

1                    **DEPARTMENT OF ENVIRONMENTAL QUALITY BOARDS**

2                                    **REVISIONS**

3    2012 GENERAL SESSION

4    STATE OF UTAH

5                                    **Chief Sponsor: Margaret Dayton**

6    House Sponsor: Bill Wright

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8                    **LONG TITLE**

9                    **General Description:**

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

15                    **Highlighted Provisions:**

16                    This bill:

- 17                    ▶ gives rulemaking authority to the Department of Environmental Quality to create  
18                    attendance standards and conflicts of interest procedures for board members and to  
19                    make procedural rules for adjudicative proceedings;
- 20                    ▶ changes the composition of each board created under Title 19, Environmental  
21                    Quality Code;
- 22                    ▶ provides a transition to the new composition of each board created under Title 19,  
23                    Environmental Quality Code;
- 24                    ▶ establishes qualifications for board members;
- 25                    ▶ 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.

38           This bill coordinates with S.B. 11, Department of Environmental Quality Boards  
39 Adjudicative Proceedings, by providing substantive and technical amendments.

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42           **19-1-105**, as enacted by Laws of Utah 1991, Chapter 112
- 43           **19-1-201**, as last amended by Laws of Utah 2010, Chapter 17
- 44           **19-1-301**, as last amended by Laws of Utah 2009, Chapter 377
- 45           **19-2-102**, as last amended by Laws of Utah 2008, Chapter 68
- 46           **19-2-103**, as last amended by Laws of Utah 2010, Chapter 286
- 47           **19-2-104**, as last amended by Laws of Utah 2011, Chapter 174
- 48           **19-2-105**, as last amended by Laws of Utah 2005, Chapter 2
- 49           **19-2-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 50           **19-2-108**, as last amended by Laws of Utah 2009, Chapter 377
- 51           **19-2-109**, as last amended by Laws of Utah 2010, Chapter 90
- 52           **19-2-109.1**, as last amended by Laws of Utah 2011, Chapter 297
- 53           **19-2-109.2**, as last amended by Laws of Utah 2010, Chapters 286 and 324
- 54           **19-2-110**, as last amended by Laws of Utah 2009, Chapter 377
- 55           **19-2-115**, as last amended by Laws of Utah 2011, Chapter 297
- 56           **19-2-116**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 57           **19-2-117**, as renumbered and amended by Laws of Utah 1991, Chapter 112

- 58           **19-2-120**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 59           **19-3-102**, as last amended by Laws of Utah 2001, Chapter 314
- 60           **19-3-103**, as last amended by Laws of Utah 2010, Chapter 286
- 61           **19-3-103.5**, as last amended by Laws of Utah 2009, Chapter 377
- 62           **19-3-104**, as last amended by Laws of Utah 2009, Chapter 183
- 63           **19-3-105**, as last amended by Laws of Utah 2007, Chapter 26
- 64           **19-3-106.4**, as last amended by Laws of Utah 2009, Chapter 183
- 65           **19-3-108**, as enacted by Laws of Utah 1991, Chapter 112
- 66           **19-3-109**, as last amended by Laws of Utah 2008, Chapter 382
- 67           **19-3-111**, as last amended by Laws of Utah 2008, Chapter 382
- 68           **19-4-102**, as last amended by Laws of Utah 2008, Chapter 51
- 69           **19-4-103**, as last amended by Laws of Utah 2010, Chapter 286
- 70           **19-4-104**, as last amended by Laws of Utah 2009, Chapter 377
- 71           **19-4-106**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 72           **19-4-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 73           **19-4-109**, as last amended by Laws of Utah 2008, Chapter 382
- 74           **19-5-102 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapters 155,
- 75 297, and 304
- 76           **19-5-103**, as last amended by Laws of Utah 2010, Chapter 286
- 77           **19-5-104 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapter 304
- 78           **19-5-105.5**, as enacted by Laws of Utah 2011, Chapter 155
- 79           **19-5-106**, as last amended by Laws of Utah 1995, Chapter 114
- 80           **19-5-107**, as last amended by Laws of Utah 1998, Chapter 271
- 81           **19-5-108**, as last amended by Laws of Utah 1995, Chapter 114
- 82           **19-5-111**, as last amended by Laws of Utah 2009, Chapter 377
- 83           **19-5-112**, as last amended by Laws of Utah 2009, Chapter 377
- 84           **19-5-113**, as last amended by Laws of Utah 2008, Chapter 382
- 85           **19-5-114**, as renumbered and amended by Laws of Utah 1991, Chapter 112

86           **19-5-115**, as last amended by Laws of Utah 2011, Chapters 297 and 340  
87           **19-6-102**, as last amended by Laws of Utah 2011, Chapter 366  
88           **19-6-102.1**, as enacted by Laws of Utah 1996, Chapter 230  
89           **19-6-102.6**, as last amended by Laws of Utah 2008, Chapter 382  
90           **19-6-103**, as last amended by Laws of Utah 2010, Chapter 286  
91           **19-6-104**, as last amended by Laws of Utah 2009, Chapter 377  
92           **19-6-105**, as last amended by Laws of Utah 2008, Chapter 382  
93           **19-6-107**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
94           **19-6-108**, as last amended by Laws of Utah 2011, Chapters 133 and 297  
95           **19-6-108.3**, as last amended by Laws of Utah 2008, Chapters 250 and 382  
96           **19-6-109**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
97           **19-6-112**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
98           **19-6-117**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
99           **19-6-119**, as last amended by Laws of Utah 2006, Chapter 251  
100          **19-6-120**, as last amended by Laws of Utah 2010, Chapter 391  
101          **19-6-402**, as last amended by Laws of Utah 2010, Chapter 324  
102          **19-6-403**, as last amended by Laws of Utah 2008, Chapters 56 and 382  
103          **19-6-404**, as last amended by Laws of Utah 1997, Chapter 172  
104          **19-6-405.3**, as last amended by Laws of Utah 2010, Chapter 186  
105          **19-6-405.7**, as last amended by Laws of Utah 2002, Chapter 256  
106          **19-6-407**, as last amended by Laws of Utah 1997, Chapter 172  
107          **19-6-408**, as last amended by Laws of Utah 2009, Chapter 183  
108          **19-6-409**, as last amended by Laws of Utah 2010, Chapter 186  
109          **19-6-411**, as last amended by Laws of Utah 1998, Chapter 95  
110          **19-6-412**, as last amended by Laws of Utah 1997, Chapter 172  
111          **19-6-413**, as last amended by Laws of Utah 2011, Chapter 297  
112          **19-6-414**, as last amended by Laws of Utah 1997, Chapter 172  
113          **19-6-416**, as last amended by Laws of Utah 1999, Chapter 21

- 114           **19-6-416.5**, as enacted by Laws of Utah 1994, Chapter 297
- 115           **19-6-417**, as last amended by Laws of Utah 1997, Chapter 172
- 116           **19-6-418**, as last amended by Laws of Utah 1998, Chapter 255
- 117           **19-6-419**, as last amended by Laws of Utah 2010, Chapter 186
- 118           **19-6-420**, as last amended by Laws of Utah 1998, Chapter 255
- 119           **19-6-421**, as last amended by Laws of Utah 1997, Chapter 172
- 120           **19-6-423**, as last amended by Laws of Utah 2010, Chapter 186
- 121           **19-6-424**, as last amended by Laws of Utah 1997, Chapter 172
- 122           **19-6-424.5**, as last amended by Laws of Utah 1998, Chapter 255
- 123           **19-6-425**, as last amended by Laws of Utah 1997, Chapter 172
- 124           **19-6-428**, as last amended by Laws of Utah 2006, Chapter 107
- 125           **19-6-601**, as enacted by Laws of Utah 1991, Chapter 122 and renumbered and amended
- 126 by Laws of Utah 1991, Chapter 112
- 127           **19-6-606**, as last amended by Laws of Utah 1996, Chapter 79
- 128           **19-6-703**, as last amended by Laws of Utah 2010, Chapter 324
- 129           **19-6-704**, as last amended by Laws of Utah 2009, Chapter 377
- 130           **19-6-705**, as last amended by Laws of Utah 1997, Chapter 186
- 131           **19-6-706**, as last amended by Laws of Utah 2010, Chapter 324
- 132           **19-6-710**, as last amended by Laws of Utah 1997, Chapter 186
- 133           **19-6-711**, as enacted by Laws of Utah 1993, Chapter 283
- 134           **19-6-712**, as last amended by Laws of Utah 2009, Chapter 388
- 135           **19-6-717**, as enacted by Laws of Utah 1993, Chapter 283
- 136           **19-6-718**, as enacted by Laws of Utah 1993, Chapter 283
- 137           **19-6-721**, as last amended by Laws of Utah 2008, Chapter 382
- 138           **19-6-803**, as last amended by Laws of Utah 2008, Chapter 382
- 139           **19-6-804**, as last amended by Laws of Utah 2002, Chapter 256
- 140           **19-6-806**, as last amended by Laws of Utah 2009, Chapter 183
- 141           **19-6-811**, as last amended by Laws of Utah 2002, Chapter 256

- 142           **19-6-817**, as last amended by Laws of Utah 2002, Chapter 256
- 143           **19-6-819**, as last amended by Laws of Utah 2008, Chapter 382
- 144           **19-6-820**, as last amended by Laws of Utah 2001, Chapter 165
- 145           **19-6-821**, as last amended by Laws of Utah 2008, Chapter 382
- 146           **19-6-1002**, as enacted by Laws of Utah 2006, Chapter 187
- 147           **19-6-1003**, as last amended by Laws of Utah 2009, Chapter 183
- 148           **19-6-1004**, as enacted by Laws of Utah 2006, Chapter 187
- 149           **19-6-1005**, as enacted by Laws of Utah 2006, Chapter 187
- 150           **19-6-1102**, as enacted by Laws of Utah 2009, Chapter 340
- 151           **19-6-1104**, as enacted by Laws of Utah 2009, Chapter 340
- 152           **19-8-106**, as enacted by Laws of Utah 1997, Chapter 247
- 153           **19-8-119**, as last amended by Laws of Utah 2009, Chapter 356
- 154           **41-6a-1644**, as last amended by Laws of Utah 2009, Chapter 333
- 155           **59-1-403**, as last amended by Laws of Utah 2011, Chapters 46, 344, and 410
- 156           **72-6-106.5**, as enacted by Laws of Utah 2009, Chapter 340

**Utah Code Sections Affected by Coordination Clause:**

- 158           **19-1-201**, as last amended by Laws of Utah 2010, Chapter 17
- 159           **19-1-301**, as last amended by Laws of Utah 2009, Chapter 377
- 160           **19-1-301.5**, Utah Code Annotated 1953

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

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

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

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

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

Act;

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

Water Act;

170 (c) the Division of Environmental Response and Remediation, to administer;

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

172 and

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

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

175 Control Act;

176 (e) the Division of Solid and Hazardous Waste, to administer;

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

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

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

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

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

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

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

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

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

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

187 (2) Each division is under the immediate direction and control of a division director

188 appointed by the executive director.

189 (3) (a) [~~Each~~] A division director shall possess the [~~necessary~~] administrative skills and

190 training [~~to adequately qualify him for his position~~] necessary to perform the duties of division

191 director. [~~He~~]

192 (b) A division director shall [~~have graduated~~] hold one of the following degrees from

193 an accredited college or university [~~with~~]:

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

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

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

197 (4) [Each director may be removed at the will of the] The executive director may

198 remove a division director at will.

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

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

202 **19-1-201. Powers and duties of department -- Rulemaking authority.**

203 (1) The department shall:

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

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

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

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

216 (ii) delineates the responsibilities of the department and each local health department  
217 for the efficient delivery of environmental programs using federal, state, and local authorities,  
218 responsibilities, and resources;

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

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

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

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



226           (A) board meeting attendance; and  
227           (B) conflicts of interest procedures; and  
228           (ii) rules that govern an adjudicative proceeding, consistent with Section 19-1-301 and  
229 Title 63G, Chapter 4, Administrative Procedures Act.

- 230           (2) The department may:
- 231           (a) investigate matters affecting the environment;
  - 232           (b) investigate and control matters affecting the public health when caused by  
233 environmental hazards;
  - 234           (c) prepare, publish, and disseminate information to inform the public concerning  
235 issues involving environmental quality;
  - 236           (d) establish and operate programs, as authorized by this title, necessary for protection  
237 of the environment and public health from environmental hazards;
  - 238           (e) use local health departments in the delivery of environmental health programs to  
239 the extent provided by law;
  - 240           (f) enter into contracts with local health departments or others to meet responsibilities  
241 established under this title;
  - 242           (g) acquire real and personal property by purchase, gift, devise, and other lawful  
243 means;
  - 244           (h) prepare and submit to the governor a proposed budget to be included in the budget  
245 submitted by the governor to the Legislature;
  - 246           (i) (i) establish a schedule of fees that may be assessed for actions and services of the  
247 department according to the procedures and requirements of Section 63J-1-504; and
  - 248           (ii) in accordance with Section 63J-1-504, all fees shall be reasonable, fair, and reflect  
249 the cost of services provided;
  - 250           (j) prescribe by rule reasonable requirements not inconsistent with law relating to  
251 environmental quality for local health departments;
  - 252           (k) perform the administrative functions of the boards established by Section 19-1-106,  
253 including the acceptance and administration of grants from the federal government and from

254 other sources, public or private, to carry out the board's functions;

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

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

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

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

266 **19-1-301. Adjudicative proceedings.**

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

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

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

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

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

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

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

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

278 (B) this title; and

279 (iii) the Utah Rules of Civil Procedure, in the absence of a procedure established under  
280 Subsection (2)(b)(i) or (ii).

281 (3) [~~An~~] Except as provided in Section 19-2-113, an administrative law judge shall

282 hear a party's request for agency action [~~made to a board created in Section 19-1-106~~].

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

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

285 (b) has a minimum of:

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

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

288 (A) environmental compliance;

289 (B) natural resources;

290 (C) regulation by an administrative agency; or

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

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

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

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

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

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

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

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

303 (i) shall conduct an adjudicative proceeding;

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

305 (iii) shall submit to the [~~board~~] executive director a proposed dispositive action,  
306 including:

307 (A) written findings of fact;

308 (B) written conclusions of law; and

309 (C) a recommended order.

