2010, for hiring a certified underground storage tank consultant:

3873 (i) to review an investigation or corrective action by a responsible party; and

3874 (ii) in accordance with Subsection (4); and

3875 (f) allowed under this part that are not listed under this Subsection (2).

3876 (3) Costs for the administration of the fund and the environmental assurance fee shall
3877 be appropriated by the Legislature.

3878 (4) The [~~executive secretary~~] director shall:

3879 (a) in paying costs under Subsection (2)(e):

3880 (i) determine a reasonable limit on costs paid based on the:

3881 (A) extent of the release;

3882 (B) impact of the release; and

3883 (C) services provided by the certified underground storage tank consultant;

3884 (ii) pay, per release, costs for one certified underground storage tank consultant agreed
3885 to by all third parties claiming damages or injury;

3886 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and

3887 (iv) not pay legal costs of third parties;

3888 (b) review and give careful consideration to reports and recommendations provided by
3889 a certified underground storage tank consultant hired by a third party; and

3890 (c) make reports and recommendations provided under Subsection (4)(b) available on
3891 the Division of Environmental Response and Remediation's website.

3892 Section 67. Section **19-6-411** is amended to read:

3893 **19-6-411. Petroleum storage tank fee for program participants.**

3894 (1) In addition to the underground storage tank registration fee paid in Section
3895 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the
3896 environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum
3897 storage tank fee to the department for each facility as follows:

3898 (a) on and after July 1, 1990, through June 30, 1993, an annual fee of:

3899 (i) \$250 for each tank:

3900 (A) located at a facility engaged in petroleum production, refining, or marketing; or

3901 (B) with an annual monthly throughput of more than 10,000 gallons; and
3902 (ii) \$125 for each tank:
3903 (A) not located at a facility engaged in petroleum production, refining, or marketing;
3904 and
3905 (B) with an annual monthly throughput of 10,000 gallons or less;
3906 (b) on and after July 1, 1993, through June 30, 1994, an annual fee of:
3907 (i) \$150 for each tank:
3908 (A) located at a facility engaged in petroleum production, refining, or marketing; or
3909 (B) with an average monthly throughput of more than 10,000 gallons; and
3910 (ii) \$75 for each tank:
3911 (A) not located at a facility engaged in petroleum production, refining, or marketing;
3912 and
3913 (B) with an average monthly throughput of 10,000 gallons or less; and
3914 (c) on and after July 1, 1994, an annual fee of:
3915 (i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000
3916 gallons or less;
3917 (ii) \$150 for each tank in a facility with an annual facility throughput rate of more than
3918 400,000 gallons; and
3919 (iii) \$150 for each tank in a facility regarding which:
3920 (A) the facility's throughput rate is not reported to the department within 30 days after
3921 the date this throughput information is requested by the department; or
3922 (B) the owner or operator elects to pay the fee under this subsection, rather than report
3923 under Subsection (1)(c)(i) or (ii); and
3924 (d) on and after July 1, 1998, for any new tank:
3925 (i) which is installed to replace an existing tank at an existing facility, any annual
3926 petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to
3927 the new tank; and
3928 (ii) installed at a new facility or at an existing facility, which is not a replacement for
3929 another existing tank, the fees are as provided in Subsection (1)(c) of this section.
3930 (2) (a) As a condition of receiving a permit and being eligible for benefits under
3931 Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank

3932 installation company shall pay to the department the following fees to be deposited in the fund:

3933 (i) an annual fee of:

3934 (A) \$2,000 per underground storage tank installation company if the installation
3935 company has installed 15 or fewer underground storage tanks within the 12 months preceding
3936 the fee due date; or

3937 (B) \$4,000 per underground storage tank installation company if the installation
3938 company has installed 16 or more underground storage tanks within the 12 months preceding
3939 the fee due date; and

3940 (ii) \$200 for each underground storage tank installed in the state, to be paid prior to
3941 completion of installation.

3942 (b) The board shall make rules specifying which portions of an underground storage
3943 tank installation shall be subject to the permitting fees when less than a full underground
3944 storage tank system is installed.

3945 (3) (a) Fees under Subsection (1) are due on or before July 1 annually.

3946 (b) If the department does not receive the fee on or before July 1, the department shall
3947 impose a late penalty of \$60 per facility.

3948 (c) (i) The fee and the late penalty accrue interest at 12% per annum.

3949 (ii) If the fee, the late penalty, and all accrued interest are not received by the
3950 department within 60 days after July 1, the eligibility of the owner or operator to receive
3951 payments for claims against the fund lapses on the 61st day after July 1.

3952 (iii) In order for the owner or operator to reinstate eligibility to receive payments for
3953 claims against the fund, the owner or operator shall meet the requirements of Subsection
3954 19-6-428(3).

3955 (4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the
3956 department does not receive the fees on or before July 1, the department shall impose a late
3957 penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per
3958 annum.

3959 (ii) If the fee, late penalty, and all accrued interest due are not received by the
3960 department within 60 days after July 1, the underground storage tank installation company's
3961 permit and eligibility to receive payments for claims against the fund lapse on the 61st day after
3962 July 1.

3963 (b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If
3964 the department does not receive the fees prior to completion of installation, the department
3965 shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at
3966 12% per annum.

3967 (ii) If the fee, late penalty, and all accrued interest are not received by the department
3968 within 60 days after the underground storage tank installation is completed, eligibility to
3969 receive payments for claims against the fund for that tank lapse on the 61st day after the tank
3970 installation is completed.

3971 (c) The [~~executive secretary~~] director may not reissue the underground storage tank
3972 installation company permit until the fee, late penalty, and all accrued interest are received by
3973 the department.

3974 (5) If the state risk manager determines the fees established in Subsections (1) and (2)
3975 and the environmental assurance fee established in Section 19-6-410.5 are insufficient to
3976 maintain the fund on an actuarially sound basis, he shall petition the Legislature to increase the
3977 petroleum storage tank and underground storage tank installation company permit fees, and the
3978 environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

3979 (6) The [~~executive secretary~~] director may waive all or part of the fees required to be
3980 paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has
3981 been dispensed from the tank on or after July 1, 1991.

3982 (7) (a) Each petroleum storage tank or underground storage tank, for which payment of
3983 fees has been made and other requirements have been met to qualify for a certificate of
3984 compliance under this part, shall be issued a form of identification, as determined by the board
3985 under Subsection (7)(b).

3986 (b) The board shall make rules providing for the identification, through a tag or other
3987 readily identifiable method, of petroleum storage tanks or underground storage tanks under
3988 Subsection (7)(a) that qualify for a certificate of compliance under this part.

3989 Section 68. Section **19-6-412** is amended to read:

3990 **19-6-412. Petroleum storage tank -- Certificate of compliance.**

3991 (1) (a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may
3992 obtain a certificate of compliance for the facility.

3993 (b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall

3994 have a certificate of compliance for the facility.

3995 (2) The [~~executive secretary~~] director shall issue a certificate of compliance if:

3996 (a) the owner or operator has a certificate of registration;

3997 (b) the owner or operator demonstrates it is participating in the Environmental
3998 Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with
3999 financial assurance requirements as defined by rule;

4000 (c) all state and federal statutes, rules, and regulations have been substantially complied
4001 with; and

4002 (d) all tank test requirements of Section 19-6-413 have been met.

4003 (3) If the ownership of or responsibility for the petroleum storage tank changes, the
4004 certificate of compliance is still valid unless it has been revoked or has lapsed.

4005 (4) The [~~executive secretary~~] director may issue a certificate of compliance for a period
4006 of less than one year to maintain an administrative schedule of certification.

4007 (5) The [~~executive secretary~~] director shall reissue a certificate of compliance if the
4008 owner or operator of an underground storage tank has complied with the requirements of
4009 Subsection (2).

4010 (6) If the owner or operator electing to participate in the program has a number of tanks
4011 in an area where the [~~executive secretary~~] director finds it would be difficult to accurately
4012 determine which of the tanks may be the source of a release, the owner may only elect to place
4013 all of the tanks in the area in the program, but not just some of the tanks in the area.

4014 Section 69. Section **19-6-413** is amended to read:

4015 **19-6-413. Tank tightness test -- Actions required after testing.**

4016 (1) The owner or operator of any petroleum storage tank registered before July 1, 1991,
4017 shall submit to the [~~executive secretary~~] director the results of a tank tightness test conducted:

4018 (a) on or after September 1, 1989, and before January 1, 1990, if the test meets
4019 requirements set by rule regarding tank tightness tests that were applicable during that period;
4020 or

4021 (b) on or after January 1, 1990, and before July 1, 1991.

4022 (2) The owner or operator of any petroleum storage tank registered on or after July 1,
4023 1991, shall submit to the [~~executive secretary~~] director the results of a tank tightness test
4024 conducted within the six months before the tank was registered or within 60 days after the date

4025 the tank was registered.

4026 (3) If the tank test performed under Subsection (1) or (2) shows no release of
4027 petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the
4028 [~~executive secretary~~] director at the same time the owner or operator submits the test results,
4029 stating that under customary business inventory practices standards, the owner or operator is
4030 not aware of any release of petroleum from the tank.

4031 (4) (a) If the tank test shows a release of petroleum from the petroleum storage tank,
4032 the owner or operator of the tank shall:

4033 (i) correct the problem; and

4034 (ii) submit evidence of the correction to the [~~executive secretary~~] director.

4035 (b) When the [~~executive secretary~~] director receives evidence from an owner or
4036 operator of a petroleum storage tank that the problem with the tank has been corrected, the
4037 [~~executive secretary~~] director shall:

4038 (i) approve or disapprove the correction; and

4039 (ii) notify the owner or operator that the correction has been approved or disapproved.

4040 (5) The [~~executive secretary~~] director shall review the results of the tank tightness test
4041 to determine compliance with this part and any rules adopted under the authority of Section
4042 19-6-403.

4043 (6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D,
4044 to perform release detection on the tank, the owner or operator shall submit the results of the
4045 tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

4046 Section 70. Section **19-6-414** is amended to read:

4047 **19-6-414. Grounds for revocation of certificate of compliance and ineligibility for**
4048 **payment of costs from fund.**

4049 (1) If the [~~executive secretary~~] director determines that any of the requirements of
4050 Subsection 19-6-412(2) and Section 19-6-413 have not been met, the [~~executive secretary~~]
4051 director shall notify the owner or operator by certified mail that:

4052 (a) his certificate of compliance may be revoked;

4053 (b) if he is participating in the program, he is violating the eligibility requirements for
4054 the fund; and

4055 (c) he shall demonstrate his compliance with this part within 60 days after receipt of

4056 the notification or his certificate of compliance will be revoked and if participating in the
4057 program he will be ineligible to receive payment for claims against the fund.

4058 (2) If the [~~executive secretary~~] director determines the owner's or operator's compliance
4059 problems have not been resolved within 60 days after receipt of the notification in Subsection
4060 (1), the [~~executive secretary~~] director shall send written notice to the owner or operator that the
4061 owner's or operator's certificate of compliance is revoked and he is no longer eligible for
4062 payment of costs from the fund.

4063 (3) Revocation of certificates of compliance may be appealed to the executive director.
4064 Section 71. Section **19-6-416** is amended to read:

4065 **19-6-416. Restrictions on delivery of petroleum -- Civil penalty.**

4066 (1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or
4067 accept petroleum for placement in a petroleum storage tank that is not identified in compliance
4068 with Subsection 19-6-411(7).

4069 (2) Any person who delivers or accepts delivery of petroleum to a petroleum storage
4070 tank or places petroleum, including waste petroleum substances, in an underground storage
4071 tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each
4072 occurrence.

4073 (3) The [~~executive secretary~~] director shall issue a notice of agency action assessing a
4074 civil penalty of not more than \$500 against any person who delivers or accepts delivery of
4075 petroleum to a petroleum storage tank or places petroleum, including waste petroleum
4076 substances, in violation of Subsection (1) in a petroleum storage tank or underground storage
4077 tank.

4078 (4) A civil penalty may not be assessed under this section against any person who in
4079 good faith delivers or places petroleum in a petroleum storage tank or underground storage tank
4080 that is identified in compliance with Subsection 19-6-411(7) and rules made under that
4081 subsection, whether or not the tank is in actual compliance with the other requirements of
4082 Section 19-6-411.

4083 Section 72. Section **19-6-416.5** is amended to read:

4084 **19-6-416.5. Restrictions on underground storage tank installation companies --**
4085 **Civil penalty.**

4086 (1) After July 1, 1994, no individual or underground installation company may install

4087 an underground storage tank without having a valid underground storage tank installation
4088 company permit.

4089 (2) Any individual or underground storage tank installation company who installs an
4090 underground storage tank in violation of Subsection (1) is subject to a civil penalty of \$500 per
4091 underground storage tank.

4092 (3) The [~~executive secretary~~] director shall issue a notice of agency action assessing a
4093 civil penalty of \$500 against any underground storage tank installation company or person who
4094 installs an underground storage tank in violation of Subsection (1).

4095 Section 73. Section **19-6-417** is amended to read:

4096 **19-6-417. Use of fund revenues to investigate certain releases from petroleum**
4097 **storage tank.**

4098 If the [~~executive secretary~~] director is notified of or otherwise becomes aware of a
4099 release or suspected release of petroleum, he may expend revenues from the fund to investigate
4100 the release or suspected release if he has reasonable cause to believe the release is from a tank
4101 that is covered by the fund.

4102 Section 74. Section **19-6-418** is amended to read:

4103 **19-6-418. Recovery of costs by director.**

4104 (1) The [~~executive secretary~~] director may recover:

4105 (a) from a responsible party the proportionate share of costs the party is responsible for
4106 as determined under Section 19-6-424.5;

4107 (b) any amount required to be paid by the owner under this part which the owner has
4108 not paid; and

4109 (c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).

4110 (2) The [~~executive secretary~~] director may pursue an action or recover costs from any
4111 other person if that person caused or substantially contributed to the release.

4112 (3) All costs recovered under this section shall be deposited in the Petroleum Storage
4113 Tank Cleanup Fund created in Section 19-6-405.7.