- 310 (b) ~~[A board]~~ The executive director may:
- 311 (i) approve, approve with modifications, or disapprove a proposed dispositive action
- 312 submitted to the ~~[board]~~ executive director under Subsection (6)(a); or
- 313 (ii) return the proposed dispositive action to the administrative law judge for further
- 314 action as directed.
- 315 (c) In making a decision regarding a dispositive action, the executive director may seek
- 316 the advice of, and consult with:
- 317 (i) the assistant attorney general assigned to the department; or
- 318 (ii) a special master who:
- 319 (A) is appointed by the executive director; and
- 320 (B) is an expert in the subject matter of the proposed dispositive action.
- 321 (d) The executive director shall base a final dispositive action on the record of the
- 322 proceeding before the administrative law judge.
- 323 (7) To conduct an adjudicative proceeding, an administrative law judge may:
- 324 (a) compel:
- 325 (i) the attendance of a witness; and
- 326 (ii) the production of a document or other evidence;
- 327 (b) administer an oath;
- 328 (c) take testimony; and
- 329 (d) receive evidence as necessary.
- 330 (8) A party may appear before an administrative law judge in person, through an agent
- 331 or employee, or as provided by ~~[a board]~~ department rule.
- 332 (9) (a) An administrative law judge ~~[or board member]~~ or the executive director may
- 333 not ~~[communicate]~~ participate in an ex parte communication with a party to an adjudicative
- 334 proceeding regarding the merits of the adjudicative proceeding unless notice and an
- 335 opportunity to be heard are afforded to all parties.
- 336 (b) ~~[An]~~ If an administrative law judge or ~~[board member who]~~ the executive director
- 337 receives an ex parte communication, the person who receives the ex parte communication shall

338 place the communication into the public record of the proceedings and afford all parties an  
339 opportunity to comment on the information.

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

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

343 **19-2-102. Definitions.**

344 As used in this chapter:

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

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

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

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

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

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

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

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

365 (b) "Board" means, as used in Sections 19-2-123 through 19-2-126, the Air Quality

366 Board or the Water Quality Board.

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

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

370 (11) "Division" means the Division of Air Quality, created in Subsection  
371 19-1-105(1)(a).

372 [~~(11)~~] (12) (a) "Facility" means machinery, equipment, structures, or any part or  
373 accessories of them, installed or acquired for the primary purpose of controlling or disposing of  
374 air pollution.

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

377 [~~(12)~~] (13) "Friable asbestos-containing material" means any material containing more  
378 than 1% asbestos, as determined using the method adopted in 40 CFR Part 61, Subpart M,  
379 National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce  
380 to powder when dry.

381 [~~(13)~~] (14) "Indirect source" means a facility, building, structure, or installation which  
382 attracts or may attract mobile source activity that results in emissions of a pollutant for which  
383 there is a national standard.

384 [~~(14)~~] (15) (a) "Pollution control facility" or "facility" means, as used in Sections  
385 19-2-123 through 19-2-126, any land, structure, building, installation, excavation, machinery,  
386 equipment, or device, or any addition to, reconstruction, replacement or improvement of, land  
387 or an existing structure, building, installation, excavation, machinery, equipment, or device  
388 reasonably used, erected, constructed, acquired, or installed by any person if the primary  
389 purpose of the use, erection, construction, acquisition, or installation is the prevention, control,  
390 or reduction of air or water pollution by:

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

393 (ii) the disposal, elimination, or reduction of or redesign to eliminate or reduce air

394 contaminants or air pollution or air contamination sources and the use of air cleaning devices.

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

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

399 **19-2-103. Members of board -- Appointment -- Terms -- Organization -- Per diem**  
400 **and expenses.**

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

403 (a) the following non-voting member, except that the member may vote to break a tie  
404 vote between the voting members:

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

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

407 (b) the following eight voting members, who shall be appointed by the governor with  
408 the consent of the Senate[-];

409 (i) one representative who:

410 (A) is not connected with industry;

411 (B) is an expert in air quality matters; and

412 (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist  
413 with relevant training and experience;

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

415 (iii) one representative from the mining industry;

416 (iv) one representative from the fuels industry;

417 (v) one representative from the manufacturing industry;

418 (vi) one representative from the public who represents:

419 (A) an environmental nongovernmental organization; or

420 (B) a nongovernmental organization that represents community interests and does not  
421 represent industry interests; and

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

424 (2) ~~[The members]~~ A member of the board shall:

425 (a) be knowledgeable [of] about air pollution matters [and shall be:], as evidenced by a  
426 professional degree, a professional accreditation, or documented experience;

427 ~~[(a) a practicing physician and surgeon licensed in the state not connected with~~  
428 ~~industry;]~~

429 ~~[(b) a registered professional engineer who is not from industry;]~~

430 ~~[(c) a representative from municipal government;]~~

431 ~~[(d) a representative from county government;]~~

432 ~~[(e) a representative from agriculture;]~~

433 ~~[(f) a representative from the mining industry;]~~

434 ~~[(g) a representative from manufacturing;]~~

435 ~~[(h) a representative from the fuel industry; and]~~

436 ~~[(i) two representatives of the public not representing or connected with industry, at~~  
437 ~~least one of whom represents organized environmental interests.]~~

438 (b) be a resident of Utah;

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

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

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

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

449 ~~[(5) Members serving on the Air Conservation Committee created by Laws of Utah~~



450 1981, Chapter 126, as amended, shall serve as members of the board throughout the terms for  
451 which they were appointed.]

452 ~~[(6)]~~ (5) (a) ~~[Except as required by Subsection (6)(b), members]~~ Members shall be  
453 appointed for a term of four years.

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

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

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

462 ~~[(7)]~~ (6) A member may serve more than one term.

463 ~~[(8)]~~ (7) A member shall hold office until the expiration of the member's term and until  
464 the member's successor is appointed, but not more than 90 days after the expiration of the  
465 member's term.

466 ~~[(9)]~~ (8) When a vacancy occurs in the membership for any reason, the replacement  
467 shall be appointed for the unexpired term.

468 ~~[(10)]~~ (9) The board shall elect annually a chair and a vice chair from its members.

469 ~~[(11)]~~ (10) (a) The board shall meet at least quarterly~~[-, and special].~~

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

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

475 ~~[(12)]~~ (11) ~~[Six]~~ Five members constitute a quorum at any meeting, and the action of a  
476 majority of members present is the action of the board.

477 ~~[(13)]~~ (12) A member may not receive compensation or benefits for the member's

478 service, but may receive per diem and travel expenses in accordance with:

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

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

481 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

482 63A-3-107.

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

484 **19-2-104. Powers of board.**

485 (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah

486 Administrative Rulemaking Act:

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

490 (b) establishing air quality standards;

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

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

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

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

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

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

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

504 (g) establishing requirements for county emissions inspection and maintenance  
505 programs after obtaining agreement from the counties that would be affected by the

506 requirements;

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

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

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

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

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

520 (3) (a) The board may:

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

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

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

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

531 (ii) order the director to:

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

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

534 (C) institute judicial proceedings to secure compliance with this chapter; or  
535 ~~[(e) settle or compromise any civil action initiated to compel compliance with this~~  
536 ~~chapter and the rules made under this chapter;]~~  
537 ~~[(d) secure necessary scientific, technical, administrative, and operational services,~~  
538 ~~including laboratory facilities, by contract or otherwise;]~~  
539 ~~[(e) prepare and develop a comprehensive plan or plans for the prevention, abatement,~~  
540 ~~and control of air pollution in this state;]~~  
541 (iii) advise, consult, contract, and cooperate with other agencies of the state, local  
542 governments, industries, other states, interstate or interlocal agencies, the federal government,  
543 or interested persons or groups.  
544 (b) The board shall:  
545 (i) to ensure compliance with applicable statutes and regulations:  
546 (A) review a settlement negotiated by the director in accordance with Subsection  
547 19-2-107(2)(b)(viii) that requires a civil penalty of \$25,000 or more; and  
548 (B) approve or disapprove the settlement;  
549 ~~[(f)]~~ (ii) encourage voluntary cooperation by persons and affected groups to achieve the  
550 purposes of this chapter;  
551 ~~[(g) encourage local units of government to handle air pollution within their respective~~  
552 ~~jurisdictions on a cooperative basis and provide technical and consultative assistance to them;]~~  
553 ~~[(h) encourage and conduct studies, investigations, and research relating to air~~  
554 ~~contamination and air pollution and their causes, effects, prevention, abatement, and control;]~~  
555 ~~[(i) determine by means of field studies and sampling the degree of air contamination~~  
556 ~~and air pollution in all parts of the state;]~~  
557 ~~[(j) monitor the effects of the emission of air contaminants from motor vehicles on the~~  
558 ~~quality of the outdoor atmosphere in all parts of this state and take appropriate action with~~  
559 ~~respect to them;]~~  
560 ~~[(k) collect and disseminate information and conduct educational and training~~  
561 ~~programs relating to air contamination and air pollution;]~~

562 ~~[(t) advise, consult, contract, and cooperate with other agencies of the state, local~~  
563 ~~governments, industries, other states, interstate or interlocal agencies, the federal government,~~  
564 ~~and with interested persons or groups;]~~

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

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

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

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

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

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

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

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

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

589 ~~[(ii) (B) conduct work described in Subsection (3)[(r)(i)](b)(v)(A) in areas to which~~

590 the general public has unrestrained access or in school buildings that are subject to the federal  
591 Asbestos Hazard Emergency Response Act of 1986;

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

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

596       ~~[(s)]~~ (vi) establish certification requirements for persons required under 15 U.S.C.A.  
597 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency  
598 Response, to be accredited as inspectors, management planners, abatement project designers,  
599 asbestos abatement contractors and supervisors, or asbestos abatement workers;

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

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

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

609       ~~[(w)]~~ (x) establish certification requirements for persons required under 15 U.S.C.A.  
610 2601 et seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited  
611 as inspectors, risk assessors, supervisors, project designers, or abatement workers; and

612       ~~[(x)]~~ (xi) assist the State Board of Education in adopting school bus idling reduction  
613 standards and implementing an idling reduction program in accordance with Section  
614 41-6a-1308.

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

617       (5) Nothing in this chapter authorizes the board to require installation of or payment for

618 any monitoring equipment by the owner or operator of a source if the owner or operator has  
619 installed or is operating monitoring equipment that is equivalent to equipment which the board  
620 would require under this section.

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

623 (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the  
624 following that are subject to the authority granted to the director under Section 19-2-107 or  
625 19-2-108:

626 (a) a permit;

627 (b) a license;

628 (c) a registration;

629 (d) a certification; or

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

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

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

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

636 **19-2-105. Duties of board.**

637 The board, in conjunction with the governing body of each county identified in Section  
638 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the  
639 inspection and maintenance program developed under Section 41-6a-1643 including issues  
640 relating to:

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

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

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

645 (4) use of the farm truck exemption;

- 646 (5) mechanic training programs;
- 647 (6) emissions standards; and
- 648 (7) emissions waivers.

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

650 **19-2-107. Director -- Appointment -- Powers.**

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

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

655 [~~(a) develop programs for the prevention, control, and abatement of new or existing air~~  
656 ~~pollution resources of the state;~~]

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

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

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

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

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

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

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

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



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

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

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

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

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

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

684 (B) requiring the construction of new control facilities or any parts of new control  
 685 facilities or the modification, extension, or alteration of existing control facilities or any parts  
 686 of new control facilities; or

687 (C) adopting other remedial measures to prevent, control, or abate air pollution; and

688 (xiv) as authorized by the board and subject to the provisions of this chapter, act as  
 689 executive secretary of the board under the direction of the chairman of the board.

690 (b) The director may:

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

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

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

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

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

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

705 ~~[(ii) requiring the construction of new control facilities or any parts of new control~~  
706 ~~facilities or the modification, extension, or alteration of existing control facilities or any parts~~  
707 ~~of new control facilities; or]~~

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

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

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

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

716 (A) the efficacy of any proposed control device or proposed control system for the  
717 source; or

718 (B) the air pollution problem that may be related to the source, device, or system;

719 (vii) accept, receive, and administer grants or other funds or gifts from public and  
720 private agencies, including the federal government, for the purpose of carrying out any of the  
721 functions of this chapter;

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

725 ~~[(†)]~~ (ix) as authorized by the board[;] and subject to the provisions of this chapter,  
726 exercise all incidental powers necessary to carry out the purposes of this chapter, including  
727 certification to any state or federal authorities for tax purposes the fact of construction,  
728 installation, or acquisition of any facility, land, building, machinery, or equipment or any part  
729 of them, in conformity with this chapter[;].

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

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

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

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

739 **19-2-108. Notice of construction or modification of installations required --**  
 740 **Authority of director to prohibit construction -- Hearings -- Limitations on authority of**  
 741 **director -- Inspections authorized.**

742 (1) ~~[The board shall require that notice]~~ Notice shall be given to the ~~[executive~~  
 743 ~~secretary]~~ director by any person planning to construct a new installation which will or might  
 744 reasonably be expected to be a source or indirect source of air pollution or to make  
 745 modifications to an existing installation which will or might reasonably be expected to increase  
 746 the amount of or change the character or effect of air contaminants discharged, so that the  
 747 installation may be expected to be a source or indirect source of air pollution, or by any person  
 748 planning to install an air cleaning device or other equipment intended to control emission of air  
 749 contaminants.

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

755 (ii) Plan approval for an indirect source may be delegated by the ~~[executive secretary]~~  
 756 director to a local authority when requested and upon assurance that the local authority has and  
 757 will maintain sufficient expertise to insure that the planned installation will meet the

758 requirements established by law.

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

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

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

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

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

785 (b) (i) A person may not refuse entry or access to any authorized representative of the

786 [~~board~~] director who requests entry for purposes of inspection and who presents appropriate  
787 credentials.

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

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

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

792 **19-2-109. Air quality standards -- Hearings on adoption -- Orders of director --**  
793 **Adoption of emission control requirements.**

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

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

799 (c) The notice shall be:

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

802 (B) published on the Utah Public Notice Website created in Section 63F-1-701, at least  
803 20 days before the public hearing; and

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

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

810 (e) The order shall be published:

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

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

813 (2) (a) The board may establish emission control requirements by rule that in its

814 judgment may be necessary to prevent, abate, or control air pollution that may be statewide or  
815 may vary from area to area, taking into account varying local conditions.

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

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

819 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

855 (b) In establishing the fee the board shall comply with the provisions of Section  
856 63J-1-504 that require a public hearing and require the established fee to be submitted to the  
857 Legislature for its approval as part of the department's annual appropriations request.

858 (c) The fee shall cover all reasonable direct and indirect costs required to develop and  
859 administer the program and the small business assistance program established under Section  
860 19-2-109.2. The ~~[board]~~ director shall prepare an annual report of the emissions fees collected  
861 and the costs covered by those fees under this Subsection (4).

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

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

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

868 (5) Emissions fees ~~[for the period: (a) of July 1, 1992, through June 30, 1993, shall be~~  
869 ~~based on the most recent emissions inventory prepared by the executive secretary; and (b)]~~

870 accrued on and after July 1, 1993, but before issuance of an operating permit, shall be based on  
871 the most recent emissions inventory, unless a source elects prior to July 1, 1992, to base the fee  
872 on allowable emissions, if applicable for a regulated pollutant.

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

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

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

881 (b) revoke the operating permit.

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

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

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

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

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



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

- 902 (a) the applicant;
- 903 (b) any person who participated in the public comment process; or
- 904 (c) any other person who could obtain judicial review of that action under applicable  
905 law.