4114 Section 75. Section **19-6-419** is amended to read:

4115 **19-6-419. Costs covered by the fund -- Costs paid by owner or operator --**
4116 **Payments to third parties -- Apportionment of costs.**

4117 (1) If all requirements of this part have been met and a release occurs from a tank that

4118 is covered by the fund, the costs per release are covered as provided under this section.
4119 (2) For releases reported before May 11, 2010, the responsible party shall pay:
4120 (a) the first \$10,000 of costs; and
4121 (b) (i) all costs over \$1,000,000, if the release was from a tank:
4122 (A) located at a facility engaged in petroleum production, refining, or marketing; or
4123 (B) with an average monthly facility throughput of more than 10,000 gallons; and
4124 (ii) all costs over \$500,000, if the release was from a tank:
4125 (A) not located at a facility engaged in petroleum production, refining, or marketing;
4126 and
4127 (B) with an average monthly facility throughput of 10,000 gallons or less.
4128 (3) For releases reported before May 11, 2010, if money is available in the fund and the
4129 responsible party has paid costs of \$10,000, the [~~executive secretary~~] director shall pay costs
4130 from the fund in an amount not to exceed:
4131 (a) \$990,000 if the release was from a tank:
4132 (i) located at a facility engaged in petroleum production, refining, or marketing; or
4133 (ii) with an average monthly facility throughput of more than 10,000 gallons; and
4134 (b) \$490,000 if the release was from a tank:
4135 (i) not located at a facility engaged in petroleum production, refining, or marketing;
4136 and
4137 (ii) with an average monthly facility throughput of 10,000 gallons or less.
4138 (4) For a release reported on or after May 11, 2010, the responsible party shall pay:
4139 (a) the first \$10,000 of costs; and
4140 (b) (i) all costs over \$2,000,000, if the release was from a tank:
4141 (A) located at a facility engaged in petroleum production, refining, or marketing; or
4142 (B) with an average monthly facility throughput of more than 10,000 gallons; and
4143 (ii) all costs over \$1,000,000, if the release was from a tank:
4144 (A) not located at a facility engaged in petroleum production, refining, or marketing;
4145 and
4146 (B) with an average monthly facility throughput of 10,000 gallons or less.
4147 (5) For a release reported on or after May 11, 2010, if money is available in the fund
4148 and the responsible party has paid costs of \$10,000, the [~~executive secretary~~] director shall pay

4149 costs from the fund in an amount not to exceed:

4150 (a) \$1,990,000 if the release was from a tank:

4151 (i) located at a facility engaged in petroleum production, refining, or marketing; or

4152 (ii) with an average monthly facility throughput of more than 10,000 gallons; and

4153 (b) \$990,000 if the release was from a tank:

4154 (i) not located at a facility engaged in petroleum production, refining, or marketing;

4155 and

4156 (ii) with an average monthly facility throughput of 10,000 gallons or less.

4157 (6) The [~~executive secretary~~] director may pay fund money to a responsible party up to

4158 the following amounts in a fiscal year:

4159 (a) \$1,990,000 to a responsible party owning or operating less than 100 petroleum
4160 storage tanks; or

4161 (b) \$3,990,000 to a responsible party owning or operating 100 or more petroleum
4162 storage tanks.

4163 (7) (a) In authorizing payments for costs from the fund, the [~~executive secretary~~]
4164 director shall apportion money:

4165 (i) first, to the following type of expenses incurred by the state:

4166 (A) legal;

4167 (B) adjusting; and

4168 (C) actuarial;

4169 (ii) second, to costs incurred for:

4170 (A) investigation;

4171 (B) abatement action; and

4172 (C) corrective action; and

4173 (iii) third, to payment of:

4174 (A) judgments;

4175 (B) awards; and

4176 (C) settlements to third parties for bodily injury or property damage.

4177 (b) The board shall make rules governing the apportionment of costs among third party
4178 claimants.

4179 Section 76. Section **19-6-420** is amended to read:

4180 **19-6-420. Releases -- Abatement actions -- Corrective actions.**

4181 (1) If the [~~executive secretary~~] director determines that a release from a petroleum
4182 storage tank has occurred, he shall:

4183 (a) identify and name as many of the responsible parties as reasonably possible; and

4184 (b) determine which responsible parties, if any, are covered by the fund regarding the
4185 release in question.

4186 (2) Regardless of whether the tank generating the release is covered by the fund, the
4187 [~~executive secretary~~] director may:

4188 (a) order the owner or operator to take abatement, investigative, or corrective action,
4189 including the submission of a corrective action plan; and

4190 (b) if the owner or operator fails to take any of the abatement, investigative, or
4191 corrective action ordered by the [~~executive secretary~~] director, the [~~executive secretary~~] director
4192 may take any one or more of the following actions:

4193 (i) subject to the conditions in this part, use money from the fund, if the tank involved
4194 is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup
4195 Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective
4196 action;

4197 (ii) commence an enforcement proceeding;

4198 (iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or

4199 (iv) recover costs from responsible parties equal to their proportionate share of liability
4200 as determined by Section 19-6-424.5.

4201 (3) (a) Subject to the limitations established in Section 19-6-419, the [~~executive~~
4202 ~~secretary~~] director shall provide money from the fund for abatement action for a release
4203 generated by a tank covered by the fund if:

4204 (i) the owner or operator takes the abatement action ordered by the [~~executive~~
4205 ~~secretary~~] director; and

4206 (ii) the [~~executive secretary~~] director approves the abatement action.

4207 (b) If a release presents the possibility of imminent and substantial danger to the public
4208 health or the environment, the owner or operator may take immediate abatement action and
4209 petition the [~~executive secretary~~] director for reimbursement from the fund for the costs of the
4210 abatement action. If the owner or operator can demonstrate to the satisfaction of the [~~executive~~

4211 ~~secretary~~ director that the abatement action was reasonable and timely in light of
4212 circumstances, the ~~[executive secretary]~~ director shall reimburse the petitioner for costs
4213 associated with immediate abatement action, subject to the limitations established in Section
4214 19-6-419.

4215 (c) The owner or operator shall notify the ~~[executive secretary]~~ director within 24 hours
4216 of the abatement action taken.

4217 (4) (a) If the ~~[executive secretary]~~ director determines corrective action is necessary,
4218 the ~~[executive secretary]~~ director shall order the owner or operator to submit a corrective action
4219 plan to address the release.

4220 (b) If the owner or operator submits a corrective action plan, the ~~[executive secretary]~~
4221 director shall review the corrective action plan and approve or disapprove the plan.

4222 (c) In reviewing the corrective action plan, the ~~[executive secretary]~~ director shall
4223 consider the following:

4224 (i) the threat to public health;

4225 (ii) the threat to the environment; and

4226 (iii) the cost-effectiveness of alternative corrective actions.

4227 (5) If the ~~[executive secretary]~~ director approves the corrective action plan or develops
4228 his own corrective action plan, he shall:

4229 (a) approve the estimated cost of implementing the corrective action plan;

4230 (b) order the owner or operator to implement the corrective action plan;

4231 (c) (i) if the release is covered by the fund, determine the amount of fund money to be
4232 allocated to an owner or operator to implement a corrective action plan; and

4233 (ii) subject to the limitations established in Section 19-6-419, provide money from the
4234 fund to the owner or operator to implement the corrective action plan.

4235 (6) (a) The ~~[executive secretary]~~ director may not distribute any money from the fund
4236 for corrective action until the owner or operator obtains the ~~[executive secretary's]~~ director's
4237 approval of the corrective action plan.

4238 (b) An owner or operator who begins corrective action without first obtaining approval
4239 from the ~~[executive secretary]~~ director and who is covered by the fund may be reimbursed for
4240 the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

4241 (i) the owner or operator submits the corrective action plan to the ~~[executive secretary]~~

4242 director within seven days after beginning corrective action; and

4243 (ii) the [~~executive secretary~~] director approves the corrective action plan.

4244 (7) If the [~~executive secretary~~] director disapproves the plan, he shall solicit a new
4245 corrective action plan from the owner or operator.

4246 (8) If the [~~executive secretary~~] director disapproves the second corrective action plan,
4247 or if the owner or operator fails to submit a second plan within a reasonable time, the
4248 [~~executive secretary~~] director may:

4249 (a) develop his own corrective action plan; and

4250 (b) act as authorized under Subsections (2) and (5).

4251 (9) (a) When notified that the corrective action plan has been implemented, the
4252 [~~executive secretary~~] director shall inspect the location of the release to determine whether or
4253 not the corrective action has been properly performed and completed.

4254 (b) If the [~~executive secretary~~] director determines the corrective action has not been
4255 properly performed or completed, he may issue an order requiring the owner or operator to
4256 complete the corrective action within the time specified in the order.

4257 Section 77. Section **19-6-421** is amended to read:

4258 **19-6-421. Third party payment restrictions and requirements.**

4259 (1) If there are sufficient revenues in the fund, and subject to the provisions of Sections
4260 19-6-419, 19-6-422, and 19-6-423, the [~~executive secretary~~] director shall authorize payment
4261 from the fund to third parties regarding a release covered by the fund as provided in Subsection
4262 (2) if:

4263 (a) (i) he is notified that a final judgment or award has been entered against the
4264 responsible party covered by the fund that determines liability for bodily injury or property
4265 damage to third parties caused by a release from the tank; or

4266 (ii) approved by the state risk manager, the responsible party has agreed to pay an
4267 amount in settlement of a claim arising from the release; and

4268 (b) the responsible party has failed to satisfy the judgment or award, or pay the amount
4269 agreed to.

4270 (2) The [~~executive secretary~~] director shall authorize payment to the third parties of the
4271 amount of the judgment, award, or amount agreed to subject to the limitations established in
4272 Section 19-6-419.

4273 Section 78. Section **19-6-423** is amended to read:

4274 **19-6-423. Claim or suit against responsible parties -- Prerequisites for payment**
4275 **from fund to responsible parties or third parties -- Limitations of liability for third party**
4276 **claims.**

4277 (1) (a) The [~~executive secretary~~] director may authorize payments from the fund to a
4278 responsible party if the responsible party receives actual or constructive notice:

4279 (i) of a release likely to give rise to a claim; or

4280 (ii) that in connection with a release a:

4281 (A) suit has been filed; or

4282 (B) claim has been made against the responsible party for:

4283 (I) bodily injury; or

4284 (II) property damage.

4285 (b) A responsible party described in Subsection (1)(a) shall:

4286 (i) inform the state risk manager immediately of a release, suit, or claim described in
4287 Subsection (1)(a);

4288 (ii) allow the state risk manager and the state risk manager's legal counsel to participate
4289 with the responsible party and the responsible party's legal counsel in:

4290 (A) the defense of a suit;

4291 (B) determination of legal strategy;

4292 (C) other decisions affecting the defense of a suit; and

4293 (D) settlement negotiations; and

4294 (iii) conduct the defense of a suit or claim in good faith.

4295 (2) The [~~executive secretary~~] director may authorize payment of fund money for a
4296 judgment or award to third parties if the state risk manager:

4297 (a) is allowed to participate in the defense of the suit as required under Subsection
4298 (1)(b); and

4299 (b) approves the settlement.

4300 (3) The [~~executive secretary~~] director may make a payment from the fund to a third
4301 party pursuant to Section 19-6-421 or fund a corrective action plan pursuant to Section
4302 19-6-420 if the payment or funding does not impose a liability or make a payment for:

4303 (a) an obligation of a responsible party for:

- 4304 (i) workers' compensation benefits;
- 4305 (ii) disability benefits;
- 4306 (iii) unemployment compensation; or
- 4307 (iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);
- 4308 (b) a bodily injury award to:
- 4309 (i) a responsible party's employee arising from and in the course of the employee's
- 4310 employment; or
- 4311 (ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of the
- 4312 employee described in Subsection (3)(b)(i);
- 4313 (c) bodily injury or property damage arising from the ownership, maintenance, use, or
- 4314 entrustment to others of an aircraft, motor vehicle, or watercraft;
- 4315 (d) property damage to a property owned by, occupied by, rented to, loaned to, bailed
- 4316 to, or otherwise in the care, custody, or control of a responsible party except to the extent
- 4317 necessary to complete a corrective action plan;
- 4318 (e) bodily injury or property damage for which a responsible party is obligated to pay
- 4319 damages by reason of the assumption of liability in a contract or agreement unless the
- 4320 responsible party entered into the contract or agreement to meet the financial responsibility
- 4321 requirements of:
- 4322 (i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c et
- 4323 seq., or regulations issued under this act; or
- 4324 (ii) this part, or rules made under this part;
- 4325 (f) bodily injury or property damage for which a responsible party is liable to a third
- 4326 party solely on account of personal injury to the third party's spouse;
- 4327 (g) bodily injury, property damage, or the cost of corrective action caused by releases
- 4328 reported before May 11, 2010 that are covered by the fund if the total amount previously paid
- 4329 by the [~~executive secretary~~] director to compensate third parties and fund corrective action
- 4330 plans for the releases equals:
- 4331 (i) \$990,000 for a single release; and
- 4332 (ii) for all releases by a responsible party in a fiscal year:
- 4333 (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;
- 4334 and

4335 (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks;
4336 and

4337 (h) bodily injury, property damage, or the cost of corrective action caused by releases
4338 reported on or after May 11, 2010, covered by the fund if the total amount previously paid by
4339 the ~~[executive secretary]~~ director to compensate third parties and fund corrective action plans
4340 for the releases equals:

4341 (i) \$1,990,000 for a single release; and

4342 (ii) for all releases by a responsible party in a fiscal year:

4343 (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;
4344 and

4345 (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks.

4346 Section 79. Section ~~19-6-424~~ is amended to read:

4347 **19-6-424. Claims not covered by fund.**

4348 (1) The ~~[executive secretary]~~ director may not authorize payments from the fund
4349 unless:

4350 (a) the claim was based on a release occurring during a period for which that tank was
4351 covered by the fund;

4352 (b) the claim was made:

4353 (i) during a period for which that tank was covered by the fund; or

4354 (ii) (A) within one year after that fund-covered tank is closed; or

4355 (B) within six months after the end of the period during which the tank was covered by
4356 the fund; and

4357 (c) there are sufficient revenues in the fund.

4358 (2) The ~~[executive secretary]~~ director may not authorize payments from the fund for an
4359 underground storage tank installation company unless:

4360 (a) the claim was based on a release occurring during the period prior to the issuance of
4361 a certificate of compliance;

4362 (b) the claim was made within 12 months after the date the tank is issued a certificate
4363 of compliance for that tank; and

4364 (c) there are sufficient revenues in the fund.

4365 (3) The ~~[executive secretary]~~ director may require the claimant to provide additional

4366 information as necessary to demonstrate coverage by the fund at the time of submittal of the
4367 claim.

4368 (4) If the Legislature repeals or refuses to reauthorize the program for petroleum
4369 storage tanks established in this part, the [~~executive secretary~~] director may authorize payments
4370 from the fund as provided in this part for claims made until the end of the time period
4371 established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

4372 Section 80. Section **19-6-424.5** is amended to read:

4373 **19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies --**
4374 **Amounts recovered.**

4375 (1) After providing notice and opportunity for comment to responsible parties
4376 identified and named under Section 19-6-420, the [~~executive secretary~~] director may:

4377 (a) issue written orders determining responsible parties;

4378 (b) issue written orders apportioning liability among responsible parties; and

4379 (c) take action, including legal action or issuing written orders, to recover costs from
4380 responsible parties, including costs of any investigation, abatement, and corrective action
4381 performed under this part.

4382 (2) (a) In any apportionment of liability, whether made by the [~~executive secretary~~]
4383 director or made in any administrative proceeding or judicial action, the following standards
4384 apply:

4385 (i) liability shall be apportioned among responsible parties in proportion to their
4386 respective contributions to the release; and

4387 (ii) the apportionment of liability shall be based on equitable factors, including the
4388 quantity, mobility, persistence, and toxicity of regulated substances contributed by a
4389 responsible party, and the comparative behavior of a responsible party in contributing to the
4390 release, relative to other responsible parties.

4391 (b) (i) The burden of proving proportionate contribution shall be borne by each
4392 responsible party.

4393 (ii) If a responsible party does not prove [~~his~~] the responsible party's proportionate
4394 contribution, the court[~~, the board,~~] or the [~~executive secretary~~] director shall apportion liability
4395 to the party based on available evidence and the standards of Subsection (2)(a).

4396 (c) The court, the board, or the [~~executive secretary~~] director may not impose joint and

4397 several liability.

4398 (d) Each responsible party is strictly liable for his share of costs.

4399 (3) The failure of the [~~executive secretary~~] director to name all responsible parties is
4400 not a defense to an action under this section.

4401 (4) The [~~executive secretary~~] director may enter into an agreement with any responsible
4402 party regarding that party's proportionate share of liability or any action to be taken by that
4403 party.

4404 (5) The [~~executive secretary~~] director and a responsible party may not enter into an
4405 agreement under this part unless all responsible parties named and identified under Subsection
4406 19-6-420(1)(a):

4407 (a) have been notified in writing by either the [~~executive secretary~~] director or the
4408 responsible party of the proposed agreement; and

4409 (b) have been given an opportunity to comment on the proposed agreement prior to the
4410 parties' entering into the agreement.

4411 (6) (a) Any party who incurs costs under this part in excess of his liability may seek
4412 contribution from any other party who is or may be liable under this part for the excess costs in
4413 the district court.

4414 (b) In resolving claims made under Subsection (6)(a), the court shall allocate costs
4415 using the standards in Subsection (2).

4416 (7) (a) A party who has resolved his liability under this part is not liable for claims for
4417 contribution regarding matters addressed in the agreement or order.

4418 (b) (i) An agreement or order determining liability under this part does not discharge
4419 any of the liability of responsible parties who are not parties to the agreement or order, unless
4420 the terms of the agreement or order expressly provide otherwise.

4421 (ii) An agreement or order determining liability made under this subsection reduces the
4422 potential liability of other responsible parties by the amount of the agreement or order.

4423 (8) (a) If the [~~executive secretary~~] director obtains less than complete relief from a
4424 party who has resolved his liability under this section, the [~~executive secretary~~] director may
4425 bring an action against any party who has not resolved his liability as determined in an order.

4426 (b) In apportioning liability, the standards of Subsection (2) apply.

4427 (c) A party who resolved his liability for some or all of the costs under this part may

4428 seek contribution from any person who is not a party to the agreement or order.

4429 (9) (a) An agreement or order determining liability under this part may provide that the
4430 [~~executive secretary~~] director will pay for costs of actions that the parties have agreed to
4431 perform, but which the [~~executive secretary~~] director has agreed to finance, under the terms of
4432 the agreement or order.

4433 (b) If the [~~executive secretary~~] director makes payments from the fund or state cleanup
4434 appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this
4435 section or any other applicable authority.

4436 (c) Any amounts recovered under this section shall be deposited in the Petroleum
4437 Storage Tank Cleanup Fund created under Section 19-6-405.7.

4438 Section 81. Section **19-6-425** is amended to read:

4439 **19-6-425. Violation of part -- Civil penalty -- Suit in district court.**

4440 (1) Except as provided in Section 19-6-407, any person who violates any requirement
4441 of this part or any order issued or rule made under the authority of this part is subject to a civil
4442 penalty of not more than \$10,000 per day for each day of violation.

4443 (2) The [~~executive secretary~~] director may enforce any requirement, rule, agreement, or
4444 order issued under this part by bringing a suit in the district court in the county where the
4445 underground storage tank or petroleum storage tank is located.

4446 (3) The department shall deposit the penalties collected under this part in the
4447 Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

4448 Section 82. Section **19-6-428** is amended to read:

4449 **19-6-428. Eligibility for participation in the fund.**

4450 (1) Subject to the requirements of Section 19-6-410.5, all owners and operators of
4451 existing petroleum storage tanks that were covered by the fund on May 5, 1997, may elect to
4452 continue to participate in the program by meeting the requirements of this part, including
4453 paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and
4454 19-6-411.

4455 (2) Any new petroleum storage tanks that were installed after May 5, 1997, or tanks
4456 eligible under Section 19-6-415, may elect to participate in the program by complying with the
4457 requirements of this part.

4458 (3) (a) All owners and operators of petroleum storage tanks who elect to not participate

4459 in the program, including by the use of an alternative financial assurance mechanism, shall, in
4460 order to subsequently participate in the program:

4461 (i) perform a tank tightness test;

4462 (ii) except as provided in Subsection (3)(b), perform a site check, including soil and,
4463 when applicable, groundwater samples, to demonstrate that no release of petroleum exists or
4464 that there has been adequate remediation of releases as required by board rules;

4465 (iii) provide the required tests and samples to the ~~[executive secretary]~~ director; and

4466 (iv) comply with the requirements of this part.

4467 (b) A site check under Subsection (3)(a)(ii) is not required if the ~~[executive secretary]~~
4468 director determines, with reasonable cause, that soil and groundwater samples are unnecessary
4469 to establish that no petroleum has been released.

4470 (4) The ~~[executive secretary]~~ director shall review the tests and samples provided under
4471 Subsection (3)(a)(iii) to determine:

4472 (a) whether or not any release of the petroleum has occurred; or

4473 (b) if the remediation is adequate.

4474 Section 83. Section **19-6-601** is amended to read:

4475 **19-6-601. Definitions.**

4476 As used in this part~~[, "board"]~~:

4477 (1) "Board" means the Solid and Hazardous Waste Control Board appointed under
4478 Title 19, Chapter 6, Hazardous Substances.

4479 (2) "Director" means the director of the Division of Solid and Hazardous Waste.

4480 Section 84. Section **19-6-606** is amended to read:

4481 **19-6-606. Enforcement.**

4482 (1) The ~~[board]~~ director may authorize inspections under Section ~~[19-6-104]~~ 19-6-107
4483 of any place, building, or premise where lead acid batteries are sold to determine compliance
4484 with this part. The ~~[board]~~ director may authorize inspections under this subsection only as
4485 funding is available within the department's current budget.

4486 (2) Local health departments established under Title 26A, Local Health Authorities,
4487 may enforce the provisions of this part.

4488 Section 85. Section **19-6-703** is amended to read:

4489 **19-6-703. Definitions.**

- 4490 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section
4491 19-1-106.
- 4492 (2) "Commission" means the State Tax Commission.
- 4493 (3) "Department" means the Department of Environmental Quality created in Title 19,
4494 Chapter 1, General Provisions.
- 4495 (4) "Director" means the director of the Division of Solid and Hazardous Waste.
- 4496 ~~[(4)]~~ (5) "Division" means the Division of Solid and Hazardous Waste ~~[as]~~, created in
4497 ~~[Section]~~ Subsection 19-1-105(1)(e).
- 4498 ~~[(5)]~~ (6) "DIY" means do it yourself.
- 4499 ~~[(6)]~~ (7) "DIYer" means a person who generates used oil through household activities,
4500 including maintenance of personal vehicles.
- 4501 ~~[(7)]~~ (8) "DIYer used oil" means used oil a person generates through household
4502 activities, including maintenance of personal vehicles.
- 4503 ~~[(8)]~~ (9) "DIYer used oil collection center" means any site or facility that accepts or
4504 aggregates and stores used oil collected only from DIYers.
- 4505 ~~[(9)] "Executive secretary" means the executive secretary of the board.]~~
- 4506 (10) "Hazardous waste" means any substance defined as hazardous waste under Title
4507 19, Chapter 6, Hazardous Substances.
- 4508 (11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce
4509 friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.
- 4510 (12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil
4511 in Utah.
- 4512 (13) "Manifest" means the form used for identifying the quantity and composition and
4513 the origin, routing, and destination of used oil during its transportation from the point of
4514 collection to the point of storage, processing, use, or disposal.
- 4515 (14) "Off-specification used oil" means used oil that exceeds levels of constituents and
4516 properties as specified by board rule and consistent with 40 CFR 279, Standards for the
4517 Management of Used Oil.
- 4518 (15) "On-specification used oil" means used oil that does not exceed levels of
4519 constituents and properties as specified by board rule and consistent with 40 CFR 279,
4520 Standards for the Management of Used Oil.

4521 (16) (a) "Processing" means chemical or physical operations under Subsection (16)(b)
4522 designed to produce from used oil, or to make used oil more amenable for production of:

4523 (i) gasoline, diesel, and other petroleum derived fuels;

4524 (ii) lubricants; or

4525 (iii) other products derived from used oil.

4526 (b) "Processing" includes:

4527 (i) blending used oil with virgin petroleum products;

4528 (ii) blending used oils to meet fuel specifications;

4529 (iii) filtration;

4530 (iv) simple distillation;

4531 (v) chemical or physical separation; and

4532 (vi) rerefining.

4533 (17) "Recycled oil" means oil reused for any purpose following its original use,
4534 including:

4535 (a) the purpose for which the oil was originally used; and

4536 (b) used oil processed or burned for energy recovery.

4537 (18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum
4538 distillation of filtered and dehydrated used oil. The composition varies with column operation
4539 and feedstock.

4540 (19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been
4541 used and as a result of that use is contaminated by physical or chemical impurities.

4542 (20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates,
4543 or stores used oil collected only from other used oil generation sites owned or operated by the
4544 owner or operator of the aggregation point, from which used oil is transported to the
4545 aggregation point in shipments of no more than 55 gallons.

4546 (b) A used oil aggregation point may also accept oil from DIYers.

4547 (21) "Used oil burner" means a person who burns used oil for energy recovery.

4548 (22) "Used oil collection center" means any site or facility registered with the state to
4549 manage used oil and that accepts or aggregates and stores used oil collected from used oil
4550 generators, other than DIYers, who are regulated under this part and bring used oil to the
4551 collection center in shipments of no more than 55 gallons and under the provisions of this part.

4552 Used oil collection centers may accept DIYer used oil also.

4553 (23) "Used oil fuel marketer" means any person who:

4554 (a) directs a shipment of off-specification used oil from its facility to a used oil burner;

4555 or

4556 (b) first claims the used oil to be burned for energy recovery meets the used oil fuel
4557 specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil
4558 is to be burned in accordance with rules for on-site burning in space heaters in accordance with
4559 40 CFR 279.

4560 (24) "Used oil generator" means any person, by site, whose act or process produces
4561 used oil or whose act first causes used oil to become subject to regulation.

4562 (25) "Used oil handler" means a person generating used oil, collecting used oil,
4563 transporting used oil, operating a transfer facility or aggregation point, processing or rerefining
4564 used oil, or marketing used oil.

4565 (26) "Used oil processor or rerefiner" means a facility that processes used oil.

4566 (27) "Used oil transfer facility" means any transportation-related facility, including
4567 loading docks, parking areas, storage areas, and other areas where shipments of used oil are
4568 held for more than 24 hours during the normal course of transportation and not longer than 35
4569 days.

4570 (28) (a) "Used oil transporter" means the following persons unless they are exempted
4571 under Subsection (28)(b):

4572 (i) any person who transports used oil;

4573 (ii) any person who collects used oil from more than one generator and transports the
4574 collected oil;

4575 (iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who
4576 transports collected DIYer used oil from used oil generators, collection centers, aggregation
4577 points, or other facilities required to be permitted or registered under this part and where
4578 household DIYer used oil is collected; and

4579 (iv) owners and operators of used oil transfer facilities.

4580 (b) "Used oil transporter" does not include:

4581 (i) persons who transport oil on site;

4582 (ii) generators who transport shipments of used oil totalling 55 gallons or less from the

4583 generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

4584 (iii) generators who transport shipments of used oil totalling 55 gallons or less from the
4585 generator to a used oil aggregation point owned or operated by the same generator as allowed
4586 under 40 CFR 279.24, Off-site Shipments;

4587 (iv) persons who transport used oil generated by DIYers from the initial generator to a
4588 used oil generator, used oil collection center, used oil aggregation point, used oil processor or
4589 rerefiner, or used oil burner subject to permitting or registration under this part; or

4590 (v) railroads that transport used oil and are regulated under 49 U.S.C. Subtitle V, Rail
4591 Programs, and 49 U.S.C. 5101 et seq., federal Hazardous Materials Transportation Uniform
4592 Safety Act.