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

907 **19-2-109.2. Small business assistance program.**

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

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

- 913 (a) two members who are not owners or representatives of owners of small business  
914 stationary air pollution sources, selected by the governor to represent the general public;
- 915 (b) four members who are owners or who represent owners of small business stationary  
916 sources selected by leadership of the Utah Legislature as follows:
  - 917 (i) one member selected by the majority leader of the Senate;
  - 918 (ii) one member selected by the minority leader of the Senate;
  - 919 (iii) one member selected by the majority leader of the House of Representatives; and
  - 920 (iv) one member selected by the minority leader of the House of Representatives; and
- 921 (c) one member selected by the executive director to represent the Division of Air  
922 Quality, Department of Environmental Quality.

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

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

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

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

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

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

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

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

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

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

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

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

946 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
947 63A-3-107.

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

949 **19-2-110. Violations -- Notice to violator -- Corrective action orders --**

950 **Conference, conciliation, and persuasion by director -- Hearings.**

951 (1) ~~(a)~~ Whenever the ~~[executive secretary]~~ director has reason to believe that a  
952 violation of any provision of this chapter or any rule issued under it has occurred, ~~[he]~~ the  
953 director may serve written notice of the violation upon the alleged violator. The notice shall

954 specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute  
955 the violation, and may include an order that necessary corrective action be taken within a  
956 reasonable time.

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

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

962 (3) Hearings may be held before an administrative law judge as provided by Section  
963 19-1-301.

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

965 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

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

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

971 (b) Subsection (2)(a) also applies to rules made under the authority of Section  
972 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,  
973 Subchapter II - Asbestos Hazard Emergency Response.

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

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

980 (a) an applicable standard or limitation;

981 (b) a permit condition; or

982 (c) a fee or filing requirement.

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

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

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

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

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

993 (7) A person who knowingly violates any requirement of an applicable implementation  
994 plan adopted by the board, more than 30 days after having been notified in writing by the  
995 [~~executive secretary~~] director that the person is violating the requirement, knowingly violates  
996 an order issued under Subsection 19-2-110(1)[~~(a)~~], or knowingly handles or disposes of  
997 asbestos in violation of a rule made under this chapter is guilty of a third degree felony and  
998 subject to imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of  
999 violation in the case of the first offense, and not more than \$50,000 per day of violation in the  
1000 case of subsequent offenses.

1001 (8) (a) As used in this section:

1002 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C.  
1003 Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).

1004 (ii) "Organization" means a legal entity, other than a government, established or  
1005 organized for any purpose, and includes a corporation, company, association, firm, partnership,  
1006 joint stock company, foundation, institution, trust, society, union, or any other association of  
1007 persons.

1008 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of  
1009 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or

1010 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

1011 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under  
1012 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with  
1013 criminal negligence:

1014 (A) releases into the ambient air any hazardous air pollutant; and

1015 (B) places another person in imminent danger of death or serious bodily injury.

1016 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is  
1017 carrying out the employee's normal activities and who is not a part of senior management  
1018 personnel or a corporate officer.

1019 (c) A person is guilty of a second degree felony and is subject to imprisonment under  
1020 Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:

1021 (i) knowingly releases into the ambient air any hazardous air pollutant; and

1022 (ii) knows at the time that the person is placing another person in imminent danger of  
1023 death or serious bodily injury.

1024 (d) If a person is an organization, it shall, upon conviction of violating Subsection  
1025 (8)(c), be subject to a fine of not more than \$1,000,000.

1026 (e) (i) A defendant who is an individual is considered to have acted knowingly under  
1027 Subsections (8)(c) and (d), if:

1028 (A) the defendant's conduct placed another person in imminent danger of death or  
1029 serious bodily injury; and

1030 (B) the defendant was aware of or believed that there was an imminent danger of death  
1031 or serious bodily injury to another person.

1032 (ii) Knowledge possessed by a person other than the defendant may not be attributed to  
1033 the defendant.

1034 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual  
1035 knowledge, including evidence that the defendant took affirmative steps to be shielded from  
1036 receiving relevant information.

1037 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the

1038 conduct charged was freely consented to by the person endangered and that the danger and  
1039 conduct charged were reasonably foreseeable hazards of:

1040 (A) an occupation, a business, a profession; or

1041 (B) medical treatment or medical or scientific experimentation conducted by  
1042 professionally approved methods and the other person was aware of the risks involved prior to  
1043 giving consent.

1044 (ii) The defendant has the burden of proof to establish any affirmative defense under  
1045 this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.

1046 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law,  
1047 all penalties assessed and collected under the authority of this section shall be deposited in the  
1048 General Fund.

1049 (b) The department may reimburse itself and local governments from money collected  
1050 from civil penalties for extraordinary expenses incurred in environmental enforcement  
1051 activities.

1052 (c) The department shall regulate reimbursements by making rules in accordance with  
1053 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

1054 (i) define qualifying environmental enforcement activities; and

1055 (ii) define qualifying extraordinary expenses.

1056 Section 15. Section **19-2-116** is amended to read:

1057 **19-2-116. Injunction or other remedies to prevent violations -- Civil actions not**  
1058 **abridged.**

1059 (1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of  
1060 the rules adopted under it or any orders made under it by injunction or other appropriate  
1061 remedy. The [~~board~~] director has the power to institute and maintain in the name of the state  
1062 any and all enforcement proceedings.

1063 (2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect  
1064 substantively or procedurally the right of any person to damages or other relief on account of  
1065 injury to persons or property and to maintain any action or other appropriate proceeding for this

1066 purpose.

1067 (3) (a) In addition to any other remedy created in this chapter, the director may initiate  
1068 an action for appropriate injunctive relief:

1069 (i) upon failure of any person to comply with:

1070 (A) any provision of this chapter [~~or~~];

1071 (B) any rule adopted under [~~it~~] this chapter; or

1072 (C) any final order made by the board, the [~~executive secretary~~] director, or the  
1073 executive director; and

1074 (ii) when it appears necessary for the protection of health and welfare[~~, the board may~~  
1075 ~~initiate through its executive secretary an action for appropriate injunctive relief~~].

1076 (b) The attorney general shall bring injunctive relief actions on request.

1077 (c) A bond is not required.

1078 Section 16. Section **19-2-117** is amended to read:

1079 **19-2-117. Attorney general as legal advisor to board -- Duties of attorney general**  
1080 **and county attorneys.**

1081 (1) The attorney general is the legal advisor to the board and [~~its executive secretary~~]  
1082 the director and shall defend them or any of them in all actions or proceedings brought against  
1083 them or any of them.

1084 (2) The county attorney in the county in which a cause of action arises may, upon  
1085 request of the board or [~~its executive secretary~~] the director, bring any action, civil or criminal,  
1086 to abate a condition which exists in violation of, or to prosecute for the violation of or to  
1087 enforce, this chapter or the standards, orders, or rules of the board or the [~~executive secretary~~]  
1088 director issued under this chapter.

1089 (3) The [~~board or its executive secretary~~] director may bring any action and be  
1090 represented by the attorney general.

1091 (4) In the event any person fails to comply with a cease and desist order of the board or  
1092 [~~its executive secretary~~] the director that is not subject to a stay pending administrative or  
1093 judicial review, the [~~board~~] director may[~~, through its executive secretary,~~] initiate an action

1094 for, and is entitled to, injunctive relief to prevent any further or continued violation of the  
1095 order.

1096 Section 17. Section **19-2-120** is amended to read:

1097 **19-2-120. Information required of owners or operators of air contaminant**  
1098 **sources.**

1099 The owner or operator of any stationary air contaminant source in the state shall furnish  
1100 to the ~~[board]~~ director the reports required ~~[under]~~ by rules made in accordance with Section  
1101 19-2-104 and any other information the ~~[board]~~ director finds necessary to determine whether  
1102 the source is in compliance with state and federal regulations and standards. The information  
1103 shall be correlated with applicable emission standards or limitations and shall be available to  
1104 the public during normal business hours at the office of the ~~[department]~~ division.

1105 Section 18. Section **19-3-102** is amended to read:

1106 **19-3-102. Definitions.**

1107 As used in this chapter:

1108 (1) "Board" means the Radiation Control Board created under Section 19-1-106.

1109 (2) (a) "Broker" means a person who performs one or more of the following functions  
1110 for a generator:

- 1111 (i) arranges for transportation of the radioactive waste;
- 1112 (ii) collects or consolidates shipments of radioactive waste; or
- 1113 (iii) processes radioactive waste in some manner.

1114 (b) "Broker" does not include a carrier whose sole function is to transport the  
1115 radioactive waste.

1116 (3) "Byproduct material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).

1117 (4) "Class B and class C low-level radioactive waste" has the same meaning as in 10  
1118 CFR 61.55.

1119 ~~[(5) "Executive secretary" means the executive secretary of the board.]~~

1120 (5) "Director" means the director of the Division of Radiation Control.

1121 (6) "Division" means the Division of Radiation Control, created in Subsection



1122 19-1-105(1)(d).

1123 [~~(6)~~] (7) "Generator" means a person who:

1124 (a) possesses any material or component:

1125 (i) that contains radioactivity or is radioactively contaminated; and

1126 (ii) for which the person foresees no further use; and

1127 (b) transfers the material or component to:

1128 (i) a commercial radioactive waste treatment or disposal facility; or

1129 (ii) a broker.

1130 [~~(7)~~] (8) (a) "High-level nuclear waste" means spent reactor fuel assemblies,

1131 dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and

1132 defense-related wastes.

1133 (b) "High-level nuclear waste" does not include medical or institutional wastes,

1134 naturally-occurring radioactive materials, or uranium mill tailings.

1135 [~~(8)~~] (9) (a) "Low-level radioactive waste" means waste material which contains

1136 radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or

1137 quantities which exceed applicable federal or state standards for unrestricted release.

1138 (b) "Low-level radioactive waste" does not include waste containing more than 100

1139 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor

1140 material classified as either high-level waste or waste which is unsuited for disposal by

1141 near-surface burial under any applicable federal regulations.

1142 [~~(9)~~] (10) "Radiation" means ionizing and nonionizing radiation, including gamma

1143 rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

1144 [~~(10)~~] (11) "Radioactive" means any solid, liquid, or gas which emits radiation

1145 spontaneously from decay of unstable nuclei.

1146 Section 19. Section **19-3-103** is amended to read:

1147 **19-3-103. Radiation Control Board -- Members -- Organization -- Meetings -- Per**  
1148 **diem and expenses.**

1149 (1) The board [~~created under Section 19-1-106 comprises 13~~] consists of the following

1150 nine members~~[, one of whom shall be]~~;

1151 (a) the following non-voting member, except that the member may vote to break a tie  
1152 vote between the voting members:

1153 (i) the executive director~~[,]; or [his designee, and the remainder of whom shall be]~~

1154 (ii) an employee of the department designated by the executive director; and

1155 (b) the following eight voting members, who shall be appointed by the governor with  
1156 the consent of the Senate~~[,];~~:

1157 (i) one representative who is:

1158 (A) a health physicist; or

1159 (B) a professional employed in the field of radiation safety;

1160 (ii) two government representatives who do not represent the federal government;

1161 (iii) one representative from the radioactive waste management industry;

1162 (iv) one representative from the uranium milling industry;

1163 (v) one representative from the regulated industry who is knowledgeable about  
1164 radiation control regulatory issues;

1165 (vi) one representative from the public who represents:

1166 (A) an environmental nongovernmental organization; or

1167 (B) a nongovernmental organization that represents community interests and does not  
1168 represent industry interests; and

1169 (vii) one representative from the public who is trained and experienced in public  
1170 health.

1171 ~~[(2) No more than six appointed members shall be from the same political party.]~~

1172 ~~[(3)]~~ (2) ~~[The appointed members]~~ A member of the board shall:

1173 (a) be knowledgeable about radiation protection ~~[and shall be as follows:]~~, as

1174 evidenced by a professional degree, a professional accreditation, or documented experience:

1175 ~~[(a) one physician;]~~

1176 ~~[(b) one dentist;]~~

1177 ~~[(c) one health physicist or other professional employed in the field of radiation safety;]~~

1178 ~~[(d) three representatives of regulated industry, at least one of whom represents the~~  
1179 ~~radioactive waste management industry, and at least one of whom represents the uranium~~  
1180 ~~milling industry;]~~

1181 ~~[(e) one registrant or licensee representative from academia;]~~

1182 ~~[(f) one representative of a local health department;]~~

1183 ~~[(g) one elected county official; and]~~

1184 ~~[(h) three members of the general public, at least one of whom represents organized~~  
1185 ~~environmental interests.]~~

1186 (b) be a resident of Utah;

1187 (c) attend board meetings in accordance with the attendance rules made by the  
1188 department under Subsection 19-1-201(1)(d)(i)(A); and

1189 (d) comply with all applicable statutes, rules, and policies, including the conflict of  
1190 interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

1191 (3) No more than five appointed members shall be from the same political party.

1192 ~~(4) (a) [Except as required by Subsection (4)(b), as terms of current board members~~  
1193 ~~expire, the] The governor shall appoint each new member or reappointed member to a~~  
1194 ~~four-year term.~~

1195 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the  
1196 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
1197 board members are staggered so that ~~[approximately]~~ half of the appointed board is appointed  
1198 every two years.

1199 (c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is  
1200 appointed before July 1, 2012, shall expire on June 30, 2012.

1201 (ii) On July 1, 2012, the governor shall appoint or reappoint board members in  
1202 accordance with this section.

1203 (5) Each board member is eligible for reappointment to more than one term.

1204 (6) Each board member shall continue in office until the expiration of his term and  
1205 until a successor is appointed, but not more than 90 days after the expiration of his term.

1206 (7) When a vacancy occurs in the membership for any reason, the replacement shall be  
 1207 appointed for the unexpired term by the governor, after considering recommendations by the  
 1208 department and with the consent of the Senate.

1209 (8) The board shall annually elect a chair and vice chair from its members.

1210 (9) The board shall meet at least quarterly. Other meetings may be called by the chair,  
 1211 by the [~~executive secretary~~] director, or upon the request of three members of the board.

1212 (10) Reasonable notice shall be given each member of the board prior to any meeting.

1213 (11) [~~Seven~~] Five members constitute a quorum. The action of a majority of the  
 1214 members present is the action of the board.

1215 (12) A member may not receive compensation or benefits for the member's service, but  
 1216 may receive per diem and travel expenses in accordance with:

1217 (a) Section 63A-3-106;

1218 (b) Section 63A-3-107; and

1219 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
 1220 63A-3-107.

1221 Section 20. Section **19-3-103.5** is amended to read:

1222 **19-3-103.5. Board authority and duties.**

1223 (1) The board may:

1224 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
 1225 Rulemaking Act, that are necessary to implement the provisions of the Radiation Control Act;

1226 [~~(a) require submittal of specifications or other information relating to licensing~~  
 1227 ~~applications for radioactive materials or registration of radiation sources for review, approval,~~  
 1228 ~~disapproval, or termination;]~~

1229 (b) recommend that the director:

1230 [~~(b)~~] (i) issue orders necessary to enforce the provisions of this part[;];

1231 (ii) enforce the orders by appropriate administrative and judicial proceedings[~~;~~ and]; or

1232 (iii) institute judicial proceedings to secure compliance with this part;

1233 (c) (i) hold a hearing that is not an adjudicative proceeding [and compel the attendance

1234 of witnesses, the production of documents, and other evidence, administer oaths and take  
1235 testimony, and receive evidence it finds proper, or]; or  
1236       (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding[  
1237 and authorize them to exercise the powers under this Subsection (1)];  
1238       [(ii) receive a proposed dispositive action from an administrative law judge as provided  
1239 by Section 19-1-301; and]  
1240       [(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
1241 action; or]  
1242       [(B) return the proposed dispositive action to the administrative law judge for further  
1243 action as directed;]  
1244       [(d) settle or compromise any administrative or civil action initiated to compel  
1245 compliance with this part or any rules adopted under this part;]  
1246       [(e) advise, consult, cooperate with, and provide technical assistance to other agencies  
1247 of the state and federal government, other states, interstate agencies, and affected groups;  
1248 political subdivisions, industries, and other persons in carrying out the provisions of this part;]  
1249       [(f) promote the planning and application of pollution prevention and radioactive waste  
1250 minimization measures to prevent the unnecessary waste and depletion of natural resources;]  
1251       [(g) cooperate with any persons in studies, research, or demonstration projects  
1252 regarding radioactive waste management or control of radiation sources;]  
1253       [(h)] (d) accept, receive, and administer grants or other funds or gifts from public and  
1254 private agencies, including the federal government, for the purpose of carrying out any of the  
1255 functions of this part; or  
1256       [(i) exercise all incidental powers necessary to carry out the purposes of this part;]  
1257       [(j) submit an application to the U.S. Food and Drug Administration for approval as an  
1258 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of  
1259 1992;]  
1260       [(k) accredit mammography facilities, pursuant to approval as an accrediting body from  
1261 the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography

1262 ~~Quality Standards Act of 1992; and]~~

1263  ~~[(f) review the qualifications of and issue certificates of approval to individuals who~~  
1264  ~~survey mammography equipment and oversee quality assurance practices at mammography~~  
1265  ~~facilities;]~~

1266 (e) order the director to impound radioactive material in accordance with Section  
1267 19-3-111.

1268 (2) The board shall:

1269  ~~[(a) receive a proposed dispositive action from an administrative law judge on an~~  
1270  ~~appeal of final decisions made by the executive secretary as provided by Section 19-1-301;]~~

1271  ~~[(b)]~~ (a) prepare a radioactive waste management plan in compliance with Section  
1272 19-3-107 as soon as practicable;  ~~[and]~~

1273  ~~[(c) impound radioactive material as authorized in Section 19-3-111;]~~

1274  ~~[(3) Representatives of the board upon presentation of appropriate credentials may~~  
1275  ~~enter at reasonable times upon the premises of public and private properties subject to~~  
1276  ~~regulation under this part to perform inspections to insure compliance with this part and rules~~  
1277  ~~made by the board;]~~

1278 (b) promote the planning and application of pollution prevention and radioactive waste  
1279 minimization measures to prevent the unnecessary waste and depletion of natural resources;

1280 (c) to ensure compliance with applicable statutes and regulations:

1281 (i) review a settlement negotiated by the director in accordance with Subsection  
1282 19-3-108(3)(b) that requires a civil penalty of \$25,000 or more; and

1283 (ii) approve or disapprove the settlement;

1284 (d) submit an application to the U.S. Food and Drug Administration for approval as an  
1285 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of  
1286 1992;

1287 (e) accredit mammography facilities, pursuant to approval as an accrediting body from  
1288 the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography  
1289 Quality Standards Act of 1992; and

1290 (f) review the qualifications of, and issue certificates of approval to, individuals who:

1291 (i) survey mammography equipment; or

1292 (ii) oversee quality assurance practices at mammography facilities.

1293 (3) The board may not issue, amend, renew, modify, revoke, or terminate any of the

1294 following that are subject to the authority granted to the director under Section 19-3-108:

1295 (a) a permit;

1296 (b) a license;

1297 (c) a registration;

1298 (d) a certification; or

1299 (e) another administrative authorization made by the director.

1300 (4) A board member may not speak or act for the board unless the board member is

1301 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

1302 Section 21. Section **19-3-104** is amended to read:

1303 **19-3-104. Registration and licensing of radiation sources by department --**

1304 **Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.**

1305 (1) As used in this section:

1306 (a) "Decommissioning" includes financial assurance.

1307 (b) "Source material" and "byproduct material" have the same definitions as in 42

1308 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

1309 (2) The [~~board~~] division may require the registration or licensing of radiation sources  
1310 that constitute a significant health hazard.

1311 (3) All sources of ionizing radiation, including ionizing radiation producing machines,  
1312 shall be registered or licensed by the department.

1313 (4) The board may make rules:

1314 (a) necessary for controlling exposure to sources of radiation that constitute a  
1315 significant health hazard;

1316 (b) to meet the requirements of federal law relating to radiation control to ensure the  
1317 radiation control program under this part is qualified to maintain primacy from the federal

1318 government;

1319 (c) to establish:

1320 (i) board accreditation requirements and procedures for mammography facilities; and

1321 (ii) certification procedure and qualifications for persons who survey mammography

1322 equipment and oversee quality assurance practices at mammography facilities; and

1323 (d) as necessary regarding the possession, use, transfer, or delivery of source and

1324 byproduct material and the disposal of byproduct material to establish requirements for:

1325 (i) the licensing, operation, decontamination, and decommissioning, including financial

1326 assurances; and

1327 (ii) the reclamation of sites, structures, and equipment used in conjunction with the

1328 activities described in this Subsection (4).

1329 (5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and

1330 byproduct material and the disposal of byproduct material at uranium mills or commercial

1331 waste facilities, as provided in this Subsection (5).

1332 (b) On and after January 1, 2003 through March 30, 2003:

1333 (i) \$6,667 per month for uranium mills or commercial sites disposing of or

1334 reprocessing byproduct material; and

1335 (ii) \$4,167 per month for those uranium mills the ~~[executive secretary]~~ director has

1336 determined are on standby status.

1337 (c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection

1338 (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an

1339 amendment for agreement state status for uranium recovery regulation on or before March 30,

1340 2003.

1341 (d) If the Nuclear Regulatory Commission does not grant the amendment for state

1342 agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and

1343 are not required to be paid until on and after the later date of:

1344 (i) October 1, 2003; or

1345 (ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for



1346 agreement state status for uranium recovery regulation.

1347 (e) For the payment periods beginning on and after July 1, 2003, the department shall  
1348 establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the  
1349 restrictions under Subsection (5)(d).

1350 (f) The [~~department~~] division shall deposit fees it receives under this Subsection (5)  
1351 into the Environmental Quality Restricted Account created in Section 19-1-108.

1352 (6) (a) The [~~department~~] division shall assess fees for registration, licensing, and  
1353 inspection of radiation sources under this section.

1354 (b) The [~~department~~] division shall comply with the requirements of Section 63J-1-504  
1355 in assessing fees for licensure and registration.

1356 (7) The [~~department~~] division shall coordinate its activities with the Department of  
1357 Health rules made under Section 26-21a-203.

1358 (8) (a) Except as provided in Subsection (9), the board may not adopt rules, for the  
1359 purpose of the state assuming responsibilities from the United States Nuclear Regulatory  
1360 Commission with respect to regulation of sources of ionizing radiation, that are more stringent  
1361 than the corresponding federal regulations which address the same circumstances.

1362 (b) In adopting those rules, the board may incorporate corresponding federal  
1363 regulations by reference.

1364 (9) (a) The board may adopt rules more stringent than corresponding federal  
1365 regulations for the purpose described in Subsection (8) only if it makes a written finding after  
1366 public comment and hearing and based on evidence in the record that corresponding federal  
1367 regulations are not adequate to protect public health and the environment of the state.

1368 (b) Those findings shall be accompanied by an opinion referring to and evaluating the  
1369 public health and environmental information and studies contained in the record which form  
1370 the basis for the board's conclusion.

1371 (10) (a) The board shall by rule:

1372 (i) authorize independent qualified experts to conduct inspections required under this  
1373 chapter of x-ray facilities registered with the division; and

1374 (ii) establish qualifications and certification procedures necessary for independent  
1375 experts to conduct these inspections.

1376 (b) Independent experts under this Subsection (10) are not considered employees or  
1377 representatives of the division or the state when conducting the inspections.

1378 (11) (a) The board may by rule establish criteria for siting commercial low-level  
1379 radioactive waste treatment or disposal facilities, subject to the prohibition imposed by Section  
1380 19-3-103.7.

1381 (b) Subject to Subsection 19-3-105(10), any facility under Subsection (11)(a) for which  
1382 a radioactive material license is required by this section shall comply with those criteria.

1383 (c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive  
1384 material license until siting criteria have been established by the board. The criteria also apply  
1385 to facilities that have applied for but not received a radioactive material license.

1386 (12) The board shall by rule establish financial assurance requirements for closure and  
1387 postclosure care of radioactive waste land disposal facilities, taking into account existing  
1388 financial assurance requirements.

1389 Section 22. Section **19-3-105** is amended to read:

1390 **19-3-105. Definitions -- Legislative and gubernatorial approval required for**  
1391 **radioactive waste license -- Exceptions -- Application for new, renewed, or amended**  
1392 **license.**

1393 (1) As used in this section:

1394 (a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

1395 (b) (i) "Class A low-level radioactive waste" means:

1396 (A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

1397 (B) radium-226 up to a maximum radionuclide concentration level of 10,000  
1398 picocuries per gram.

1399 (ii) "Class A low-level radioactive waste" does not include:

1400 (A) uranium mill tailings;

1401 (B) naturally occurring radioactive materials; or

1402 (C) the following radionuclides if classified as "special nuclear material" under the  
1403 Atomic Energy Act of 1954, 42 U.S.C. 2014:

1404 (I) uranium-233; and

1405 (II) uranium-235 with a radionuclide concentration level greater than the concentration  
1406 limits for specific conditions and enrichments established by an order of the Nuclear  
1407 Regulatory Commission:

1408 (Aa) to ensure criticality safety for a radioactive waste facility in the state; and

1409 (Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive  
1410 waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special  
1411 nuclear material exemption order.

1412 (c) (i) "Radioactive waste facility" or "facility" means a facility that receives, transfers,  
1413 stores, decays in storage, treats, or disposes of radioactive waste:

1414 (A) commercially for profit; or

1415 (B) generated at locations other than the radioactive waste facility.

1416 (ii) "Radioactive waste facility" does not include a facility that receives:

1417 (A) alternate feed material for reprocessing; or

1418 (B) radioactive waste from a location in the state designated as a processing site under  
1419 42 U.S.C. 7912(f).

1420 (d) "Radioactive waste license" or "license" means a radioactive material license issued  
1421 by the [~~executive secretary~~] director under Subsection 19-3-108(2)[~~(c)(i)~~](d), to own, construct,  
1422 modify, or operate a radioactive waste facility.

1423 (2) The provisions of this section are subject to the prohibition under Section  
1424 19-3-103.7.

1425 (3) Subject to Subsection (10), a person may not own, construct, modify, or operate a  
1426 radioactive waste facility without:

1427 (a) having received a radioactive waste license for the facility;

1428 (b) meeting the requirements established by rule under Section 19-3-104;

1429 (c) the approval of the governing body of the municipality or county responsible for

1430 local planning and zoning where the radioactive waste is or will be located; and

1431 (d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the  
1432 approval of the governor and the Legislature.

1433 (4) Subject to Subsection (10), a new radioactive waste license application, or an  
1434 application to renew or amend an existing radioactive waste license, is subject to the  
1435 requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

1436 (a) specifies a different geographic site than a previously submitted application;

1437 (b) would cost 50% or more of the cost of construction of the original radioactive  
1438 waste facility or the modification would result in an increase in capacity or throughput of a  
1439 cumulative total of 50% of the total capacity or throughput which was approved in the facility  
1440 license as of January 1, 1990, or the initial approval facility license if the initial license  
1441 approval is subsequent to January 1, 1990; or

1442 (c) requests approval to receive, transfer, store, decay in storage, treat, or dispose of  
1443 radioactive waste having a higher radionuclide concentration limit than allowed, under an  
1444 existing approved license held by the facility, for the specific type of waste to be received,  
1445 transferred, stored, decayed in storage, treated, or disposed of.

1446 (5) The requirements of Subsection (4)(c) do not apply to an application to renew or  
1447 amend an existing radioactive waste license if:

1448 (a) the radioactive waste facility requesting the renewal or amendment has received a  
1449 license prior to January 1, 2004; and

1450 (b) the application to renew or amend its license is limited to a request to approve the  
1451 receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level  
1452 radioactive waste.

1453 (6) A radioactive waste facility which receives a new radioactive waste license after  
1454 May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license  
1455 application, renewal, or amendment that requests approval to receive, transfer, store, decay in  
1456 storage, treat, or dispose of radioactive waste not previously approved under an existing license  
1457 held by the facility.

1458 (7) If the board finds that approval of additional radioactive waste license applications,  
1459 renewals, or amendments will result in inadequate oversight, monitoring, or licensure  
1460 compliance and enforcement of existing and any additional radioactive waste facilities, the  
1461 board shall suspend acceptance of further applications for radioactive waste licenses. The  
1462 board shall report the suspension to the Legislative Management Committee.

1463 (8) The ~~[board]~~ director shall review each proposed radioactive waste license  
1464 application to determine whether the application complies with the provisions of this chapter  
1465 and the rules of the board.

1466 (9) (a) If the radioactive waste license application is determined to be complete, the  
1467 ~~[board]~~ director shall issue a notice of completeness.

1468 (b) If the ~~[board]~~ director determines that the radioactive waste license application is  
1469 incomplete, the ~~[board]~~ director shall issue a notice of deficiency, listing the additional  
1470 information to be provided by the applicant to complete the application.

1471 (10) The requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(11) do  
1472 not apply to:

1473 (a) a radioactive waste license that is in effect on December 31, 2006, including all  
1474 amendments to the license that have taken effect as of December 31, 2006;

1475 (b) a license application for a facility in existence as of December 31, 2006, unless the  
1476 license application includes an area beyond the facility boundary approved in the license  
1477 described in Subsection (10)(a); or

1478 (c) an application to renew or amend a license described in Subsection (10)(a), unless  
1479 the renewal or amendment includes an area beyond the facility boundary approved in the  
1480 license described in Subsection (10)(a).

1481 Section 23. Section **19-3-106.4** is amended to read:

1482 **19-3-106.4. Generator site access permits.**

1483 (1) A generator or broker may not transfer radioactive waste to a commercial  
1484 radioactive waste treatment or disposal facility in the state without first obtaining a generator  
1485 site access permit from the ~~[executive secretary]~~ director.

1486 (2) The board may make rules pursuant to Section 19-3-104 governing a generator site  
1487 access permit program.

1488 (3) (a) Except as provided in Subsection (3)(b), the ~~[department]~~ division shall  
1489 establish fees for generator site access permits in accordance with Section 63J-1-504.

1490 (b) On and after July 1, 2001 through June 30, 2002, the fees are:

1491 (i) \$1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per  
1492 year;

1493 (ii) \$500 for generators transferring less than 1,000 cubic feet of radioactive waste per  
1494 year; and

1495 (iii) \$5,000 for brokers.