4593 Section 86. Section **19-6-704** is amended to read:

4594 **19-6-704. Powers and duties of the board.**

4595 (1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative
4596 Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279,
4597 Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil
4598 under 40 CFR 279. For these purposes the board shall:

4599 [~~(a) (i) receive a proposed dispositive action from an administrative law judge as~~
4600 ~~provided by Section 19-1-301; and]~~

4601 [~~(ii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~
4602 ~~action; or]~~

4603 [~~(B) return the proposed dispositive action to the administrative law judge for further~~
4604 ~~action as directed;]~~

4605 [~~(b)~~] (a) establish by rule conditions and procedures for registration and revocation of
4606 registration as a used oil collection center, used oil aggregation point, or DIYer used oil
4607 collection center;

4608 [~~(c)~~] (b) provide by rule that used oil aggregation points that do not accept DIYer used
4609 oil are required to comply with used oil collection standards under this part, but are not
4610 required to be permitted or registered;

4611 [~~(d)~~] (c) establish by rule conditions and fees required to obtain permits and operate as
4612 used oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil
4613 fuel marketers;

4614 ~~[(e)]~~ (d) establish by rule the amount of liability insurance or other financial
4615 responsibility the applicant shall have to qualify for a permit under Subsection (1)~~[(d)]~~(c);

4616 ~~[(f)]~~ (e) establish by rule the form and amount of reclamation surety required for
4617 reclamation of any site or facility required to be permitted under this part;

4618 ~~[(g) after public notice and opportunity for a public hearing, hear and act on permit~~
4619 ~~issues appealed under Subsection 19-6-712(2);]~~

4620 ~~[(h)]~~ (f) establish by rule standards for tracking, analysis, and recordkeeping regarding
4621 used oil subject to regulation under this part, including:

4622 (i) manifests for handling and transferring used oil;

4623 (ii) analyses necessary to determine if used oil is on-specification or off-specification;

4624 (iii) records documenting date, quantities, and character of used oil transported,
4625 processed, transferred, or sold;

4626 (iv) records documenting persons between whom transactions under this subsection
4627 occurred; and

4628 (v) exemption of DIYer used oil collection centers from this subsection except as
4629 necessary to verify volumes of used oil picked up by a permitted transporter and the
4630 transporter's name and federal EPA identification number;

4631 ~~[(i)]~~ (g) authorize inspections and audits of facilities, centers, and operations subject to
4632 regulation under this part;

4633 ~~[(j)]~~ (h) establish by rule standards for:

4634 (i) used oil generators;

4635 (ii) used oil collection centers;

4636 (iii) DIYer used oil collection centers;

4637 (iv) aggregation points;

4638 (v) curbside used oil collection programs;

4639 (vi) used oil transporters;

4640 (vii) used oil transfer facilities;

4641 (viii) used oil burners;

4642 (ix) used oil processors and rerefiners; and

4643 (x) used oil marketers;

4644 ~~[(k)]~~ (i) establish by rule standards for determining on-specification and

4645 off-specification used oil and specified mixtures of used oil, subject to Section 19-6-707
 4646 regarding rebuttable presumptions;

4647 ~~[(†)]~~ (j) establish by rule standards for closure, remediation, and response to releases
 4648 involving used oil; and

4649 ~~[(m)]~~ (k) establish a public education program to promote used oil recycling and use of
 4650 used oil collection centers.

4651 (2) The board may:

4652 (a) ~~[(†)]~~ hold a hearing that is not an adjudicative proceeding relating to any aspect of
 4653 or matter in the administration of this part ~~[and compel the attendance of witnesses and the~~
 4654 ~~production of documents and other evidence, administer oaths and take testimony, and receive~~
 4655 ~~evidence as necessary];~~

4656 ~~[(ii)]~~ receive a proposed dispositive action from an administrative law judge as provided
 4657 by Section 19-1-301; and]

4658 ~~[(iii)]~~ (A) approve, approve with modifications, or disapprove a proposed dispositive
 4659 action; or]

4660 ~~[(B)]~~ return the proposed dispositive action to the administrative law judge for further
 4661 action as directed;]

4662 (b) require retention and submission of records required under this part; ~~[and]~~ or

4663 (c) require audits of records and recordkeeping procedures required under this part and
 4664 rules made under this part, except that audits of records regarding the fee imposed and
 4665 collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the
 4666 commission under Section 19-6-716.

4667 Section 87. Section **19-6-705** is amended to read:

4668 **19-6-705. Powers and duties of the director**

4669 (1) The ~~[executive secretary]~~ director shall:

4670 (a) administer and enforce the rules and orders of the board;

4671 (b) issue and revoke registration numbers for DIYer used oil collection centers and
 4672 used oil collection centers;

4673 (c) after public notice and opportunity for a public hearing:

4674 (i) issue or modify a permit under this part;

4675 (ii) deny a permit when the ~~[executive secretary]~~ director finds the application is not

4676 complete; and

4677 (iii) revoke a permit issued under this section upon a finding the permit holder has
4678 failed to ensure compliance with this part;

4679 (d) (i) coordinate with federal, state, and local government, and other agencies,
4680 including entering into memoranda of understanding, to ensure effective regulation of used oil
4681 under this part, minimize duplication of regulation, and encourage responsible recycling of
4682 used oil; and

4683 (ii) as the department finds appropriate to the implementation of this part, enter into
4684 contracts with local health departments to carry out specified functions under this part and be
4685 reimbursed by the department in accordance with the contract;

4686 (e) require forms, analyses, documents, maps, and other records as the [~~executive~~
4687 ~~secretary~~] director finds necessary to permit and inspect an operation regulated under this part;

4688 (f) establish a toll-free telephone line to provide information to the public regarding
4689 management of used oil and locations of used oil collection centers; and

4690 (g) accept, receive, and administer grants or other funds or gifts from public and
4691 private agencies, including the federal government, for the purpose of carrying out any of the
4692 functions of this part.

4693 (2) The [~~executive secretary~~] director may:

4694 (a) authorize any employee of the division to enter any facility regulated under this part
4695 at reasonable times and upon presentation of credentials for the purpose of inspection, audit, or
4696 sampling of the used oil site or facility, records, operations, or product;

4697 (b) direct a person whose activities are regulated under this part to take samples for a
4698 stated purpose and cause them to be analyzed at that person's expense; and

4699 (c) [~~as authorized by the board under this part;~~] enforce board rules by issuing orders
4700 [~~which the board may subsequently amend or revoke~~].

4701 Section 88. Section **19-6-706** is amended to read:

4702 **19-6-706. Disposal of used oil -- Prohibitions.**

4703 (1) (a) Except as authorized by the [~~board~~] director, or by rule of the board, or as
4704 exempted in this section, a person may not place, discard, or otherwise dispose of used oil:

4705 (i) in any solid waste treatment, storage, or disposal facility operated by a political
4706 subdivision or a private entity, except as authorized for the disposal of used oil that is

4707 hazardous waste under state law;

4708 (ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses,
4709 or any body of water; or

4710 (iii) on the ground.

4711 (b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i)
4712 is not guilty of a violation of this section.

4713 (2) (a) A person may dispose of an item or substance that contains de minimis amounts
4714 of oil in disposal facilities under Subsection (1)(a)(i) if:

4715 (i) to the extent reasonably possible all oil has been removed from the item or
4716 substance; and

4717 (ii) no free flowing oil remains in the item or substance.

4718 (b) (i) A nonterne plated used oil filter complies with this section if it is not mixed with
4719 hazardous waste and the oil filter has been gravity hot-drained by one of the following
4720 methods:

4721 (A) puncturing the filter antidrain back valve or the filter dome end and gravity
4722 hot-draining;

4723 (B) gravity hot-draining and crushing;

4724 (C) dismantling and gravity hot-draining; or

4725 (D) any other equivalent gravity hot-draining method that will remove used oil from
4726 the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

4727 (ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less
4728 than 12 hours near operating temperature but above 60 degrees Fahrenheit.

4729 (3) A person may not mix or commingle used oil with the following substances, except
4730 as incidental to the normal course of processing, mechanical, or industrial operations:

4731 (a) solid waste that is to be disposed of in any solid waste treatment, storage, or
4732 disposal facility, except as authorized by the [board] director under this chapter; or

4733 (b) any hazardous waste so the resulting mixture may not be recycled or used for other
4734 beneficial purpose as authorized under this part.

4735 (4) (a) This section does not apply to releases to land or water of de minimis quantities
4736 of used oil, except:

4737 (i) the release of de minimis quantities of used oil is subject to any regulation or

4738 prohibition under the authority of the department; and

4739 (ii) the release of de minimis quantities of used oil is subject to any rule made by the
4740 board under this part prohibiting the release of de minimis quantities of used oil to the land or
4741 water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise
4742 managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

4743 (b) As used in this Subsection (4), "de minimis quantities of used oil:"

4744 (i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other
4745 similar equipment during normal operations; and

4746 (ii) does not include used oil discarded as a result of abnormal operations resulting in
4747 substantial leaks, spills, or other releases.

4748 (5) Used oil may not be used for road oiling, dust control, weed abatement, or other
4749 similar uses that have the potential to release used oil in the environment, except in compliance
4750 with Section 19-6-711 and board rule.

4751 (6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply
4752 to the [~~executive secretary~~] director for an extension of time beyond that date to meet the
4753 requirements of this section.

4754 (ii) The [~~executive secretary~~] director may grant an extension of time beyond July 1,
4755 1993, upon a finding of need under Subsection (6)(b) or (c).

4756 (iii) The total of all extensions of time granted to one applicant under this Subsection
4757 (6)(a) may not extend beyond January 1, 1995.

4758 (b) The [~~executive secretary~~] director upon receipt of a request for an extension of time
4759 may request from the facility any information the [~~executive secretary~~] director finds
4760 reasonably necessary to evaluate the need for an extension. This information may include:

4761 (i) why the facility is unable to comply with the requirements of this section on or
4762 before July 1, 1993;

4763 (ii) the processes or functions which prevent compliance on or before July 1, 1993;

4764 (iii) measures the facility has taken and will take to achieve compliance; and

4765 (iv) a proposed compliance schedule, including a proposed date for being in
4766 compliance with this section.

4767 (c) Additional extensions of time may be granted by the [~~executive secretary~~] director
4768 upon application by the facility and a showing by the facility that:

4769 (i) the additional extension is reasonably necessary; and
4770 (ii) the facility has made a diligent and good faith effort to comply with this section
4771 within the time frame of the prior extension.

4772 Section 89. Section **19-6-710** is amended to read:

4773 **19-6-710. Registration and permitting of used oil handlers.**

4774 (1) (a) A person may not operate a DIYer used oil collection center or used oil
4775 collection center without holding a registration number issued by the [~~executive secretary~~]
4776 director.

4777 (b) The application for registration shall include the following information regarding
4778 the DIYer used oil collection center or used oil collection center:

- 4779 (i) the name and address of the operator;
- 4780 (ii) the location of the center;
- 4781 (iii) whether the center will accept DIYer used oil;
- 4782 (iv) the type of containment or storage to be used;
- 4783 (v) the status of business, zoning, and other applicable licenses and permits required by
4784 federal, state, and local governmental entities;
- 4785 (vi) emergency spill containment plan;
- 4786 (vii) proof of liability insurance or other means of financial responsibility in an amount
4787 determined by board rule for any liability that may be incurred in collecting or storing the used
4788 oil, unless waived by the board; and
- 4789 (viii) any other information the [~~executive secretary~~] director finds necessary to ensure
4790 the safe handling of used oil.

4791 (c) The owner or operator of the center shall notify the [~~executive secretary~~] director in
4792 writing of any changes in the information submitted to apply for registration within 20 days of
4793 the change.

4794 (d) To be reimbursed under Section 19-6-717 for collected DIYer used oil, the operator
4795 of the DIYer used oil collection center shall maintain and submit to the [~~executive secretary~~]
4796 director records of volumes of DIYer used oil picked up by a permitted used oil transporter, the
4797 dates of pickup, and the name and federal EPA identification number of the transporter.

4798 (2) (a) A person may not act as a used oil transporter or operate a transfer facility
4799 without holding a permit issued by the [~~executive secretary~~] director.

- 4800 (b) The application for a permit shall include the following information regarding
4801 acting as a transporter or operating a transfer facility:
- 4802 (i) the name and address of the operator;
 - 4803 (ii) the location of the transporter's base of operations or the location of the transfer
4804 facility;
 - 4805 (iii) maps of all transfer facilities;
 - 4806 (iv) the methods to be used for collecting, storing, and delivering used oil;
 - 4807 (v) the methods to be used to determine if used oil received by the transporter or
4808 facility is on-specification or off-specification;
 - 4809 (vi) the type of containment or storage to be used;
 - 4810 (vii) the methods of disposing of the waste by-products;
 - 4811 (viii) the status of business, zoning, and other applicable licenses and permits required
4812 by federal, state, and local government entities;
 - 4813 (ix) emergency spill containment plan;
 - 4814 (x) proof of liability insurance or other means of financial responsibility in an amount
4815 determined by board rule for any liability that may be incurred in collecting, transporting, or
4816 storing the used oil;
 - 4817 (xi) proof of form and amount of reclamation surety for any facility used in conjunction
4818 with transportation or storage of used oil; and
 - 4819 (xii) any other information the [~~executive secretary~~] director finds necessary to ensure
4820 the safe handling of used oil.
- 4821 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director
4822 in writing of any changes in the information submitted to apply for a permit within 20 days of
4823 the change.
- 4824 (3) (a) A person may not operate a used oil processing or rerefining facility without
4825 holding a permit issued by the [~~executive secretary~~] director.
- 4826 (b) The application for a permit shall include the following information regarding the
4827 used oil processing or rerefining facility:
- 4828 (i) the name and address of the operator;
 - 4829 (ii) the location of the facility;
 - 4830 (iii) a map of the facility;

- 4831 (iv) methods to be used to determine if used oil is on-specification or off-specification;
4832 (v) the type of containment or storage to be used;
4833 (vi) the grades of oil to be produced;
4834 (vii) the methods of disposing of the waste by-products;
4835 (viii) the status of business, zoning, and other applicable licenses and permits required
4836 by federal, state, and local governmental entities;
4837 (ix) emergency spill containment plan;
4838 (x) proof of liability insurance or other means of financial responsibility in an amount
4839 determined by board rule for any liability that may be incurred in processing or rerefining used
4840 oil;
4841 (xi) proof of form and amount of reclamation surety; and
4842 (xii) any other information the [~~executive secretary~~] director finds necessary to ensure
4843 the safe handling of used oil.
4844 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director
4845 in writing of any changes in the information submitted to apply for a permit within 20 days of
4846 the change.
4847 (4) (a) A person may not act as a used oil fuel marketer without holding a registration
4848 number issued by the [~~executive secretary~~] director.
4849 (b) The application for a registration number shall include the following information
4850 regarding acting as a used oil fuel marketer:
4851 (i) the name and address of the marketer;
4852 (ii) the location of any facilities used by the marketer to collect, transport, process, or
4853 store used oil subject to separate permits under this part;
4854 (iii) the status of business, zoning, and other applicable licenses and permits required
4855 by federal, state, and local governmental entities, including any registrations or permits
4856 required under this part to collect, process, transport, or store used oil; and
4857 (iv) any other information the [~~executive secretary~~] director finds necessary to ensure
4858 the safe handling of used oil.
4859 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director
4860 in writing of any changes in the information submitted to apply for a permit within 20 days of
4861 the change.

4862 (5) (a) Unless exempted under Subsection 19-6-708(2), a person may not burn used oil
4863 for energy recovery without holding a permit issued by the [~~executive secretary~~] director or an
4864 authorization from the department.

4865 (b) The application for a permit shall include the following information regarding the
4866 used oil burning facility:

4867 (i) the name and address of the operator;

4868 (ii) the location of the facility;

4869 (iii) methods to be used to determine if used oil is on-specification or off-specification;

4870 (iv) the type of containment or storage to be used;

4871 (v) the type of burner to be used;

4872 (vi) the methods of disposing of the waste by-products;

4873 (vii) the status of business, zoning, and other applicable licenses and permits required
4874 by federal, state, and local governmental entities;

4875 (viii) emergency spill containment plan;

4876 (ix) proof of liability insurance or other means of financial responsibility in an amount
4877 determined by board rule for any liability that may be incurred in processing or rerefining used
4878 oil;

4879 (x) proof of form and amount of reclamation surety for any facility receiving and
4880 burning used oil; and

4881 (xi) any other information the [~~executive secretary~~] director finds necessary to ensure
4882 the safe handling of used oil.

4883 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director
4884 in writing of any changes in the information submitted to apply for a permit within 20 days of
4885 the change.

4886 Section 90. Section **19-6-711** is amended to read:

4887 **19-6-711. Application of used oil to the land -- Limitations.**

4888 (1) A person may not apply used oil to the land as a dust or weed suppressant or for
4889 other similar applications to the land unless the person has obtained:

4890 (a) written authorization as required under this chapter; and

4891 (b) a permit from the [~~executive secretary~~] director.

4892 (2) The applicant for a permit under this section shall demonstrate:

- 4893 (a) the used oil is not mixed with any hazardous waste;
- 4894 (b) the used oil does not exhibit any hazardous characteristic other than ignitability;
- 4895 and
- 4896 (c) how the applicant will minimize the impact on the environment of the use of used
- 4897 oil as a dust or weed suppressant or for other similar applications to the land.
- 4898 (3) Prior to acting on the application, the [~~executive secretary~~] director shall provide
- 4899 public notice of the application and shall provide opportunity for public comment under
- 4900 Section 19-6-712.

4901 Section 91. Section **19-6-712** is amended to read:

4902 **19-6-712. Issuance of permits -- Public comments and hearing.**

4903 (1) In considering permit applications under this part, the [~~executive secretary~~] director

4904 shall:

- 4905 (a) ensure the application is complete prior to acting on it;
- 4906 (b) (i) publish notice of the permit application and the opportunity for public comment
- 4907 in:

- 4908 (A) a newspaper of general circulation in the state; and
- 4909 (B) a newspaper of general circulation in the county where the operation for which the
- 4910 application is submitted is located; and

4911 (ii) as required in Section 45-1-101;

4912 (c) allow the public to submit written comments to the [~~executive secretary~~] director

4913 within 15 days after date of publication;

4914 (d) consider timely submitted public comments and the criteria established in this part

4915 and by rule in determining whether to grant the permit; and

4916 (e) send a written copy of the decision to the applicant and to persons submitting

4917 timely comments under Subsection (1)(c).

4918 (2) The [~~executive secretary's~~] director's decision under this section may be appealed to

4919 the [~~board only within the 30 days after the day the decision is mailed to the applicant~~]

4920 executive director as provided by rule.

4921 Section 92. Section **19-6-717** is amended to read:

4922 **19-6-717. Used oil collection incentive payment.**

4923 (1) (a) The division shall pay a recycling incentive to registered DIYer used oil

4924 collection centers and curbside collection programs approved by the [~~executive secretary~~]
4925 director for each gallon of used oil collected from DIYer used oil generators on and after July
4926 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor,
4927 rerefiner, burner, or to another disposal method authorized by board rule.

4928 (b) Payment of the incentive is subject to Section 19-6-720 regarding priorities.

4929 (2) The board shall by rule establish the amount of the payment, which shall be \$.16
4930 per gallon unless the board determines the incentive should be:

4931 (a) reduced to ensure adequate funds to meet priorities set in Section 19-6-720 and to
4932 reimburse all qualified operations under this section; or

4933 (b) increased to promote collection of used oil under this part and the funds are
4934 available in the account created under Section 19-6-719 after meeting the priorities set in
4935 Section 19-6-720.

4936 Section 93. Section **19-6-718** is amended to read:

4937 **19-6-718. Limitations on liability of operator of collection center.**

4938 (1) Subject to Subsection (2), a person may not recover from the owner, operator, or
4939 lessor of a DIYer used oil collection center any costs of response actions at another location
4940 resulting from a release or threatened release of used oil collected at the center if the owner,
4941 operator, or lessor:

4942 (a) operates the DIYer used oil collection center in compliance with this part and rules
4943 made under this part and the [~~executive secretary~~] director upon inspection finds the center is in
4944 compliance with this part and rules made under this part;

4945 (b) does not mix any used oil collected with any hazardous waste or PCBs or with any
4946 material that would render the resulting mixture as a hazardous waste;

4947 (c) does not knowingly accept any used oil containing hazardous waste or PCBs;

4948 (d) ensures the used oil is transported from the center by a permitted used oil
4949 transporter; and

4950 (e) complies with Section 114(c) of the federal Comprehensive Environmental
4951 Response, Compensation, and Liability Act of 1980, as amended.

4952 (2) (a) This section applies only to that portion of a used oil collection center used for
4953 the collection of DIYer used oil under this part.

4954 (b) This section does not apply to willful or grossly negligent activities of the owner,

4955 operator, or lessor in operating the DIYer used oil collection center.

4956 (c) This section does not affect or modify in any way the obligations or liability of any
4957 person other than the owner, operator, or lessor under any other provisions of state or federal
4958 law, including common law, for injury or damage resulting from a release of used oil or
4959 hazardous waste.

4960 (d) For the purposes of this section, the owner, operator, or lessor of a DIYer used oil
4961 collection center may presume a quantity of not more than five gallons, except under
4962 Subsection (2)(e), of used oil accepted from a member of the public is not mixed with a
4963 hazardous waste or PCBs if:

4964 (i) the oil is accepted in accordance with the inspection and identification procedures
4965 required by board rule; and

4966 (ii) the owner, operator, or lessor operates the DIYer used oil collection center in good
4967 faith and in compliance with this part and rules made under this part.

4968 (e) The owner, operator, or lessor of a DIYer used oil collection center may claim the
4969 presumption under Subsection (2)(d) for a quantity of more than five gallons but not more than
4970 55 gallons, if the quantity received is:

4971 (i) from a farmer exempted under Subsection 19-6-708(1)(b);

4972 (ii) generated by farming equipment; and

4973 (iii) handled in accordance with all requirements of this section.

4974 (f) This section does not affect or modify the obligations or liability of any owner,
4975 operator, or lessor of a DIYer used oil collection center regarding that person's services or
4976 functions other than accepting DIYer used oil under this part.

4977 Section 94. Section **19-6-721** is amended to read:

4978 **19-6-721. Violations -- Proceedings -- Orders.**

4979 (1) A person who violates any provision of this part or any order, permit, rule, or other
4980 requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not
4981 more than \$10,000 per day for each day of violation, in addition to any fine otherwise imposed
4982 for violation of this part.

4983 (2) (a) The [~~board~~] director may bring suit in the name of the state to restrain the
4984 person from continuing the violation and to require the person to perform necessary
4985 remediation.

4986 (b) Suit under Subsection (2)(a) may be brought in any court in the state having
4987 jurisdiction in the county of residence of the person charged or in the county where the
4988 violation is alleged to have occurred.

4989 (c) The court may grant prohibitory and mandatory injunctions, including temporary
4990 restraining orders.

4991 (3) When the [~~executive secretary~~] director finds a situation exists in violation of this
4992 part that presents an immediate threat to the public health or welfare, the [~~executive secretary~~]
4993 director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures
4994 Act.

4995 (4) All penalties collected under this section shall be deposited in the account created
4996 in Section 19-6-719.

4997 Section 95. Section **19-6-803** is amended to read:

4998 **19-6-803. Definitions.**

4999 As used in this part:

5000 (1) "Abandoned waste tire pile" means a waste tire pile regarding which the local
5001 department of health has not been able to:

- 5002 (a) locate the persons responsible for the tire pile; or
- 5003 (b) cause the persons responsible for the tire pile to remove it.

5004 (2) (a) "Beneficial use" means the use of chipped tires in a manner that is not recycling,
5005 storage, or disposal, but that serves as a replacement for another product or material for specific
5006 purposes.

5007 (b) "Beneficial use" includes the use of chipped tires:

- 5008 (i) as daily landfill cover;
- 5009 (ii) for civil engineering purposes;
- 5010 (iii) as low-density, light-weight aggregate fill; or
- 5011 (iv) for septic or drain field construction.

5012 (c) "Beneficial use" does not include the use of waste tires or material derived from
5013 waste tires:

- 5014 (i) in the construction of fences; or
- 5015 (ii) as fill, other than low-density, light-weight aggregate fill.

5016 (3) "Board" means the Solid and Hazardous Waste Control Board created under

5017 Section 19-1-106.

5018 (4) "Chip" or "chipped tire" means a two inch square or smaller piece of a waste tire.

5019 (5) "Commission" means the Utah State Tax Commission.

5020 (6) (a) "Consumer" means a person who purchases a new tire to satisfy a direct need,
5021 rather than for resale.

5022 (b) "Consumer" includes a person who purchases a new tire for a motor vehicle to be
5023 rented or leased.

5024 (7) "Crumb rubber" means waste tires that have been ground, shredded, or otherwise
5025 reduced in size such that the particles are less than or equal to 3/8 inch in diameter and are 98%
5026 wire free by weight.

5027 (8) "Director" means the director of the Division of Solid and Hazardous Waste.

5028 ~~[(8)]~~ (9) "Disposal" means the deposit, dumping, or permanent placement of any waste
5029 tire in or on any land or in any water in the state.

5030 ~~[(9)]~~ (10) "Dispose of" means to deposit, dump, or permanently place any waste tire in
5031 or on any land or in any water in the state.

5032 ~~[(10)]~~ (11) "Division" means the Division of Solid and Hazardous Waste, created in
5033 [Section 19-1-105, within the Department of Environmental Quality] Subsection
5034 19-1-105(1)(e).

5035 ~~[(11) "Executive secretary" means the executive secretary of the Solid and Hazardous~~
5036 ~~Waste Control Board created in Section 19-1-106.]~~

5037 (12) "Fund" means the Waste Tire Recycling Fund created in Section 19-6-807.

5038 (13) "Landfill waste tire pile" means a waste tire pile:

5039 (a) located within the permitted boundary of a landfill operated by a governmental
5040 entity; and

5041 (b) consisting solely of waste tires brought to a landfill for disposal and diverted from
5042 the landfill waste stream to the waste tire pile.

5043 (14) "Local health department" means the local health department, as defined in
5044 Section 26A-1-102, with jurisdiction over the recycler.

5045 (15) "Materials derived from waste tires" means tire sections, tire chips, tire
5046 shreadings, rubber, steel, fabric, or other similar materials derived from waste tires.

5047 (16) "Mobile facility" means a mobile facility capable of cutting waste tires on site so

5048 the waste tires may be effectively disposed of by burial, such as in a landfill.

5049 (17) "New motor vehicle" means a motor vehicle which has never been titled or
5050 registered.

5051 (18) "Passenger tire equivalent" means a measure of mixed sizes of tires where each 25
5052 pounds of whole tires or material derived from waste tires is equal to one waste tire.

5053 (19) "Proceeds of the fee" means the money collected by the commission from
5054 payment of the recycling fee including interest and penalties on delinquent payments.

5055 (20) "Recycler" means a person who:

5056 (a) annually uses, or can reasonably be expected within the next year to use, a
5057 minimum of 100,000 waste tires generated in the state or 1,000 tons of waste tires generated in
5058 the state to recover energy or produce energy, crumb rubber, chipped tires, or an ultimate
5059 product; and

5060 (b) is registered as a recycler in accordance with Section 19-6-806.

5061 (21) "Recycling fee" means the fee provided for in Section 19-6-805.

5062 (22) "Shredded waste tires" means waste tires or material derived from waste tires that
5063 has been reduced to a six inch square or smaller.

5064 (23) (a) "Storage" means the placement of waste tires in a manner that does not
5065 constitute disposal of the waste tires.

5066 (b) "Storage" does not include:

5067 (i) the use of waste tires as ballast to maintain covers on agricultural materials or to
5068 maintain covers at a construction site; or

5069 (ii) the storage for five or fewer days of waste tires or material derived from waste tires
5070 that are to be recycled or applied to a beneficial use.