1496 (c) The ~~[department]~~ division shall deposit fees received under this section into the  
1497 Environmental Quality Restricted Account created in Section 19-1-108.

1498 (4) This section does not apply to a generator or broker transferring radioactive waste  
1499 to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

1500 Section 24. Section **19-3-108** is amended to read:

1501 **19-3-108. Powers and duties of director.**

1502 (1) The executive director shall appoint ~~[an executive secretary, with the approval of~~  
1503 ~~the board, to]~~ the director. The director shall serve under the administrative direction of the  
1504 executive director.

1505 (2) The ~~[executive secretary may]~~ director shall:

1506 (a) develop programs to promote and protect the public from radiation sources in the  
1507 state;

1508 (b) advise, consult, ~~[and]~~ cooperate with, and provide technical assistance to other  
1509 agencies, states, the federal government, political subdivisions, industries, and other ~~[groups to~~  
1510 ~~further the purposes of this chapter]~~ persons in carrying out the provisions of the Radiation  
1511 Control Act;

1512 ~~[(c) as authorized by the board:]~~

1513 (c) receive specifications or other information relating to licensing applications for

1514 radioactive materials or registration of radiation sources for review, approval, disapproval, or  
1515 termination;

1516 [(i)] (d) issue permits, licenses, registrations, [and] certifications, and other  
1517 administrative authorizations;

1518 [(ii)] (e) review and approve plans;

1519 [(iii) enforce rules through the issuance of orders and]

1520 (f) assess penalties in accordance with Section 19-3-109;

1521 [(iv)] (g) impound radioactive material under Section 19-3-111; [and]

1522 [(v) 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 (h) issue orders necessary to enforce the provisions of this part, enforce the orders by  
1526 appropriate administrative and judicial proceedings, or institute judicial proceedings to secure  
1527 compliance with this part; and

1528 (i) as authorized by the board and subject to the provisions of this chapter, act as  
1529 executive secretary of the board under the direction of the chairman of the board.

1530 (3) The director may:

1531 (a) cooperate with any person in studies, research, or demonstration projects regarding  
1532 radioactive waste management or control of radiation sources;

1533 (b) subject to Subsection 19-3-103.5(2)(c), settle or compromise any civil action  
1534 initiated by the division to compel compliance with this chapter or the rules made under this  
1535 chapter; or

1536 (c) authorize employees or representatives of the department to enter, at reasonable  
1537 times and upon reasonable notice, in and upon public or private property for the purpose of  
1538 inspecting and investigating conditions and records concerning radiation sources.

1539 Section 25. Section **19-3-109** is amended to read:

1540 **19-3-109. Civil penalties -- Appeals.**

1541 (1) A person who violates any provision of Sections 19-3-104 through 19-3-113, any

1542 rule or order issued under the authority of those sections, or the terms of a license, permit, or  
1543 registration certificate issued under the authority of those sections is subject to a civil penalty  
1544 not to exceed \$5,000 for each violation.

1545 (2) The ~~[board]~~ director may assess and make a demand for payment of a penalty under  
1546 this section and may compromise or remit that penalty.

1547 (3) In order to make demand for payment of a penalty assessed under this section, the  
1548 ~~[board]~~ director shall issue a notice of agency action, specifying, in addition to the  
1549 requirements for notices of agency action contained in Title 63G, Chapter 4, Administrative  
1550 Procedures Act:

1551 (a) the date, facts, and nature of each act or omission charged;

1552 (b) the provision of the statute, rule, order, license, permit, or registration certificate  
1553 that is alleged to have been violated;

1554 (c) each penalty that the ~~[bureau]~~ director proposes to impose, together with the  
1555 amount and date of effect of that penalty; and

1556 (d) that failure to pay the penalty or respond may result in a civil action for collection.

1557 (4) A person notified according to Subsection (3) may request an adjudicative  
1558 proceeding.

1559 (5) Upon request by the ~~[board]~~ director, the attorney general may institute a civil  
1560 action to collect a penalty imposed under this section.

1561 (6) (a) Except as provided in Subsection (6)(b), the department shall deposit all money  
1562 collected from civil penalties imposed under this section into the General Fund.

1563 (b) The department may reimburse itself and local governments from money collected  
1564 from civil penalties for extraordinary expenses incurred in environmental enforcement  
1565 activities.

1566 (c) The department shall regulate reimbursements by making rules that:

1567 (i) define qualifying environmental enforcement activities; and

1568 (ii) define qualifying extraordinary expenses.

1569 Section 26. Section **19-3-111** is amended to read:



1570 **19-3-111. Impounding of radioactive material.**

1571 (1) The ~~[board]~~ director may impound the radioactive material of any person if:

1572 (a) the material poses an imminent threat or danger to the public health or safety; or

1573 (b) that person is violating:

1574 (i) any provision of Sections 19-3-104 through 19-3-113;

1575 (ii) any rules or orders enacted or issued under the authority of those sections; or

1576 (iii) the terms of a license, permit, or registration certificate issued under the authority

1577 of those sections.

1578 (2) Before any dispositive action may be taken with regard to impounded radioactive

1579 materials, the ~~[board]~~ director shall comply with the procedures and requirements of Title 63G,

1580 Chapter 4, Administrative Procedures Act and Section 19-1-301.

1581 Section 27. Section **19-4-102** is amended to read:

1582 **19-4-102. Definitions.**

1583 As used in this chapter:

1584 (1) "Board" means the Drinking Water Board appointed under Section 19-4-103.

1585 (2) "Contaminant" means a physical, chemical, biological, or radiological substance or

1586 matter in water.

1587 ~~[(3) "Executive secretary" means the executive secretary of the board.]~~

1588 (3) "Director" means the director of the Division of Drinking Water.

1589 (4) "Division" means the Division of Drinking Water, created in Subsection

1590 19-1-105(1)(b).

1591 ~~[(4)]~~ (5) (a) "Groundwater source" means an underground opening from or through

1592 which groundwater flows or is pumped from a subsurface water-bearing formation.

1593 (b) "Groundwater source" includes:

1594 (i) a well;

1595 (ii) a spring;

1596 (iii) a tunnel; or

1597 (iv) an adit.

1598           ~~[(5)]~~ (6) "Maximum contaminant level" means the maximum permissible level of a  
1599 contaminant in water that is delivered to a user of a public water system.

1600           ~~[(6)]~~ (7) (a) "Public water system" means a system providing water for human  
1601 consumption and other domestic uses that:

- 1602           (i) has at least 15 service connections; or
- 1603           (ii) serves an average of 25 individuals daily for at least 60 days of the year.

1604           (b) "Public water system" includes:

- 1605           (i) a collection, treatment, storage, or distribution facility under the control of the  
1606 operator and used primarily in connection with the system; and
- 1607           (ii) a collection, pretreatment, or storage facility used primarily in connection with the  
1608 system but not under the operator's control.

1609           ~~[(7)]~~ (8) "Retail water supplier" means a person that:

- 1610           (a) supplies water for human consumption and other domestic uses to an end user; and
- 1611           (b) has more than 500 service connections.

1612           ~~[(8)]~~ (9) "Supplier" means a person who owns or operates a public water system.

1613           ~~[(9)]~~ (10) "Wholesale water supplier" means a person that provides most of that  
1614 person's water to a retail water supplier.

1615           Section 28. Section **19-4-103** is amended to read:

1616           **19-4-103. Drinking Water Board -- Members -- Organization -- Meetings -- Per**  
1617 **diem and expenses.**

1618           (1) The board ~~[created under Section 19-1-106 comprises 11 members, one of whom~~  
1619 ~~is]~~ consists of the following nine members:

1620           (a) the following non-voting member, except that the member may vote to break a tie  
1621 vote between the voting members:

- 1622           (i) the executive director [and the remainder of whom]; or
- 1623           (ii) an employee of the department designated by the executive director; and

1624           (b) the following eight voting members, who shall be appointed by the governor with  
1625 the consent of the Senate[-];

- 1626 (i) one representative who is a Utah-licensed professional engineer with expertise in
- 1627 civil or sanitary engineering;
- 1628 (ii) two representatives who are elected officials from a municipal government that is
- 1629 involved in the management or operation of a public water system;
- 1630 (iii) one representative from an improvement district, a water conservancy district, or a
- 1631 metropolitan water district;
- 1632 (iv) one representative from an entity that manages or operates a public water system;
- 1633 (v) one representative from:
- 1634 (A) the state water research community; or
- 1635 (B) an institution of higher education that has comparable expertise in water research
- 1636 to the state water research community;
- 1637 (vi) one representative from the public who represents:
- 1638 (A) an environmental nongovernmental organization; or
- 1639 (B) a nongovernmental organization that represents community interests and does not
- 1640 represent industry interests; and
- 1641 (vii) one representative from the public who is trained and experienced in public
- 1642 health.
- 1643 ~~[(2) No more than five appointed members shall be from the same political party.]~~
- 1644 ~~[(3)]~~ (2) ~~[The appointed members]~~ A member of the board shall:
- 1645 (a) be knowledgeable about drinking water and public water systems [and shall], as
- 1646 evidenced by a professional degree, a professional accreditation, or documented experience;
- 1647 (b) represent different geographical areas within the state insofar as practicable[-];
- 1648 (c) be a resident of Utah;
- 1649 (d) attend board meetings in accordance with the attendance rules made by the
- 1650 department under Subsection 19-1-201(1)(d)(i)(A); and
- 1651 (e) comply with all applicable statutes, rules, and policies, including the conflict of
- 1652 interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).
- 1653 (3) No more than five appointed members of the board shall be from the same political

1654 party.

1655 ~~[(4) The 10 appointed members shall be appointed from the following areas:]~~

1656 ~~[(a) two elected officials of municipal government or their representatives involved in~~  
1657 ~~management or operation of public water systems;]~~

1658 ~~[(b) two representatives of improvement districts, water conservancy districts, or~~  
1659 ~~metropolitan water districts;]~~

1660 ~~[(c) one representative from an industry which manages or operates a public water~~  
1661 ~~system;]~~

1662 ~~[(d) one registered professional engineer with expertise in civil or sanitary~~  
1663 ~~engineering;]~~

1664 ~~[(e) one representative from the state water research community or from an institution~~  
1665 ~~of higher education which has comparable expertise in water research;]~~

1666 ~~[(f) two representatives of the public who do not represent other interests named in this~~  
1667 ~~section and who do not receive, and have not received during the past two years, a significant~~  
1668 ~~portion of their income, directly or indirectly, from suppliers; and]~~

1669 ~~[(g) one representative from a local health department.]~~

1670 ~~[(5) (a) Members of the Utah Safe Drinking Water Committee created by Laws of Utah~~  
1671 ~~1981, Chapter 126, shall serve as members of the board throughout the terms for which they~~  
1672 ~~were appointed.]~~

1673 ~~[(b) Except as required by Subsection (5)(c), as]~~

1674 (4) (a) As terms of current board members expire, the governor shall appoint each new  
1675 member or reappointed member to a four-year term.

1676 ~~[(e)]~~ (b) Notwithstanding the requirements of Subsection ~~[(5)(b)]~~ (4)(a), the governor  
1677 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the  
1678 terms of board members are staggered so that ~~[approximately]~~ half of the appointed board is  
1679 appointed every two years.

1680 (c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is  
1681 appointed before May 1, 2013, shall expire on April 30, 2013.

1682 (ii) On May 1, 2013, the governor shall appoint or reappoint board members in  
1683 accordance with this section.

1684 [~~(6)~~] (5) When a vacancy occurs in the membership for any reason, the replacement  
1685 shall be appointed for the unexpired term.

1686 [~~(7)~~] (6) Each member holds office until the expiration of the member's term, and until  
1687 a successor is appointed, but not for more than 90 days after the expiration of the term.

1688 [~~(8)~~] (7) The board shall elect annually a chair and a vice chair from its members.

1689 [~~(9)~~] (8) (a) The board shall meet at least quarterly.

1690 (b) Special meetings may be called by the chair upon [~~his~~] the chair's own initiative,  
1691 upon the request of the [~~executive secretary~~] director, or upon the request of three members of  
1692 the board.

1693 (c) Reasonable notice shall be given to each member of the board [~~prior to~~] before any  
1694 meeting.

1695 [~~(10) Six~~] (9) Five members constitute a quorum at any meeting and the action of the  
1696 majority of the members present is the action of the board.

1697 [~~(11)~~] (10) A member may not receive compensation or benefits for the member's  
1698 service, but may receive per diem and travel expenses in accordance with:

1699 (a) Section 63A-3-106;

1700 (b) Section 63A-3-107; and

1701 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
1702 63A-3-107.

1703 Section 29. Section **19-4-104** is amended to read:

1704 **19-4-104. Powers of board.**

1705 (1) (a) The board may[~~-(a)~~] make rules in accordance with Title 63G, Chapter 3, Utah  
1706 Administrative Rulemaking Act:

1707 (i) establishing standards that prescribe the maximum contaminant levels in any public  
1708 water system and provide for monitoring, record-keeping, and reporting of water quality related  
1709 matters;

1710 (ii) governing design, construction, operation, and maintenance of public water  
1711 systems;

1712 (iii) granting variances and exemptions to the requirements established under this  
1713 chapter that are not less stringent than those allowed under federal law;

1714 (iv) protecting watersheds and water sources used for public water systems; and

1715 (v) governing capacity development in compliance with Section 1420 of the federal  
1716 Safe Drinking Water Act, 42 U.S.C.A. Sec. 300f et seq.;

1717 (b) The board may:

1718 (i) order the director to:

1719 ~~[(b)]~~ (A) issue orders necessary to enforce the provisions of this chapter~~[-];~~;

1720 (B) enforce the orders by appropriate administrative and judicial proceedings~~[-and];~~ or

1721 (C) institute judicial proceedings to secure compliance with this chapter;

1722 ~~[(c)-(i)]~~ (ii) (A) hold a hearing that is not an adjudicative proceeding relating to the  
1723 administration of this chapter ~~[and compel the attendance of witnesses, the production of~~  
1724 ~~documents and other evidence, administer oaths and take testimony, and receive evidence as~~  
1725 ~~necessary];~~ or

1726 ~~[(i)]~~ (B) appoint hearing officers to conduct a hearing that is not an adjudicative  
1727 proceeding ~~[and authorize them to exercise powers under Subsection (1)(c)(i)];~~ or

1728 ~~[(iii)]~~ receive a proposed dispositive action from an administrative law judge as  
1729 provided by Section 19-1-301; and]

1730 ~~[(iv) (A)]~~ approve, approve with modifications, or disapprove a proposed dispositive  
1731 action; ~~or]~~

1732 ~~[(B)]~~ return the proposed dispositive action to the administrative law judge for further  
1733 action as directed;]

1734 ~~[(d)]~~ require the submission to the executive secretary of plans and specifications for  
1735 construction of, substantial addition to, or alteration of public water systems for review and  
1736 approval by the board before that action begins and require any modifications or impose any  
1737 conditions that may be necessary to carry out the purposes of this chapter;]

1738 ~~[(e) advise, consult, cooperate with, provide technical assistance to, and enter into~~  
1739 ~~agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,~~  
1740 ~~municipalities, local health departments, educational institutions, or others necessary to carry~~  
1741 ~~out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of~~  
1742 ~~local jurisdictions;]~~

1743 ~~[(f) (iii) request and accept financial assistance from other public agencies, private~~  
1744 ~~entities, and the federal government to carry out the purposes of this chapter[;].~~

1745 ~~[(g) develop and implement an emergency plan to protect the public when declining~~  
1746 ~~drinking water quality or quantity creates a serious health risk and issue emergency orders if a~~  
1747 ~~health risk is imminent;]~~

1748 ~~[(h) authorize employees or agents of the department, after reasonable notice and~~  
1749 ~~presentation of credentials, to enter any part of a public water system at reasonable times to~~  
1750 ~~inspect the facilities and water quality records required by board rules, conduct sanitary~~  
1751 ~~surveys, take samples, and investigate the standard of operation and service delivered by public~~  
1752 ~~water systems;]~~

1753 ~~[(i) meet the requirements of federal law related or pertaining to drinking water; and]~~

1754 ~~[(j) exercise all other incidental powers necessary to carry out the purpose of this~~  
1755 ~~chapter.]~~

1756 (c) The board shall:

1757 (i) require the submission to the director of plans and specifications for construction of,  
1758 substantial addition to, or alteration of public water systems for review and approval by the  
1759 board before that action begins and require any modifications or impose any conditions that  
1760 may be necessary to carry out the purposes of this chapter;

1761 (ii) advise, consult, cooperate with, provide technical assistance to, and enter into  
1762 agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,  
1763 municipalities, local health departments, educational institutions, and others necessary to carry  
1764 out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of  
1765 local jurisdictions;

1766 (iii) develop and implement an emergency plan to protect the public when declining  
1767 drinking water quality or quantity creates a serious health risk and issue emergency orders if a  
1768 health risk is imminent; and

1769 (iv) meet the requirements of federal law related or pertaining to drinking water.

1770 (2) (a) The board may adopt and enforce standards and establish fees for certification  
1771 of operators of any public water system.

1772 (b) The board may not require certification of operators for a water system serving a  
1773 population of 800 or less except:

1774 (i) to the extent required for compliance with Section 1419 of the federal Safe Drinking  
1775 Water Act, 42 U.S.C.A. 300f et seq.; and

1776 (ii) for a system that is required to treat its drinking water.

1777 (c) The certification program shall be funded from certification and renewal fees.

1778 (3) Routine extensions or repairs of existing public water systems that comply with the  
1779 rules and do not alter the system's ability to provide an adequate supply of water are exempt  
1780 from the provisions of Subsection (1)~~(c)~~(i).

1781 (4) (a) The board may adopt and enforce standards and establish fees for certification  
1782 of persons engaged in administering cross connection control programs or backflow prevention  
1783 assembly training, repair, and maintenance testing.

1784 (b) The certification program shall be funded from certification and renewal fees.

1785 (5) A board member may not speak or act for the board unless the board member is  
1786 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

1787 Section 30. Section **19-4-106** is amended to read:

1788 **19-4-106. Director -- Appointment -- Authority.**

1789 ~~[An executive secretary to the board shall be appointed by the executive director, with~~  
1790 ~~the approval of the board, and serve under the direction of the executive director. The~~  
1791 ~~executive secretary may:]~~

1792 (1) The executive director shall appoint the director. The director shall serve under the  
1793 administrative direction of the executive director.



1794           (2) The director shall:  
1795           ~~[(1)]~~ (a) develop programs to promote and protect the quality of the public drinking  
1796 water supplies of the state;  
1797           ~~[(2)]~~ (b) advise, consult, and cooperate with other agencies of this and other states, the  
1798 federal government, and with other groups, political subdivisions, and industries in furtherance  
1799 of the purpose of this chapter;  
1800           ~~[(3)]~~ (c) review plans, specifications, and other data pertinent to proposed or expanded  
1801 water supply systems to ~~[insure]~~ ensure proper design and construction; and  
1802           ~~[(4) as authorized by the board and]~~  
1803           (d) subject to the provisions of this chapter, enforce rules made by the board through  
1804 the issuance of orders which may be subsequently revoked, which rules may require:  
1805           ~~[(a)]~~ (i) discontinuance of use of unsatisfactory sources of drinking water;  
1806           ~~[(b)]~~ (ii) suppliers to notify the public concerning the need to boil water; ~~[and]~~ or  
1807           ~~[(c)]~~ (iii) suppliers in accordance with existing rules, to take remedial actions necessary  
1808 to protect or improve an existing water system~~[-]; and~~  
1809           (e) as authorized by the board and subject to the provisions of this chapter, act as  
1810 executive secretary of the board under the direction of the chairman of the board.  
1811           (3) The director may authorize employees or agents of the department, after reasonable  
1812 notice and presentation of credentials, to enter any part of a public water system at reasonable  
1813 times to inspect the facilities and water quality records required by board rules, conduct  
1814 sanitary surveys, take samples, and investigate the standard of operation and service delivered  
1815 by public water systems.

1816           Section 31. Section **19-4-107** is amended to read:

1817           **19-4-107. Notice of violation of rule or order -- Action by attorney general.**

1818           (1) Upon discovery of any violation of a rule or order of the board, the board or ~~[its~~  
1819 ~~executive secretary]~~ the director shall promptly notify the supplier of the violation, state the  
1820 nature of the violation, and issue an order requiring correction of that violation or the filing of a  
1821 request for variance or exemption by a specific date.

1822 (2) The attorney general shall, upon request of the [~~board~~] director, commence an  
1823 action for an injunction or other relief relative to the order.

1824 Section 32. Section **19-4-109** is amended to read:

1825 **19-4-109. Violations -- Penalties -- Reimbursement for expenses.**

1826 (1) Any person that violates any rule or order made or issued pursuant to this chapter is  
1827 subject to a civil penalty of not more than \$1,000 per day for each day of violation. The board  
1828 may assess and make a demand for payment of a penalty under this section by directing the  
1829 [~~executive secretary~~] director to issue a notice of agency action under Title 63G, Chapter 4,  
1830 Administrative Procedures Act.

1831 (2) (a) Any person that willfully violates any rule or order made or issued pursuant to  
1832 this chapter, or that willfully fails to take any corrective action required by such an order, is  
1833 guilty of a class B misdemeanor and subject to a fine of not more than \$5,000 per day for each  
1834 day of violation.

1835 (b) In addition, the person is subject, in a civil proceeding, to a penalty of not more  
1836 than \$5,000 per day for each day of violation.

1837 (3) (a) Except as provided in Subsection (3)(b), all penalties assessed and collected  
1838 under the authority of this section shall be deposited in the General Fund.

1839 (b) The department may reimburse itself and local governments from money collected  
1840 from civil penalties for extraordinary expenses incurred in environmental enforcement  
1841 activities.

1842 (c) The department shall regulate reimbursements by making rules that:

1843 (i) define qualifying environmental enforcement activities; and

1844 (ii) define qualifying extraordinary expenses.

1845 Section 33. Section **19-5-102 (Effective 07/01/12)** is amended to read:

1846 **19-5-102 (Effective 07/01/12). Definitions.**

1847 As used in this chapter:

1848 (1) "Agriculture discharge":

1849 (a) means the release of agriculture water from the property of a farm, ranch, or feed lot

1850 that:

1851 (i) pollutes a surface body of water, including a stream, lake, pond, marshland,  
1852 watercourse, waterway, river, ditch, and other water conveyance system of the state;

1853 (ii) pollutes the ground water of the state; or

1854 (iii) constitutes a significant nuisance on urban land; and

1855 (b) does not include:

1856 (i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land  
1857 that is not part of a body of water; or

1858 (ii) a release into a normally dry water conveyance to an active body of water, unless  
1859 the release reaches the water of a lake, pond, stream, marshland, river, or other active body of  
1860 water.

1861 (2) "Agriculture water" means:

1862 (a) water used by a farmer, rancher, or feed lot for the production of food, fiber, or fuel;

1863 (b) return flows from irrigated agriculture; and

1864 (c) agricultural storm water runoff.

1865 (3) "Board" means the Water Quality Board created in Section 19-1-106.

1866 (4) "Commission" means the Conservation Commission created in Section 4-18-4.

1867 (5) "Contaminant" means any physical, chemical, biological, or radiological substance  
1868 or matter in water.

1869 (6) "Director" means the director of the Division of Water Quality or, for purposes of  
1870 groundwater quality at a facility licensed by and under the jurisdiction of the Division of  
1871 Radiation Control, the director of the Division of Radiation Control.

1872 [~~(6)~~] (7) "Discharge" means the addition of any pollutant to any waters of the state.

1873 [~~(7)~~] (8) "Discharge permit" means a permit issued to a person who:

1874 (a) discharges or whose activities would probably result in a discharge of pollutants  
1875 into the waters of the state; or

1876 (b) generates or manages sewage sludge.

1877 [~~(8)~~] (9) "Disposal system" means a system for disposing of wastes, and includes

1878 sewerage systems and treatment works.

1879 (10) "Division" means the Division of Water Quality, created in Subsection  
1880 19-1-105(1)(f).

1881 [~~9~~] (11) "Effluent limitations" means any restrictions, requirements, or prohibitions,  
1882 including schedules of compliance established under this chapter which apply to discharges.

1883 [~~10~~] "Executive secretary" means the executive secretary of the board.]

1884 [~~11~~] (12) "Point source":

1885 (a) means any discernible, confined, and discrete conveyance, including any pipe,  
1886 ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated  
1887 animal feeding operation, or vessel or other floating craft, from which pollutants are or may be  
1888 discharged; and

1889 (b) does not include return flows from irrigated agriculture.

1890 [~~12~~] (13) "Pollution" means any man-made or man-induced alteration of the  
1891 chemical, physical, biological, or radiological integrity of any waters of the state, unless the  
1892 alteration is necessary for the public health and safety.

1893 [~~13~~] (14) "Publicly owned treatment works" means any facility for the treatment of  
1894 pollutants owned by the state, its political subdivisions, or other public entity.

1895 [~~14~~] (15) "Schedule of compliance" means a schedule of remedial measures,  
1896 including an enforceable sequence of actions or operations leading to compliance with this  
1897 chapter.

1898 [~~15~~] (16) "Sewage sludge" means any solid, semisolid, or liquid residue removed  
1899 during the treatment of municipal wastewater or domestic sewage.

1900 [~~16~~] (17) "Sewerage system" means pipelines or conduits, pumping stations, and all  
1901 other constructions, devices, appurtenances, and facilities used for collecting or conducting  
1902 wastes to a point of ultimate disposal.

1903 [~~17~~] (18) "Total maximum daily load" means a calculation of the maximum amount  
1904 of a pollutant that a body of water can receive and still meet water quality standards.

1905 [~~18~~] (19) "Treatment works" means any plant, disposal field, lagoon, dam, pumping

1906 station, incinerator, or other works used for the purpose of treating, stabilizing, or holding  
1907 wastes.

1908 ~~[(19)]~~ (20) "Underground injection" means the subsurface emplacement of fluids by  
1909 well injection.

1910 ~~[(20)]~~ (21) "Underground wastewater disposal system" means a system for disposing of  
1911 domestic wastewater discharges as defined by the board and the executive director.

1912 ~~[(21)]~~ (22) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator  
1913 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,  
1914 radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and  
1915 industrial, municipal, and agricultural waste discharged into water.

1916 ~~[(22)]~~ (23) "Waters of the state":

1917 (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs,  
1918 irrigation systems, drainage systems, and all other bodies or accumulations of water, surface  
1919 and underground, natural or artificial, public or private, which are contained within, flow  
1920 through, or border upon this state or any portion of the state; and

1921 (b) does not include bodies of water confined to and retained within the limits of  
1922 private property, and which do not develop into or constitute a nuisance, a public health hazard,  
1923 or a menace to fish or wildlife.

1924 Section 34. Section **19-5-103** is amended to read:

1925 **19-5-103. Water Quality Board -- Members of board -- Appointment -- Terms --**  
1926 **Organization -- Meetings -- Per diem and expenses.**

1927 (1) The board ~~[comprises]~~ consists of the following nine members:

1928 (a) the following non-voting member, except that the member may vote to break a tie  
1929 vote between the voting members:

1930 (i) the executive director ~~[and 11 members]~~; or

1931 (ii) an employee of the department designated by the executive director; and

1932 (b) the following eight voting members, who shall be appointed by the governor with  
1933 the consent of the Senate[-];

- 1934 (i) one representative who:
- 1935 (A) is not connected with industry;
- 1936 (B) is an expert in water quality matters; and
- 1937 (C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist
- 1938 with relevant training and experience;
- 1939 (ii) two government representatives who do not represent the federal government;
- 1940 (iii) one representative from the mineral industry;
- 1941 (iv) one representative from the manufacturing industry;
- 1942 (v) one representative who represents agricultural and livestock interests;
- 1943 (vi) one representative from the public who represents:
- 1944 (A) an environmental nongovernmental organization; or
- 1945 (B) a nongovernmental organization that represents community interests and does not
- 1946 represent industry interests; and
- 1947 (vii) one representative from the public who is trained and experienced in public
- 1948 health.
- 1949 ~~[(2) No more than six of the appointed members may be from the same political party.]~~
- 1950 ~~[(3) The appointed members, insofar as practicable, shall include the following:]~~
- 1951 ~~[(a) one member representing the mineral industry;]~~
- 1952 ~~[(b) one member representing the food processing industry;]~~
- 1953 ~~[(c) one member representing another manufacturing industry;]~~
- 1954 ~~[(d) two members who are officials of a municipal government or the officials'~~
- 1955 ~~representative involved in the management or operation of a wastewater treatment facility;]~~
- 1956 ~~[(e) one member representing agricultural and livestock interests;]~~
- 1957 ~~[(f) one member representing fish, wildlife, and recreation interests;]~~
- 1958 ~~[(g) one member representing an improvement or special service district;]~~
- 1959 ~~[(h) two members at large, one of whom represents organized environmental interests;~~
- 1960 ~~selected with due consideration of the areas of the state affected by water pollution and not~~
- 1961 ~~representing other interests named in this Subsection (3); and]~~

1962            ~~[(i) one member representing a local health department.]~~  
1963            (2) A member of the board shall:  
1964            (a) be knowledgeable about water quality matters, as evidenced by a professional  
1965 degree, a professional accreditation, or documented experience;  
1966            (b) be a resident of Utah;  
1967            (c) attend board meetings in accordance with the attendance rules made by the  
1968 department under Subsection 19-1-201(1)(d)(i)(A); and  
1969            (d) comply with all applicable statutes, rules, and policies, including the conflict of  
1970 interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).  
1971            (3) No more than five of the appointed members may be from the same political party.  
1972            (4) When a vacancy occurs in the membership for any reason, the replacement shall be  
1973 appointed for the unexpired term with the consent of the Senate.  
1974            (5) (a) ~~[Except as required by Subsection (5)(b), a]~~ A member shall be appointed for a  
1975 term of four years and is eligible for reappointment.  
1976            (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the  
1977 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
1978 board members are staggered so that ~~[approximately]~~ half of the appointed board is appointed  
1979 every two years.  
1980            (c) (i) Notwithstanding Subsection (5)(a), the term of a board member who is  
1981 appointed before March 1, 2013, shall expire on February 28, 2013.  
1982            (ii) On March 1, 2013, the governor shall appoint or reappoint board members in  
1983 accordance with this section.  
1984            (6) A member shall hold office until the expiration of the member's term and until the  
1985 member's successor is appointed, not to exceed 90 days after the formal expiration of the term.  
1986            (7) The board shall:  
1987            (a) organize and annually select one of its members as chair and one of its members as  
1988 vice chair;  
1989            (b) hold at least four regular meetings each calendar year; and

1990 (c) keep minutes of its proceedings which are open to the public for inspection.