5071 (24) (a) "Store" means to place waste tires in a manner that does not constitute disposal
5072 of the waste tires.

5073 (b) "Store" does not include:

5074 (i) to use waste tires as ballast to maintain covers on agricultural materials or to
5075 maintain covers at a construction site; or

5076 (ii) to store for five or fewer days waste tires or material derived from waste tires that
5077 are to be recycled or applied to a beneficial use.

5078 (25) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a

5079 vehicle in which a person or property is or may be transported or drawn upon a highway.

5080 (26) "Tire retailer" means any person engaged in the business of selling new tires either
5081 as replacement tires or as part of a new vehicle sale.

5082 (27) (a) "Ultimate product" means a product that has as a component materials derived
5083 from waste tires and that the [~~executive secretary~~] director finds has a demonstrated market.

5084 (b) "Ultimate product" includes pyrolyzed materials derived from:

5085 (i) waste tires; or

5086 (ii) chipped tires.

5087 (c) "Ultimate product" does not include a product regarding which a waste tire remains
5088 after the product is disposed of or disassembled.

5089 (28) "Waste tire" means a tire that is no longer suitable for its original intended
5090 purpose because of wear, damage, or defect.

5091 (29) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.

5092 (30) (a) "Waste tire transporter" means a person or entity engaged in picking up or
5093 transporting at one time more than 10 whole waste tires, or the equivalent amount of material
5094 derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal.

5095 (b) "Waste tire transporter" includes any person engaged in the business of collecting,
5096 hauling, or transporting waste tires or who performs these functions for another person, except
5097 as provided in Subsection (30)(c).

5098 (c) "Waste tire transporter" does not include:

5099 (i) a person transporting waste tires generated solely by:

5100 (A) that person's personal vehicles;

5101 (B) a commercial vehicle fleet owned or operated by that person or that person's
5102 employer;

5103 (C) vehicles sold, leased, or purchased by a motor vehicle dealership owned or
5104 operated by that person or that person's employer; or

5105 (D) a retail tire business owned or operated by that person or that person's employer;

5106 (ii) a solid waste collector operating under a license issued by a unit of local
5107 government as defined in Section 63M-5-103, or a local health department;

5108 (iii) a recycler of waste tires;

5109 (iv) a person transporting tires by rail as a common carrier subject to federal regulation;

5110 or

5111 (v) a person transporting processed or chipped tires.

5112 Section 96. Section **19-6-804** is amended to read:

5113 **19-6-804. Restrictions on disposal of tires -- Penalties.**

5114 (1) (a) After January 1, 1994, an individual, including a waste tire transporter, may not
5115 dispose of more than four whole tires at one time in a landfill or any other location in the state
5116 authorized by the [~~executive secretary~~] director to receive waste tires, except for purposes
5117 authorized by board rule.

5118 (b) Tires are exempt from this Subsection (1) if the original tire has a rim diameter
5119 greater than 24.5 inches.

5120 (c) No person, including a waste tire transporter, may dispose of waste tires or store
5121 waste tires in any manner not allowed under this part or rules made under this part.

5122 (2) The operator of the landfill or other authorized location shall direct that the waste
5123 tires be disposed in a designated area to facilitate retrieval if a market becomes available for the
5124 disposed waste tires or material derived from waste tires.

5125 (3) An individual, including a waste tire transporter, may dispose of shredded waste
5126 tires in a landfill in accordance with Section 19-6-812, and may also, without reimbursement,
5127 dispose in a landfill materials derived from waste tires that do not qualify for reimbursement
5128 under Section 19-6-812, but the landfill shall dispose of the material in accordance with
5129 Section 19-6-812.

5130 (4) (a) An individual, including a waste tire transporter, violating this section is subject
5131 to enforcement proceedings and a civil penalty of not more than \$100 per waste tire or per
5132 passenger tire equivalent disposed of in violation of this section. A warning notice may be
5133 issued prior to taking further enforcement action under this Subsection (4).

5134 (b) A civil proceeding to enforce this section and collect penalties under this section
5135 may be brought in the district court where the violation occurred by the [~~board~~] director, the
5136 local health department, or the county attorney having jurisdiction over the location where the
5137 tires were disposed in violation of this section.

5138 (c) Penalties collected under this section shall be deposited in the fund.

5139 Section 97. Section **19-6-806** is amended to read:

5140 **19-6-806. Registration of waste tire transporters and recyclers.**

5141 (1) (a) The [~~executive secretary~~] director shall register each applicant for registration to
5142 act as a waste tire transporter if the applicant meets the requirements of this section.

5143 (b) An applicant for registration as a waste tire transporter shall:

5144 (i) submit an application in a form prescribed by the [~~executive secretary~~] director;

5145 (ii) pay a fee as determined by the board under Section 63J-1-504;

5146 (iii) provide the name and business address of the operator;

5147 (iv) provide proof of liability insurance or other form of financial responsibility in an
5148 amount determined by board rule, but not more than \$300,000, for any liability the waste tire
5149 transporter may incur in transporting waste tires; and

5150 (v) meet requirements established by board rule.

5151 (c) The holder of a registration under this section shall advise the [~~executive secretary~~]
5152 director in writing of any changes in application information provided to the [~~executive~~
5153 ~~secretary~~] director within 20 days of the change.

5154 (d) If the [~~executive secretary~~] director has reason to believe a waste tire transporter has
5155 disposed of tires other than as allowed under this part, the [~~executive secretary~~] director shall
5156 conduct an investigation and, after complying with the procedural requirements of Title 63G,
5157 Chapter 4, Administrative Procedures Act, may revoke the registration.

5158 (2) (a) The [~~executive secretary~~] director shall register each applicant for registration to
5159 act as a waste tire recycler if the applicant meets the requirements of this section.

5160 (b) An applicant for registration as a waste tire recycler shall:

5161 (i) submit an application in a form prescribed by the [~~executive secretary~~] director;

5162 (ii) pay a fee as determined by the board under Section 63J-1-504;

5163 (iii) provide the name and business address of the operator of the recycling business;

5164 (iv) provide proof of liability insurance or other form of financial responsibility in an
5165 amount determined by board rule, but not more than \$300,000, for any liability the waste tire
5166 recycler may incur in storing and recycling waste tires;

5167 (v) engage in activities as described under the definition of recycler in Section
5168 19-6-803; and

5169 (vi) meet requirements established by board rule.

5170 (c) The holder of a registration under this section shall advise the [~~executive secretary~~]
5171 director in writing of any changes in application information provided to the [~~executive~~

5172 ~~secretary~~ director within 20 days of the change.

5173 (d) If the [~~executive secretary~~] director has reason to believe a waste tire recycler has
5174 falsified any information provided in an application for partial reimbursement under this
5175 section, the [~~executive secretary~~] director shall, after complying with the procedural
5176 requirements of Title 63G, Chapter 4, Administrative Procedures Act, revoke the registration.

5177 (3) The board shall establish a uniform fee for registration which shall be imposed by
5178 any unit of local government or local health department that requires a registration fee as part
5179 of the registration of waste tire transporters or waste tire recyclers.

5180 Section 98. Section **19-6-811** is amended to read:

5181 **19-6-811. Funding for management of certain landfill or abandoned waste tire**
5182 **piles -- Limitations.**

5183 (1) (a) A county or municipality may apply to the [~~executive secretary~~] director for
5184 payment from the fund for costs of a waste tire transporter or recycler to remove waste tires
5185 from an abandoned waste tire pile or a landfill waste tire pile operated by a state or local
5186 governmental entity and deliver the waste tires to a recycler.

5187 (b) The [~~executive secretary~~] director may authorize a maximum reimbursement of:

5188 (i) 100% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to
5189 remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the
5190 waste tires to a recycler, if no waste tires have been added to the abandoned waste tire pile or
5191 landfill waste tire pile on or after July 1, 2001; or

5192 (ii) 60% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to
5193 remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the
5194 waste tires to a recycler, if waste tires have been added to the abandoned waste tire pile or
5195 landfill waste tire pile on or after July 1, 2001.

5196 (c) The [~~executive secretary~~] director may deny an application for payment of waste
5197 tire pile removal and delivery costs, if the [~~executive secretary~~] director determines that
5198 payment of the costs will result in there not being sufficient money in the fund to pay expected
5199 reimbursements for recycling or beneficial use under Section 19-6-809 during the next quarter.

5200 (2) (a) The maximum number of miles for which the [~~executive secretary~~] director may
5201 reimburse for transportation costs incurred by a waste tire transporter under this section, is the
5202 number of miles, one way, between the location of the waste tire pile and the State Capitol

5203 Building, in Salt Lake City, Utah, or to the recycler, whichever is less.

5204 (b) This maximum number of miles available for reimbursement applies regardless of
5205 the location of the recycler to which the waste tires are transported under this section.

5206 (c) The [~~executive secretary~~] director shall, upon request, advise any person preparing a
5207 bid under this section of the maximum number of miles available for reimbursement under this
5208 Subsection (2).

5209 (d) The cost under this Subsection (2) shall be calculated based on the cost to transport
5210 one ton of waste tires one mile.

5211 (3) (a) The county or municipality shall through a competitive bidding process make a
5212 good faith attempt to obtain a bid for the removal of the landfill or abandoned waste tire pile
5213 and transport to a recycler.

5214 (b) The county or municipality shall submit to the [~~executive secretary~~] director:

5215 (i) (A) (I) a statement from the local health department stating the landfill waste tire
5216 pile is operated by a state or local governmental entity and consists solely of waste tires
5217 diverted from the landfill waste stream;

5218 (II) a description of the size and location of the landfill waste tire pile; and

5219 (III) landfill records showing the origin of the waste tires; or

5220 (B) a statement from the local health department that the waste tire pile is abandoned;

5221 and

5222 (ii) (A) the bid selected by the county or municipality; or

5223 (B) if no bids were received, a statement to that fact.

5224 (4) (a) If a bid is submitted, the [~~executive secretary~~] director shall determine if the bid
5225 is reasonable, taking into consideration:

5226 (i) the location and size of the landfill or abandoned waste tire pile;

5227 (ii) the number and size of any other landfill or abandoned waste tire piles in the area;

5228 and

5229 (iii) the current market for waste tires of the type in the landfill or abandoned waste tire
5230 pile.

5231 (b) The [~~executive secretary~~] director shall advise the county or municipality within 30
5232 days of receipt of the bid whether or not the bid is determined to be reasonable.

5233 (5) (a) If the bid is found to be reasonable, the county or municipality may proceed to

5234 have the landfill or abandoned waste tire pile removed pursuant to the bid.

5235 (b) The county or municipality shall advise the [~~executive secretary~~] director that the
5236 landfill or abandoned waste tire pile has been removed.

5237 (6) The recycler or waste tire transporter that removed the landfill or abandoned waste
5238 tires pursuant to the bid shall submit to the [~~executive secretary~~] director a copy of the
5239 manifest, which shall state:

5240 (a) the number or tons of waste tires transported;

5241 (b) the location from which they were removed;

5242 (c) the recycler to which the waste tires were delivered; and

5243 (d) the amount charged by the transporter or recycler.

5244 (7) Upon receipt of the information required under Subsection (6), and determination
5245 that the information is complete, the [~~executive secretary~~] director shall, within 30 days after
5246 receipt authorize the Division of Finance to reimburse the waste tire transporter or recycler the
5247 amount established under this section.

5248 Section 99. Section **19-6-817** is amended to read:

5249 **19-6-817. Administrative fees to local health departments -- Reporting by local**
5250 **health departments.**

5251 (1) (a) The Division of Finance shall pay quarterly to the local health departments from
5252 the fund \$5 per ton of tires for which a partial reimbursement is made under this part.

5253 (b) The payment under Subsection (1)(a) shall be allocated among the local health
5254 departments in accordance with recommendations of the Utah Association of Local Health
5255 Officers.

5256 (c) The recommendation shall be based on the efforts expended and the costs incurred
5257 by the local health departments in enforcing this part and rules made under this part.

5258 (2) (a) Each local health department shall track all waste tires removed from
5259 abandoned waste tire piles within its jurisdiction, to determine the amount of waste tires
5260 removed and the recycler to which they are transported.

5261 (b) The local health department shall report this information quarterly to the [~~executive~~
5262 ~~secretary~~] director.

5263 Section 100. Section **19-6-819** is amended to read:

5264 **19-6-819. Powers and duties of the board.**

5265 (1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative
5266 Rulemaking Act, as necessary to administer this part. For these purposes the board shall
5267 establish by rule:

5268 (a) conditions and procedures for acting to issue or revoke a registration as a waste tire
5269 recycler or transporter under Section 19-6-806;

5270 (b) the amount of liability insurance or other financial responsibility the applicant is
5271 required to have to qualify for registration under Section 19-6-806, which amount may not be
5272 more than \$300,000 for any liability the waste tire transporter or recycler may incur in
5273 recycling or transporting waste tires;

5274 (c) the form and amount of financial assurance required for a site or facility used to
5275 store waste tires, which amount shall be sufficient to ensure the cleanup or removal of waste
5276 tires from that site or facility;

5277 (d) standards and required documentation for tracking and record keeping of waste
5278 tires subject to regulation under this part, including:

5279 (i) manifests for handling and transferring waste tires;

5280 (ii) records documenting date, quantities, and size or type of waste tires transported,
5281 processed, transferred, or sold;

5282 (iii) records documenting persons between whom transactions under this Subsection
5283 (1)(d) occurred and the amounts of waste tires involved in those transactions; and

5284 (iv) requiring that documentation under this Subsection (1)(d) be submitted on a
5285 quarterly basis, and that this documentation be made available for public inspection;

5286 (e) authorize inspections and audits of waste tire recycling, transportation, or storage
5287 facilities and operations subject to this part;

5288 (f) standards for payments authorized under Sections 19-6-809, 19-6-810, 19-6-811,
5289 and 19-6-812;

5290 (g) regarding applications to the [~~executive secretary~~] director for reimbursements
5291 under Section 19-6-811, the content of the reimbursement application form and the procedure
5292 to apply for reimbursement;

5293 (h) requirements for the storage of waste tires, including permits for storage;

5294 (i) the types of energy recovery or other appropriate environmentally compatible uses
5295 eligible for reimbursement, which:

- 5296 (i) shall include pyrolization, but not retreading; and
5297 (ii) shall apply to all waste tire recycling and beneficial use reimbursements within the
5298 state;
- 5299 (j) the applications of waste tires that are not eligible for reimbursement;
5300 (k) the applications of waste tires that are considered to be the storage or disposal of
5301 waste tires; and
- 5302 (l) provisions governing the storage or disposal of waste tires, including the process for
5303 issuing permits for waste tire storage sites.
- 5304 (2) The board may:
- 5305 (a) require retention and submission of the records required under this part;
5306 (b) require audits of the records and record keeping procedures required under this part
5307 and rules made under this part, except that audits of records regarding the fee imposed and
5308 collected by the commission under Sections 19-6-805 and 19-6-808 are the responsibility of the
5309 commission; and
- 5310 (c) as necessary, make rules requiring additional information as the board determines
5311 necessary to effectively administer Section 19-6-812, which rules may not place an undue
5312 burden on the operation of landfills.
- 5313 Section 101. Section **19-6-820** is amended to read:
5314 **19-6-820. Powers and duties of the director.**
- 5315 (1) The [~~executive secretary~~] director shall:
- 5316 (a) administer and enforce the rules and orders of the board;
5317 (b) issue and revoke registrations for waste tire recyclers and transporters; and
5318 (c) require forms, analyses, documents, maps, and other records as the [~~executive~~
5319 ~~secretary~~] director finds necessary to:
- 5320 (i) issue recycler and transporter registrations;
5321 (ii) authorize reimbursements under Section 19-6-811;
5322 (iii) inspect a site, facility, or activity regulated under this part; and
5323 (iv) issue permits for and inspect waste tire storage sites.
- 5324 (2) The [~~executive secretary~~] director may:
- 5325 (a) authorize any division employee to enter any site or facility regulated under this
5326 part at reasonable times and upon presentation of credentials, for the purpose of inspection,

5327 audit, or sampling:

5328 (i) at the site or facility; or

5329 (ii) of the records, operations, or products;

5330 (b) as authorized by the board, enforce board rules by issuing orders which are

5331 subsequently subject to the board's amendment or revocation; and

5332 (c) coordinate with federal, state, and local governments, and other agencies, including

5333 entering into memoranda of understanding, to:

5334 (i) ensure effective regulation of waste tires under this part;

5335 (ii) minimize duplication of regulation; and

5336 (iii) encourage responsible recycling of waste tires.

5337 Section 102. Section **19-6-821** is amended to read:

5338 **19-6-821. Violations -- Civil proceedings and penalties -- Orders.**

5339 (1) A person who violates any provision of this part or any order, permit, plan

5340 approval, or rule issued or adopted under this part is subject to a civil penalty of not more than

5341 \$10,000 per day for each day of violation as determined in a civil hearing under Title 63G,

5342 Chapter 4, Administrative Procedures Act, except:

5343 (a) any violation of Subsection 19-6-804(1) or (3), regarding landfills, is subject to the
5344 penalty under Subsection 19-6-804(4) rather than the penalties under this section; and

5345 (b) any violation of Subsection 19-6-808(1), (2), or (3) regarding payment of the
5346 recycling fee by the tire retailer is subject to penalties as provided in Subsection 19-6-808(4)

5347 rather than the penalties under this section.

5348 (2) The [~~board~~] director may bring an action in the name of the state to restrain a

5349 person from continuing a violation of this part and to require the person to perform necessary

5350 remediation regarding a violation of this part.

5351 (3) When the [~~executive secretary~~] director finds a situation exists in violation of this
5352 part that presents an immediate threat to the public health or welfare, the [~~executive secretary~~]

5353 director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures
5354 Act.

5355 (4) The [~~executive secretary~~] director may revoke the registration of a waste tire

5356 recycler or transporter who violates any provision of this part or any order, plan approval,

5357 permit, or rule issued or adopted under this part.

5358 (5) The ~~[executive secretary]~~ director may revoke the tire storage permit for a storage
5359 facility that is in violation of any provision of this part or any order, plan approval, permit, or
5360 rule issued or adopted under this part.

5361 (6) If a person has been convicted of violating a provision of this part prior to a finding
5362 by the ~~[executive secretary]~~ director of a violation of the same provision in an administrative
5363 hearing, the ~~[executive secretary]~~ director may not assess a civil monetary penalty under this
5364 section for the same offense for which the conviction was obtained.

5365 (7) All penalties collected under this section shall be deposited in the fund.

5366 Section 103. Section **19-6-1002** is amended to read:

5367 **19-6-1002. Definitions.**

5368 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section
5369 ~~[19-6-103]~~ 19-1-106.

5370 ~~[(2) "Executive secretary" means the executive secretary of the Solid and Hazardous
5371 Waste Control Board appointed under Section 19-6-107.]~~

5372 (2) "Director" means the director of the Division of Solid and Hazardous Waste.

5373 (3) "Division" means the Division of Solid and Hazardous Waste, created in
5374 Subsection 19-1-105(1)(e).

5375 ~~[(3)]~~ (4) "Manufacturer" means the last person in the production or assembly process of
5376 a vehicle.

5377 ~~[(4)]~~ (5) "Mercury switch" means a mercury-containing capsule that is part of a
5378 convenience light switch assembly installed in a vehicle's hood or trunk.

5379 ~~[(5)]~~ (6) "Person" means an individual, a firm, an association, a partnership, a
5380 corporation, the state, or a local government.

5381 ~~[(6)]~~ (7) "Plan" means a plan for removing and collecting mercury switches from
5382 vehicles.

5383 ~~[(7)]~~ (8) "Vehicle" means any passenger automobile or car, station wagon, truck, van,
5384 or sport utility vehicle that may contain one or more mercury switches.

5385 Section 104. Section **19-6-1003** is amended to read:

5386 **19-6-1003. Board and director powers.**

5387 (1) By following the procedures and requirements of Title 63G, Chapter 3, Utah
5388 Administrative Rulemaking Act, the board shall make rules:

- 5389 (a) governing administrative proceedings under this part;
- 5390 (b) specifying the terms and conditions under which the ~~[executive secretary]~~ director
- 5391 shall approve, disapprove, revoke, or review a plan submitted by a manufacturer; and
- 5392 (c) governing reports and educational materials required by this part.
- 5393 (2) These rules shall include:
- 5394 (a) time requirements for plan submission, review, approval, and implementation;
- 5395 (b) a public notice and comment period for a proposed plan; and
- 5396 (c) safety standards for the collection, packaging, transportation, storage, recycling, and
- 5397 disposal of mercury switches.
- 5398 ~~[(3) The board may request the attorney general to bring an action for injunctive relief~~
- 5399 ~~and enforcement of this part, including, without limitation, imposition of the penalty provided~~
- 5400 ~~in Section 19-6-1006.]~~
- 5401 ~~[(4) As authorized by the board, the executive secretary may:]~~
- 5402 (3) The director may:
- 5403 (a) review and approve or disapprove plans, specifications, or other data related to
- 5404 mercury switch removal;
- 5405 (b) enforce a rule by issuing a notice, an order, or both~~[-, which may be subsequently~~
- 5406 ~~amended or revoked by the board, and];~~
- 5407 (c) initiate an administrative action to compel compliance with this part and any rules
- 5408 adopted under this part~~[-]; or~~
- 5409 (d) request the attorney general to bring an action for injunctive relief and enforcement
- 5410 of this part, including imposition of the penalty described in Section 19-6-1006.
- 5411 (5) The ~~[executive secretary]~~ director shall establish a fee to cover the costs of a plan's
- 5412 review by following the procedures and requirements of Section 63J-1-504.
- 5413 Section 105. Section **19-6-1004** is amended to read:
- 5414 **19-6-1004. Mercury switch collection plan -- Reimbursement for mercury switch**
- 5415 **removal.**
- 5416 (1) (a) Each manufacturer of any vehicle sold within this state, individually or in
- 5417 cooperation with other manufacturers, shall submit a plan, accompanied by a fee, to the
- 5418 ~~[executive secretary]~~ director.
- 5419 (b) If the ~~[executive secretary]~~ director disapproves a plan, the manufacturer shall

5420 submit an amended plan within 90 days.

5421 (c) A manufacturer shall submit an updated plan within 90 days of any change in the
5422 information required by Subsection (2).

5423 (d) The [~~executive secretary~~] director may require the manufacturer to modify the plan
5424 at any time upon finding that an approved plan as implemented has failed to meet the
5425 requirements of this part.

5426 (e) If the manufacturer does not know or is uncertain about whether or not a switch
5427 contains mercury, the plan shall presume that the switch contains mercury.

5428 (2) The plan shall include:

5429 (a) the make, model, and year of any vehicle, including current and anticipated future
5430 production models, sold by the manufacturer that may contain one or more mercury switches;

5431 (b) the description and location of each mercury switch for each make, model, and year
5432 of vehicle;

5433 (c) education materials that include:

5434 (i) safe and environmentally sound methods for mercury switch removal; and

5435 (ii) information about hazards related to mercury and the proper handling of mercury;

5436 (d) a method for storage and disposal of the mercury switches, including packaging and
5437 shipping of mercury switches to an authorized recycling, storage, or disposal facility;

5438 (e) a procedure for the transfer of information among persons involved with the plan to
5439 comply with reporting requirements; and

5440 (f) a method to implement and finance the plan, which shall include the prompt
5441 reimbursement by the manufacturer of costs incurred by a person removing and collecting
5442 mercury switches.

5443 (3) In order to ensure that the costs of removal and collection of mercury switches are
5444 not borne by any other person, the manufacturers of vehicles sold in the state shall pay:

5445 (a) a minimum of \$5 for each mercury switch removed by a person as partial
5446 compensation for the labor and other costs incurred in removing the mercury switch;

5447 (b) the cost of packaging necessary to store or transport mercury switches to recycling,
5448 storage, or disposal facilities;

5449 (c) the cost of shipping mercury switches to recycling, storage, or disposal facilities;

5450 (d) the cost of recycling, storage, or disposal of mercury switches;

5451 (e) the cost of the preparation and distribution of educational materials; and

5452 (f) the cost of maintaining all appropriate record-keeping systems.

5453 (4) Manufacturers of vehicles sold within this state shall reimburse a person for each
5454 mercury switch removed and collected without regard to the date on which the mercury switch
5455 is removed and collected.

5456 (5) The manufacturer shall ensure that plan implementation occurs by July 1, 2007.

5457 Section 106. Section **19-6-1005** is amended to read:

5458 **19-6-1005. Reporting requirements.**

5459 (1) Each manufacturer that is required to implement a plan shall submit, either
5460 individually or in cooperation with other manufacturers, an annual report on the plan's
5461 implementation to the ~~[executive secretary]~~ director within 90 days after the anniversary of the
5462 date on which the manufacturer is required to begin plan implementation.

5463 (2) The report shall include:

5464 (a) the number of mercury switches collected;

5465 (b) the number of mercury switches for which the manufacturer has provided
5466 reimbursement;

5467 (c) a description of the successes and failures of the plan; and

5468 (d) a statement that details the costs required to implement the plan.

5469 Section 107. Section **19-6-1102** is amended to read:

5470 **19-6-1102. Definitions.**

5471 As used in this part:

5472 (1) "Board" means the Solid and Hazardous Waste Control Board created under
5473 Section 19-1-106.

5474 ~~[(2) "Executive secretary" means the executive secretary of the board.]~~

5475 (2) "Director" means the director of the Division of Solid and Hazardous Waste.

5476 (3) "Division" means the Division of Solid and Hazardous Waste, created in
5477 Subsection 19-1-105(1)(e).

5478 ~~[(3)]~~ (4) (a) "Industrial byproduct" means an industrial residual, including:

5479 (i) inert construction debris;

5480 (ii) fly ash;

5481 (iii) bottom ash;

- 5482 (iv) slag;
- 5483 (v) flue gas emission control residuals generated primarily from the combustion of coal
- 5484 or other fossil fuel;
- 5485 (vi) residual from the extraction, beneficiation, and processing of an ore or mineral;
- 5486 (vii) cement kiln dust; or
- 5487 (viii) contaminated soil extracted as a result of a corrective action subject to an
- 5488 operation plan under Part 1, Solid and Hazardous Waste Act.
- 5489 (b) "Industrial byproduct" does not include material that:
- 5490 (i) causes a public nuisance or public health hazard; or
- 5491 (ii) is a hazardous waste under Part 1, Solid and Hazardous Waste Act.
- 5492 [~~4~~] 5 "Public project" means a project of the Department of Transportation to
- 5493 construct:
- 5494 (a) a highway or road;
- 5495 (b) a curb;
- 5496 (c) a gutter;
- 5497 (d) a walkway;
- 5498 (e) a parking facility;
- 5499 (f) a public transportation facility; or
- 5500 (g) a facility, infrastructure, or transportation improvement that benefits the public.
- 5501 [~~5~~] 6 "Reuse" means to use an industrial byproduct in place of a raw material.
- 5502 Section 108. Section **19-6-1104** is amended to read:
- 5503 **19-6-1104. Applications for industrial byproduct reuse -- Approval by the**
- 5504 **director.**
- 5505 (1) A person may submit to the [~~executive secretary~~] director an application for reuse
- 5506 of an industrial byproduct from an inactive industrial site, as defined in Section 17C-1-102.
- 5507 (2) The [~~executive secretary~~] director shall respond to an application submitted under
- 5508 Subsection (1) within 60 days of the day on which the [~~executive secretary~~] director determines
- 5509 the application is complete.
- 5510 (3) The [~~executive secretary~~] director shall approve an application submitted under
- 5511 Subsection (1) if the applicant shows:
- 5512 (a) the industrial byproduct meets the applicable health risk standard;

5513 (b) the industrial byproduct satisfies the applicable toxicity characteristic leaching
5514 procedure; and

5515 (c) the proposed method of installation and type of reuse meet the applicable health
5516 risk standard.