1991 (8) The chair may call a special meeting upon the request of three or more members of  
1992 the board.

1993 (9) Each member of the board and the [~~executive secretary~~] director shall be notified of  
1994 the time and place of each meeting.

1995 (10) [~~Seven~~] Five members of the board constitute a quorum for the transaction of  
1996 business, and the action of a majority of members present is the action of the board.

1997 (11) A member may not receive compensation or benefits for the member's service, but  
1998 may receive per diem and travel expenses in accordance with:

1999 (a) Section 63A-3-106;

2000 (b) Section 63A-3-107; and

2001 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
2002 63A-3-107.

2003 Section 35. Section **19-5-104 (Effective 07/01/12)** is amended to read:

2004 **19-5-104 (Effective 07/01/12). Powers and duties of board.**

2005 [~~(1) The board has the following powers and duties:~~]

2006 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2007 board may make rules that:

2008 (a) taking into account Subsection (6):

2009 (i) implement the awarding of construction loans to political subdivisions and  
2010 municipal authorities under Section 11-8-2, including:

2011 (A) requirements pertaining to applications for loans;

2012 (B) requirements for determination of eligible projects;

2013 (C) requirements for determination of the costs upon which loans are based, which  
2014 costs may include engineering, financial, legal, and administrative expenses necessary for the

2015 construction, reconstruction, and improvement of sewage treatment plants, including major  
2016 interceptors, collection systems, and other facilities appurtenant to the plant;

2017 (D) a priority schedule for awarding loans, in which the board may consider, in



2018 addition to water pollution control needs, any financial needs relevant, including per capita  
2019 cost, in making a determination of priority; and  
2020 (E) requirements for determination of the amount of the loan;  
2021 (ii) implement the awarding of loans for nonpoint source projects pursuant to Section  
2022 73-10c-4.5;  
2023 (iii) set effluent limitations and standards subject to Section 19-5-116;  
2024 (iv) implement or effectuate the powers and duties of the board; and  
2025 (v) protect the public health for the design, construction, operation, and maintenance of  
2026 underground wastewater disposal systems, liquid scavenger operations, and vault and earthen  
2027 pit privies;  
2028 (b) govern inspection, monitoring, recordkeeping, and reporting requirements for  
2029 underground injections and require permits for underground injections, to protect drinking  
2030 water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and  
2031 oil, recognizing that underground injection endangers drinking water sources if:  
2032 (i) injection may result in the presence of any contaminant in underground water that  
2033 supplies or can reasonably be expected to supply any public water system, as defined in Section  
2034 19-4-102; and  
2035 (ii) the presence of the contaminant may:  
2036 (A) result in the public water system not complying with any national primary drinking  
2037 water standards; or  
2038 (B) otherwise adversely affect the health of persons;  
2039 (c) govern sewage sludge management, including permitting, inspecting, monitoring,  
2040 recordkeeping, and reporting requirements; and  
2041 (d) notwithstanding the provisions of Section 19-4-112, govern design and construction  
2042 of irrigation systems that:  
2043 (i) convey sewage treatment facility effluent of human origin in pipelines under  
2044 pressure, unless contained in surface pipes wholly on private property and for agricultural  
2045 purposes; and

2046 (ii) are constructed after May 4, 1998.

2047 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
2048 the board shall adopt and enforce rules and establish fees to cover the costs of testing for  
2049 certification of operators of treatment works and sewerage systems operated by political  
2050 subdivisions.

2051 (b) In establishing certification rules under Subsection (2)(a), the board shall:

2052 (i) base the requirements for certification on the size, treatment process type, and  
2053 complexity of the treatment works and sewerage systems operated by political subdivisions;

2054 (ii) allow operators until three years after the date of adoption of the rules to obtain  
2055 initial certification;

2056 (iii) allow a new operator one year from the date the operator is hired by a treatment  
2057 plant or sewerage system or three years after the date of adoption of the rules, whichever occurs  
2058 later, to obtain certification;

2059 (iv) issue certification upon application and without testing, at a grade level  
2060 comparable to the grade of current certification to operators who are currently certified under  
2061 the voluntary certification plan for wastewater works operators as recognized by the board; and

2062 (v) issue a certification upon application and without testing that is valid only at the  
2063 treatment works or sewerage system where that operator is currently employed if the operator:

2064 (A) is in charge of and responsible for the treatment works or sewerage system on  
2065 March 16, 1991;

2066 (B) has been employed at least 10 years in the operation of that treatment works or  
2067 sewerage system before March 16, 1991; and

2068 (C) demonstrates to the board the operator's capability to operate the treatment works  
2069 or sewerage system at which the operator is currently employed by providing employment  
2070 history and references as required by the board.

2071 (3) The board shall:

2072 (a) develop programs for the prevention, control, and abatement of new or existing  
2073 pollution of the waters of the state;

2074           ~~[(b) advise, consult, and cooperate with other agencies of the state, the federal~~  
2075 ~~government, other states, and interstate agencies, and with affected groups, political~~  
2076 ~~subdivisions, and industries to further the purposes of this chapter;]~~

2077           ~~[(c) encourage, participate in, or conduct studies, investigations, research, and~~  
2078 ~~demonstrations relating to water pollution and causes of water pollution as the board finds~~  
2079 ~~necessary to discharge its duties;]~~

2080           ~~[(d) collect and disseminate information relating to water pollution and the prevention,~~  
2081 ~~control, and abatement of water pollution;]~~

2082           ~~[(e)]~~ (b) adopt, modify, or repeal standards of quality of the waters of the state and  
2083 classify those waters according to their reasonable uses in the interest of the public under  
2084 conditions the board may prescribe for the prevention, control, and abatement of pollution;

2085           ~~[(f) make rules in accordance with Title 63G, Chapter 3, Utah Administrative~~  
2086 ~~Rulemaking Act, taking into account Subsection (3), to:]~~

2087           ~~[(i) implement the awarding of construction loans to political subdivisions and~~  
2088 ~~municipal authorities under Section 11-8-2, including:]~~

2089           ~~[(A) requirements pertaining to applications for loans;]~~

2090           ~~[(B) requirements for determination of eligible projects;]~~

2091           ~~[(C) requirements for determination of the costs upon which loans are based, which~~  
2092 ~~costs may include engineering, financial, legal, and administrative expenses necessary for the~~  
2093 ~~construction, reconstruction, and improvement of sewage treatment plants, including major~~  
2094 ~~interceptors, collection systems, and other facilities appurtenant to the plant;]~~

2095           ~~[(D) a priority schedule for awarding loans, in which the board may consider in~~  
2096 ~~addition to water pollution control needs any financial needs relevant, including per capita cost,~~  
2097 ~~in making a determination of priority, and]~~

2098           ~~[(E) requirements for determination of the amount of the loan;]~~

2099           ~~[(ii) implement the awarding of loans for nonpoint source projects pursuant to Section~~  
2100 ~~73-10c-4.5;]~~

2101           ~~[(iii) set effluent limitations and standards subject to Section 19-5-116;]~~

- 2102 ~~[(iv) implement or effectuate the powers and duties of the board; and]~~  
2103 ~~[(v) protect the public health for the design, construction, operation, and maintenance~~  
2104 ~~of underground wastewater disposal systems, liquid scavenger operations, and vault and~~  
2105 ~~earthen pit privies;]~~
- 2106 (c) give reasonable consideration in the exercise of its powers and duties to the  
2107 economic impact of water pollution control on industry and agriculture;
- 2108 (d) meet the requirements of federal law related to water pollution;
- 2109 (e) establish and conduct a continuing planning process for control of water pollution,  
2110 including the specification and implementation of maximum daily loads of pollutants;
- 2111 (f) (i) approve, approve in part, approve with conditions, or deny, in writing, an  
2112 application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;
- 2113 (ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater  
2114 Reuse Act;
- 2115 (g) (i) review all total daily maximum load reports and recommendations for water  
2116 quality end points and implementation strategies developed by the division before submission  
2117 of the report, recommendation, or implementation strategy to the EPA;
- 2118 (ii) disapprove, approve, or approve with conditions all staff total daily maximum load  
2119 recommendations; and
- 2120 (iii) provide suggestions for further consideration to the Division of Water Quality in  
2121 the event a total daily maximum load strategy is rejected; and
- 2122 (h) to ensure compliance with applicable statutes and regulations:
- 2123 (i) review a settlement negotiated by the director in accordance with Subsection  
2124 19-5-106(2)(k) that requires a civil penalty of \$25,000 or more; and
- 2125 (ii) approve or disapprove the settlement.
- 2126 (4) The board may:
- 2127 ~~[(g)]~~ (a) order the director to issue, modify, or revoke orders:
- 2128 (i) prohibiting or abating discharges;
- 2129 (ii) requiring the construction of new treatment works or any parts of them, or requiring

2130 the modification, extension, or alteration of existing treatment works as specified by board rule  
2131 or any parts of them, or the adoption of other remedial measures to prevent, control, or abate  
2132 pollution;

2133 (iii) setting standards of water quality, classifying waters or evidencing any other  
2134 determination by the board under this chapter; ~~[and] or~~

2135 (iv) requiring compliance with this chapter and with rules made under this chapter;  
2136 ~~[(h) (i) review plans, specifications, or other data relative to disposal systems or any~~  
2137 ~~part of disposal systems;]~~

2138 ~~[(ii) issue construction or operating permits for the installation or modification of~~  
2139 ~~treatment works or any parts of the treatment works; and]~~

2140 (b) advise, consult, and cooperate with other agencies of the state, the federal  
2141 government, other states, or interstate agencies, or with affected groups, political subdivisions,  
2142 or industries to further the purposes of this chapter; or

2143 ~~[(iii)]~~ (c) delegate the authority to issue an operating permit to a local health  
2144 department[;].

2145 ~~[(i) after public notice and opportunity for a public hearing, issue, continue in effect,~~  
2146 ~~revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe~~  
2147 ~~to;]~~

2148 ~~[(i) control the management of sewage sludge; or]~~

2149 ~~[(ii) prevent or control the discharge of pollutants, including effluent limitations for the~~  
2150 ~~discharge of wastes into the waters of the state;]~~

2151 ~~[(j) give reasonable consideration in the exercise of its powers and duties to the~~  
2152 ~~economic impact of water pollution control on industry and agriculture;]~~

2153 ~~[(k) exercise all incidental powers necessary to carry out the purposes of this chapter,~~  
2154 ~~including delegation to the department of its duties as appropriate to improve administrative~~  
2155 ~~efficiency;]~~

2156 ~~[(l) meet the requirements of federal law related to water pollution;]~~

2157 ~~[(m) establish and conduct a continuing planning process for control of water pollution~~

2158 including the specification and implementation of maximum daily loads of pollutants;]  
2159       ~~[(n) make rules governing inspection, monitoring, recordkeeping, and reporting~~  
2160 ~~requirements for underground injections and require permits for them, to protect drinking water~~  
2161 ~~sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil,~~  
2162 ~~recognizing that underground injection endangers drinking water sources if:]~~  
2163       ~~[(i) injection may result in the presence of any contaminant in underground water that~~  
2164 ~~supplies or can reasonably be expected to supply any public water system, as defined in Section~~  
2165 ~~19-4-102; and]~~  
2166       ~~[(ii) the presence of the contaminant may:]~~  
2167       ~~[(A) result in the public water system not complying with any national primary~~  
2168 ~~drinking water standards; or]~~  
2169       ~~[(B) otherwise adversely affect the health of persons;]~~  
2170       ~~[(o) make rules governing sewage sludge management, including permitting,~~  
2171 ~~inspecting, monitoring, recordkeeping, and reporting requirements;]~~  
2172       ~~[(p) adopt and enforce rules and establish fees to cover the costs of testing for~~  
2173 ~~certification of operators of treatment works and sewerage systems operated by political~~  
2174 ~~subdivisions;]~~  
2175       ~~[(q) notwithstanding the provisions of Section 19-4-112, make rules governing design~~  
2176 ~~and construction of irrigation systems that:]~~  
2177       ~~[(i) convey sewage treatment facility effluent of human origin in pipelines under~~  
2178 ~~pressure, unless contained in surface pipes wholly on private property and for agricultural~~  
2179 ~~purposes; and]~~  
2180       ~~[(ii) are constructed after May 4, 1998;]~~  
2181       ~~[(r) (i) approve, approve in part, approve with conditions, or deny, in writing, an~~  
2182 ~~application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;]~~  
2183       ~~[(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater~~  
2184 ~~Reuse Act; and]~~  
2185       ~~[(s) (i) review all total daily maximum load reports and recommendations for water~~

2186 ~~quality end points and implementation strategies developed by the division before submission~~  
2187 ~~of the report, recommendation, or implementation strategy to the EPA;]~~

2188 ~~[(ii) disapprove, approve, or approve with conditions all staff total daily maximum load~~  
2189 ~~recommendations; and]~~

2190 ~~[(iii) provide suggestions for further consideration to the Division of Water Quality in~~  
2191 ~~the event a total daily maximum load strategy is rejected.]~~

2192 ~~[(2)] (5) In performing the duties listed in [Subsection] Subsections (1) through (4), the~~  
2193 ~~board shall give priority to pollution that results in a hazard to the public health.~~

2194 ~~[(3)] (6) The board shall take into consideration the availability of federal grants:~~

2195 ~~(a) in determining eligible project costs; and~~

2196 ~~(b) in establishing priorities pursuant to Subsection [(1)(f)(i)] (1)(a)(i).~~

2197 ~~[(4) In establishing certification rules under Subsection (1)(p), the board shall:]~~

2198 ~~[(a) base the requirements for certification on the size, treatment process type, and~~  
2199 ~~complexity of the treatment works and sewerage systems operated by political subdivisions;]~~

2200 ~~[(b) allow operators until three years after the date of adoption of the rules to obtain~~  
2201 ~~initial certification;]~~

2202 ~~[(c) allow a new operator one year from the date the operator is hired by a treatment~~  
2203 ~~plant or sewerage system or three years after the date of adoption of the rules, whichever occurs~~  
2204 ~~later, to obtain certification;]~~

2205 ~~[(d) issue certification upon application and without testing, at a grade level~~  
2206 ~~comparable to the grade of current certification to operators who are currently certified under~~  
2207 ~~the voluntary certification plan for wastewater works operators as recognized by the board;~~  
2208 ~~and]~~

2209 ~~[(e) issue a certification upon application and without testing that is valid only at the~~  
2210 ~~treatment works or sewerage system where that operator is currently employed if the operator:]~~

2211 ~~[(i) is in charge of and responsible for the treatment works or sewerage system on~~  
2212 ~~March 16, 1991;]~~

2213 ~~[(ii) has been employed at least 10 years in the operation of that treatment works or~~

2214 sewerage system prior to March 16, 1991; and]

2215 [~~(iii) demonstrates to the board the operator's capability to operate the treatment works~~  
2216 ~~or sewerage system at which the operator is currently employed by providing employment~~  
2217 ~~history and references as required by the board.]~~

2218 (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the  
2219 following that are subject to the authority granted to the director under Section 19-5-106:

2220 (a) a permit;

2221 (b) a license;

2222 (c) a registration;

2223 (d) a certification; or

2224 (e) another administrative authorization made by the director.