5517 Section 109. Section **19-8-106** is amended to read:

5518 **19-8-106. Rejection of application -- Notice to applicant -- Resubmission**
5519 **procedure.**

5520 (1) The executive director may in his sole discretion reject an application prior to
5521 accepting the application fee, and return the application fee to the applicant if:

5522 (a) the executive director has reason to believe that a working relationship with the
5523 applicant cannot be achieved; or

5524 (b) the application site is not eligible under Section 19-8-105.

5525 (2) (a) The executive director may reject an application after processing the application
5526 if [~~the executive secretary determines~~]:

5527 (i) the application is not complete or is not accurate; or

5528 (ii) the applicant has not demonstrated financial capability to perform the voluntary
5529 cleanup.

5530 (b) The applicant is not entitled to refund of an application fee for an application
5531 rejected under this Subsection (2).

5532 (3) An application rejected under Subsection (1) or (2) shall be promptly returned to
5533 the applicant with a letter of explanation.

5534 (4) (a) If the executive director rejects an application because it is incomplete or
5535 inaccurate, the executive director shall, not later than 60 days after receipt of the application,
5536 provide to the applicant a list in writing of all information needed to make the application
5537 complete or accurate, as appropriate.

5538 (b) The applicant may submit for a second time an application rejected due to
5539 inaccuracy or incompleteness without submitting an additional application fee.

5540 Section 110. Section **19-8-119** is amended to read:

5541 **19-8-119. Apportionment or contribution.**

5542 (1) Any party who incurs costs under a voluntary agreement entered into under this part
5543 in excess of his liability may seek contribution in an action in district court from any other

5544 party who is or may be liable under Subsection 19-6-302(21) or [~~19-6-402(26)~~] 19-6-402(27)
5545 for the excess costs after providing written notice to any other party that the party bringing the
5546 action has entered into a voluntary agreement and will incur costs.

5547 (2) In resolving claims made under Subsection (1), the court shall allocate costs using
5548 the standards in Subsection 19-6-310(2).

5549 Section 111. Section ~~41-6a-1644~~ is amended to read:

5550 **41-6a-1644. Diesel emissions program -- Implementation -- Monitoring --**
5551 **Exemptions.**

5552 (1) The legislative body of each county required by the comprehensive plan for air
5553 pollution control developed by the [~~Air Quality Board under Subsection 19-2-104(3)(e)~~]
5554 director of the Division of Air Quality in accordance with Subsection 19-2-107(2)(a)(i) to use
5555 an emissions opacity inspection and maintenance program for diesel-powered motor vehicles
5556 shall:

5557 (a) make regulations or ordinances to implement and enforce the requirement
5558 established by the Air Quality Board;

5559 (b) collect information about and monitor the program; and

5560 (c) by August 1 of each year, supply written information to the Department of
5561 Environmental Quality to identify program status.

5562 (2) The following vehicles are exempt from an emissions opacity inspection and
5563 maintenance program for diesel-powered motor vehicles established by a legislative body of a
5564 county under Subsection (1):

5565 (a) an implement of husbandry; and

5566 (b) a motor vehicle that:

5567 (i) meets the definition of a farm truck under Section 41-1a-102; and

5568 (ii) has a gross vehicle weight rating of 12,001 pounds or more.

5569 (3) (a) The legislative body of a county identified in Subsection (1) shall exempt a
5570 pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or
5571 less from the emissions opacity inspection and maintenance program requirements of this
5572 section, if the registered owner of the pickup truck provides a signed statement to the
5573 legislative body stating the truck is used:

5574 (i) by the owner or operator of a farm located on property that qualifies as land in

5575 agricultural use under Sections 59-2-502 and 59-2-503; and

5576 (ii) exclusively for the following purposes in operating the farm:

5577 (A) for the transportation of farm products, including livestock and its products,
5578 poultry and its products, and floricultural and horticultural products; and

5579 (B) for the transportation of farm supplies, including tile, fence, and every other thing
5580 or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production
5581 and maintenance.

5582 (b) The county shall provide to the registered owner who signs and submits a signed
5583 statement under this section a certificate of exemption from emissions opacity inspection and
5584 maintenance program requirements for purposes of registering the exempt vehicle.

5585 Section 112. Section **59-1-403** is amended to read:

5586 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

5587 (1) (a) Any of the following may not divulge or make known in any manner any
5588 information gained by that person from any return filed with the commission:

5589 (i) a tax commissioner;

5590 (ii) an agent, clerk, or other officer or employee of the commission; or

5591 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
5592 town.

5593 (b) An official charged with the custody of a return filed with the commission is not
5594 required to produce the return or evidence of anything contained in the return in any action or
5595 proceeding in any court, except:

5596 (i) in accordance with judicial order;

5597 (ii) on behalf of the commission in any action or proceeding under:

5598 (A) this title; or

5599 (B) other law under which persons are required to file returns with the commission;

5600 (iii) on behalf of the commission in any action or proceeding to which the commission
5601 is a party; or

5602 (iv) on behalf of any party to any action or proceeding under this title if the report or
5603 facts shown by the return are directly involved in the action or proceeding.

5604 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
5605 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically

5606 pertinent to the action or proceeding.

5607 (2) This section does not prohibit:

5608 (a) a person or that person's duly authorized representative from receiving a copy of
5609 any return or report filed in connection with that person's own tax;

5610 (b) the publication of statistics as long as the statistics are classified to prevent the
5611 identification of particular reports or returns; and

5612 (c) the inspection by the attorney general or other legal representative of the state of the
5613 report or return of any taxpayer:

5614 (i) who brings action to set aside or review a tax based on the report or return;

5615 (ii) against whom an action or proceeding is contemplated or has been instituted under
5616 this title; or

5617 (iii) against whom the state has an unsatisfied money judgment.

5618 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
5619 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
5620 Rulemaking Act, provide for a reciprocal exchange of information with:

5621 (i) the United States Internal Revenue Service; or

5622 (ii) the revenue service of any other state.

5623 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
5624 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,
5625 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and
5626 other written statements with the federal government, any other state, any of the political
5627 subdivisions of another state, or any political subdivision of this state, except as limited by
5628 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal
5629 government grant substantially similar privileges to this state.

5630 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
5631 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,
5632 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
5633 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
5634 due.

5635 (d) Notwithstanding Subsection (1), the commission shall provide to the [~~Solid and~~
5636 ~~Hazardous Waste Control Board executive secretary~~] director of the division of Solid and

5637 Hazardous Waste, as defined in Section 19-6-102, as requested by the [~~executive secretary~~]
5638 director of the division of Solid and Hazardous Waste, any records, returns, or other
5639 information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or
5640 Section 19-6-410.5 regarding the environmental assurance program participation fee.

5641 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
5642 provide that person sales and purchase volume data reported to the commission on a report,
5643 return, or other information filed with the commission under:

5644 (i) Chapter 13, Part 2, Motor Fuel; or

5645 (ii) Chapter 13, Part 4, Aviation Fuel.

5646 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
5647 as defined in Section 59-22-202, the commission shall report to the manufacturer:

5648 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
5649 manufacturer and reported to the commission for the previous calendar year under Section
5650 59-14-407; and

5651 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
5652 manufacturer for which a tax refund was granted during the previous calendar year under
5653 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

5654 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
5655 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
5656 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

5657 (h) Notwithstanding Subsection (1), the commission may:

5658 (i) provide to the Division of Consumer Protection within the Department of
5659 Commerce and the attorney general data:

5660 (A) reported to the commission under Section 59-14-212; or

5661 (B) related to a violation under Section 59-14-211; and

5662 (ii) upon request, provide to any person data reported to the commission under
5663 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

5664 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
5665 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
5666 and Budget, provide to the committee or office the total amount of revenues collected by the
5667 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period

5668 specified by the committee or office.

5669 (j) Notwithstanding Subsection (1), the commission shall make the directory required
5670 by Section 59-14-603 available for public inspection.

5671 (k) Notwithstanding Subsection (1), the commission may share information with
5672 federal, state, or local agencies as provided in Subsection 59-14-606(3).

5673 (l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of
5674 Recovery Services within the Department of Human Services any relevant information
5675 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer
5676 who has become obligated to the Office of Recovery Services.

5677 (ii) The information described in Subsection (3)(l)(i) may be provided by the Office of
5678 Recovery Services to any other state's child support collection agency involved in enforcing
5679 that support obligation.

5680 (m) (i) Notwithstanding Subsection (1), upon request from the state court
5681 administrator, the commission shall provide to the state court administrator, the name, address,
5682 telephone number, county of residence, and Social Security number on resident returns filed
5683 under Chapter 10, Individual Income Tax Act.

5684 (ii) The state court administrator may use the information described in Subsection
5685 (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

5686 (n) Notwithstanding Subsection (1), the commission shall at the request of a
5687 committee, commission, or task force of the Legislature provide to the committee, commission,
5688 or task force of the Legislature any information relating to a tax imposed under Chapter 9,
5689 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

5690 (o) (i) As used in this Subsection (3)(o), "office" means the:

5691 (A) Office of the Legislative Fiscal Analyst; or

5692 (B) Office of Legislative Research and General Counsel.

5693 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii),
5694 the commission shall at the request of an office provide to the office all information:

5695 (A) gained by the commission; and

5696 (B) required to be attached to or included in returns filed with the commission.

5697 (iii) (A) An office may not request and the commission may not provide to an office a
5698 person's:

5699 (I) address;
5700 (II) name;
5701 (III) Social Security number; or
5702 (IV) taxpayer identification number.
5703 (B) The commission shall in all instances protect the privacy of a person as required by
5704 Subsection (3)(o)(iii)(A).
5705 (iv) An office may provide information received from the commission in accordance
5706 with this Subsection (3)(o) only:
5707 (A) as:
5708 (I) a fiscal estimate;
5709 (II) fiscal note information; or
5710 (III) statistical information; and
5711 (B) if the information is classified to prevent the identification of a particular return.
5712 (v) (A) A person may not request information from an office under Title 63G, Chapter
5713 2, Government Records Access and Management Act, or this section, if that office received the
5714 information from the commission in accordance with this Subsection (3)(o).
5715 (B) An office may not provide to a person that requests information in accordance with
5716 Subsection (3)(o)(v)(A) any information other than the information the office provides in
5717 accordance with Subsection (3)(o)(iv).
5718 (p) Notwithstanding Subsection (1), the commission may provide to the governing
5719 board of the agreement or a taxing official of another state, the District of Columbia, the United
5720 States, or a territory of the United States:
5721 (i) the following relating to an agreement sales and use tax:
5722 (A) information contained in a return filed with the commission;
5723 (B) information contained in a report filed with the commission;
5724 (C) a schedule related to Subsection (3)(p)(i)(A) or (B); or
5725 (D) a document filed with the commission; or
5726 (ii) a report of an audit or investigation made with respect to an agreement sales and
5727 use tax.
5728 (q) Notwithstanding Subsection (1), the commission may provide information
5729 concerning a taxpayer's state income tax return or state income tax withholding information to

5730 the Driver License Division if the Driver License Division:

5731 (i) requests the information; and

5732 (ii) provides the commission with a signed release form from the taxpayer allowing the
5733 Driver License Division access to the information.

5734 (r) Notwithstanding Subsection (1), the commission shall provide to the Utah 911
5735 Committee the information requested by the Utah 911 Committee under Subsection
5736 53-10-602(3).

5737 (s) Notwithstanding Subsection (1), the commission shall provide to the Utah
5738 Educational Savings Plan information related to a resident or nonresident individual's
5739 contribution to a Utah Educational Savings Plan account as designated on the resident or
5740 nonresident's individual income tax return as provided under Section 59-10-1313.

5741 (t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under
5742 Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the
5743 Department of Health or its designee with the adjusted gross income of an individual if:

5744 (i) an eligibility worker with the Department of Health or its designee requests the
5745 information from the commission; and

5746 (ii) the eligibility worker has complied with the identity verification and consent
5747 provisions of Sections 26-18-2.5 and 26-40-105.

5748 (u) Notwithstanding Subsection (1), the commission may provide to a county, as
5749 determined by the commission, information declared on an individual income tax return in
5750 accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption
5751 authorized under Section 59-2-103.

5752 (4) (a) Each report and return shall be preserved for at least three years.

5753 (b) After the three-year period provided in Subsection (4)(a) the commission may
5754 destroy a report or return.

5755 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

5756 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
5757 the person shall be dismissed from office and be disqualified from holding public office in this
5758 state for a period of five years thereafter.

5759 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in
5760 accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with

5761 Subsection (3)(o)(v):

5762 (i) is not guilty of a class A misdemeanor; and

5763 (ii) is not subject to:

5764 (A) dismissal from office in accordance with Subsection (5)(b); or

5765 (B) disqualification from holding public office in accordance with Subsection (5)(b).

5766 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

5767 Section 113. Section **72-6-106.5** is amended to read:

5768 **72-6-106.5. Reuse of industrial byproducts.**

5769 (1) As used in this section:

5770 (a) [~~"Executive secretary" has the same meaning~~] "Director" is as defined in Section

5771 19-6-1102.

5772 (b) "Industrial byproduct" has the same meaning as defined in Section 19-6-1102.

5773 (c) "Public project" has the same meaning as defined in Section 19-6-1102.

5774 (d) "Reuse" has the same meaning as defined in Section 19-6-1102.

5775 (2) Consistent with the protection of public health and the environment and generally

5776 accepted engineering practices, the department shall, to the maximum extent possible

5777 considering budgetary factors:

5778 (a) allow and encourage the reuse of an industrial byproduct in:

5779 (i) a plan, specification, and estimate for a public project; and

5780 (ii) advertising for a bid for a public project;

5781 (b) allow for the reuse of an industrial byproduct in, among other uses:

5782 (i) landscaping;

5783 (ii) a general geotechnical fill;

5784 (iii) a structural fill;

5785 (iv) concrete or asphalt;

5786 (v) a base or subbase; and

5787 (vi) geotechnical drainage materials; and

5788 (c) promulgate and apply public project specifications that allow reuse of an industrial

5789 byproduct based upon:

5790 (i) cost;

5791 (ii) performance; and

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**