2225 (8) A board member may not speak or act for the board unless the board member is  
2226 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

2227 Section 36. Section **19-5-105.5** is amended to read:

2228 **19-5-105.5. Agriculture water.**

2229 (1) (a) The board shall draft any rules relating to agriculture water in cooperation with  
2230 the commission.

2231 (b) The commission shall advise the board before the board may adopt rules relating to  
2232 agriculture water.

2233 (2) A program or rule adopted by the board for agriculture production or irrigation  
2234 water shall:

2235 (a) be consistent with the federal Clean Water Act; and

2236 (b) if possible, be developed in a voluntary cooperative program with the agriculture  
2237 producer associations and the commission.

2238 (3) (a) The board's authority to regulate a discharge is subject to Subsection (3)(b)  
2239 relating to an agriculture discharge.

2240 (b) (i) A person responsible for an agriculture discharge shall mitigate the resulting  
2241 damage in a reasonable manner, as approved by the [~~executive secretary~~] director after



2242 consulting with the commission chair.

2243 (ii) A penalty imposed on an agriculture discharge shall be proportionate to the  
2244 seriousness of the resulting harm, as determined by the ~~[executive secretary]~~ director in  
2245 consultation with the commission chair.

2246 (iii) An agriculture producer may not be held liable for an agriculture discharge  
2247 resulting from a large weather event if the agriculture producer has taken reasonable measures,  
2248 as the board defines by rule, to prevent an agriculture discharge.

2249 Section 37. Section **19-5-106** is amended to read:

2250 **19-5-106. Director -- Appointment -- Duties.**

2251 ~~[The executive secretary shall be appointed by the executive director with the approval~~  
2252 ~~of the board, shall serve under the administrative direction of the executive director, and has~~  
2253 ~~the following duties:]~~

2254 (1) The executive director shall appoint the director. The director shall serve under the  
2255 administrative direction of the executive director.

2256 (2) The director shall:

2257 ~~[(1) to]~~ (a) develop programs for the prevention, control, and abatement of new or  
2258 existing pollution of the waters of the state;

2259 ~~[(2) to]~~ (b) advise, consult, and cooperate with other agencies of the state, the federal  
2260 government, other states and interstate agencies, and with affected groups, political  
2261 subdivisions, and industries in furtherance of the purposes of this chapter;

2262 ~~[(3) to employ full-time employees as necessary to carry out the provisions of this~~  
2263 ~~chapter;]~~

2264 ~~[(4) as authorized by the board and subject to the provisions of this chapter, to~~  
2265 ~~authorize any employee or representative of the department to enter at reasonable times and~~  
2266 ~~upon reasonable notice in or upon public or private property for the purposes of inspecting and~~  
2267 ~~investigating conditions and plant records concerning possible water pollution;]~~

2268 ~~[(5) to encourage, participate in, or conduct studies, investigations, research, and~~  
2269 ~~demonstrations relating to water pollution and causes of water pollution as necessary for the~~

2270 discharge of duties assigned under this chapter, including the establishment of inventories of  
2271 pollution sources;]

2272 ~~[(6) to collect and disseminate information relating to water pollution and the~~  
2273 ~~prevention, control, and abatement of water pollution;]~~

2274 ~~[(7) to] (c) develop programs for the management of sewage sludge;~~  
2275 ~~[(8) as authorized by the board and]~~

2276 (d) subject to the provisions of this chapter, ~~[to]~~ enforce rules made by the board  
2277 through the issuance of orders ~~[which may be subsequently amended or revoked by the board],~~  
2278 which orders may include:

2279 ~~[(a)] (i) prohibiting or abating discharges of wastes into the waters of the state;~~  
2280 ~~[(b)] (ii) requiring the construction of new control facilities or any parts of them or the~~  
2281 ~~modification, extension, or alteration of existing control facilities or any parts of them, or the~~  
2282 ~~adoption of other remedial measures to prevent, control, or abate water pollution; [and] or~~  
2283 ~~[(c)] (iii) prohibiting any other violation of this chapter or rules made under this~~  
2284 ~~chapter;~~

2285 ~~[(9) to] (e) review plans, specifications, or other data relative to pollution control~~  
2286 ~~systems or any part of the systems provided for in this chapter;~~

2287 (f) issue construction or operating permits for the installation or modification of  
2288 treatment works or any parts of the treatment works;

2289 (g) after public notice and opportunity for public hearing, issue, continue in effect,  
2290 renew, revoke, modify, or deny discharge permits under reasonable conditions the board may  
2291 prescribe to:

2292 (i) control the management of sewage sludge; or  
2293 (ii) prevent or control the discharge of pollutants, including effluent limitations for the  
2294 discharge of wastes into the waters of the state;

2295 (h) meet the requirements of federal law related to water pollution;

2296 ~~[(10) as authorized by the board and subject to the provisions of this chapter, to~~  
2297 ~~exercise all incidental powers necessary to carry out the purposes of this chapter, including~~

2298 certification to any state or federal authorities for tax purposes only if the fact of construction,  
2299 installation, or acquisition of any facility, land, or building, machinery, or equipment, or any  
2300 part of them conforms with this chapter;]

2301 [~~(11) to cooperate, where the board finds appropriate, with any person in studies and~~  
2302 ~~research regarding water pollution and its control, abatement, and prevention; and]~~

2303 [~~(12) to~~] (i) under the direction of the executive director, represent the state [~~with the~~  
2304 ~~specific concurrence of the executive director]~~ in all matters pertaining to water pollution,  
2305 including interstate compacts and other similar agreements[-];

2306 (j) collect and disseminate information relating to water pollution and the prevention,  
2307 control, and abatement of water pollution; and

2308 (k) subject to Subsection 19-5-104(3)(h), settle or compromise any civil action initiated  
2309 by the division to compel compliance with this chapter or the rules made under this chapter.

2310 (3) The director may:

2311 (a) employ full-time employees as necessary to carry out the provisions of this chapter;

2312 (b) subject to the provisions of this chapter, authorize any employee or representative  
2313 of the department to enter, at reasonable times and upon reasonable notice, in or upon public or  
2314 private property for the purposes of inspecting and investigating conditions and plant records  
2315 concerning possible water pollution;

2316 (c) encourage, participate in, or conduct studies, investigations, research, and  
2317 demonstrations relating to water pollution and causes of water pollution as necessary for the  
2318 discharge of duties assigned under this chapter, including the establishment of inventories of  
2319 pollution sources;

2320 (d) collect and disseminate information relating to water pollution and the prevention,  
2321 control, and abatement of water pollution;

2322 (e) subject to the provisions of this chapter, exercise all incidental powers necessary to  
2323 carry out the purposes of this chapter, including certification to any state or federal authorities  
2324 for tax purposes only if the construction, installation, or acquisition of any facility, land,  
2325 building, machinery, equipment, or any part of them conforms with this chapter;

2326 (f) cooperate with any person in studies and research regarding water pollution and its  
2327 control, abatement, and prevention;

2328 (g) encourage, participate in, or conduct studies, investigations, research, and  
2329 demonstrations relating to water pollution and causes of water pollution; or

2330 (h) as authorized by the board and subject to the provisions of this chapter, act as  
2331 executive secretary of the board under the direction of the chairman of the board.

2332 Section 38. Section **19-5-107** is amended to read:

2333 **19-5-107. Discharge of pollutants unlawful -- Discharge permit required.**

2334 (1) (a) Except as provided in this chapter or rules made under it, it is unlawful for any  
2335 person to discharge a pollutant into waters of the state or to cause pollution which constitutes a  
2336 menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs  
2337 domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or  
2338 cause to be placed any wastes in a location where there is probable cause to believe it will  
2339 cause pollution.

2340 (b) For purposes of injunctive relief, any violation of this subsection is a public  
2341 nuisance.

2342 (2) (a) A person may not generate, store, treat, process, use, transport, dispose, or  
2343 otherwise manage sewage sludge, except in compliance with this chapter and rules made under  
2344 it.

2345 (b) For purposes of injunctive relief, any violation of this subsection is a public  
2346 nuisance.

2347 (3) It is unlawful for any person, without first securing a permit from the [~~executive~~  
2348 ~~secretary as authorized by the board~~] director, to:

2349 (a) make any discharge or manage sewage sludge not authorized under an existing  
2350 valid discharge permit; or

2351 (b) construct, install, modify, or operate any treatment works or part of any treatment  
2352 works or any extension or addition to any treatment works, or construct, install, or operate any  
2353 establishment or extension or modification of or addition to any treatment works, the operation

2354 of which would probably result in a discharge.

2355 Section 39. Section **19-5-108** is amended to read:

2356 **19-5-108. Discharge permits -- Requirements and procedure for issuance.**

2357 (1) The board may [~~prescribe conditions~~] make rules, in accordance with Title 63G,  
2358 Chapter 3, Utah Administrative Rulemaking Act, for and require the submission of plans,  
2359 specifications, and other information to the [~~executive secretary~~] director in connection with  
2360 the issuance of discharge permits.

2361 (2) Each discharge permit shall have a fixed term not exceeding five years. Upon  
2362 expiration of a discharge permit, a new permit may be issued by the [~~executive secretary~~]  
2363 director as authorized by the board after notice and an opportunity for public hearing and upon  
2364 condition that the applicant meets or will meet all applicable requirements of this chapter,  
2365 including the conditions of any permit granted by the board.

2366 (3) The board may require notice to the [~~executive secretary~~] director of the  
2367 introduction of pollutants into publicly-owned treatment works and identification to the  
2368 [~~executive secretary~~] director of the character and volume of any pollutant of any significant  
2369 source subject to pretreatment standards under Subsection 307(b) of the federal Clean Water  
2370 Act. The [~~executive secretary~~] director shall provide in the permit for compliance with  
2371 pretreatment standards.

2372 (4) The [~~board~~] director may impose as conditions in permits for the discharge of  
2373 pollutants from publicly-owned treatment works appropriate measures to establish and insure  
2374 compliance by industrial users with any system of user charges required under this chapter or  
2375 the rules adopted under it.

2376 (5) The [~~board~~] director may apply and enforce against industrial users of  
2377 publicly-owned treatment works, toxic effluent standards and pretreatment standards for the  
2378 introduction into the treatment works of pollutants which interfere with, pass through, or  
2379 otherwise are incompatible with the treatment works.

2380 Section 40. Section **19-5-111** is amended to read:

2381 **19-5-111. Notice of violations -- Hearings.**

2382 (1) Whenever the ~~[board]~~ director determines there are reasonable grounds to believe  
 2383 that there has been a violation of this chapter or any order of the director or the board, ~~[it]~~ the  
 2384 director may give written notice to the alleged violator specifying the provisions that have been  
 2385 violated and the facts that constitute the violation.

2386 (2) The notice shall require that the matters complained of be corrected.

2387 (3) The notice may order the alleged violator to appear before an administrative law  
 2388 judge as provided by Section 19-1-301 at a time and place specified in the notice and answer  
 2389 the charges.

2390 Section 41. Section **19-5-112** is amended to read:

2391 **19-5-112. Hearings conducted by an administrative law judge -- Decisions on**  
 2392 **denial or revocation of permit conducted by executive director.**

2393 (1) ~~[(a)]~~ Except as provided by Subsection (2), an administrative law judge shall  
 2394 conduct hearings authorized by Section 19-5-111 in accordance with Section 19-1-301.

2395 ~~[(b) All decisions shall be rendered by a majority of the board.]~~

2396 (2) (a) An administrative law judge shall conduct, on the executive director's behalf, a  
 2397 hearing regarding an appeal of a permit decision for which the state has assumed primacy under  
 2398 the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

2399 ~~[(b) Notwithstanding Subsection 19-1-301(6), the administrative law judge shall~~  
 2400 ~~submit to the executive director a proposed dispositive action.]~~

2401 ~~[(c) The executive director may:]~~

2402 ~~[(i) approve, approve with modifications, or disapprove a proposed dispositive action~~  
 2403 ~~submitted to the executive director under Subsection (2)(b); or]~~

2404 ~~[(ii) return the proposed dispositive action to the administrative law judge for further~~  
 2405 ~~action as directed.]~~

2406 ~~[(d)]~~ (b) The decision of the executive director is final and binding on all parties ~~[as a~~  
 2407 ~~final determination of the board]~~ unless stayed or overturned on appeal.

2408 Section 42. Section **19-5-113** is amended to read:

2409 **19-5-113. Power of director to enter property for investigation -- Records and**

2410 **reports required of owners or operators.**

2411 (1) The [~~board~~] director or [~~its~~] the director's authorized representative has, after  
2412 presentation of credentials, the authority to enter at reasonable times upon any private or public  
2413 property for the purpose of:

2414 (a) sampling, inspecting, or investigating matters or conditions relating to pollution or  
2415 the possible pollution of any waters of the state, effluents or effluent sources, monitoring  
2416 equipment, or sewage sludge; and

2417 (b) reviewing and copying records required to be maintained under this chapter.

2418 (2) (a) The board may make rules, in accordance with Title 63G, Chapter 3, Utah  
2419 Administrative Rulemaking Act, that require a person managing sewage sludge, or the owner  
2420 or operator of a disposal system, including a system discharging into publicly owned treatment  
2421 works, to:

2422 (i) establish and maintain reasonable records and make reports relating to the operation  
2423 of the system or the management of the sewage sludge;

2424 (ii) install, use, and maintain monitoring equipment or methods;

2425 (iii) sample, and analyze effluents or sewage sludges; and

2426 (iv) provide other information reasonably required.

2427 (b) The records, reports, and information shall be available to the public except as  
2428 provided in Subsection 19-1-306(2) or Subsections 63G-2-305(1) and (2), Government  
2429 Records Access and Management Act, as appropriate, for other than effluent information.

2430 Section 43. Section **19-5-114** is amended to read:

2431 **19-5-114. Spills or discharges of oil or other substance -- Notice to director.**

2432 Any person who spills or discharges any oil or other substance which may cause the  
2433 pollution of the waters of the state shall immediately notify the [~~executive secretary~~] director of  
2434 the spill or discharge, any containment procedures undertaken, and a proposed procedure for  
2435 cleanup and disposal, in accordance with rules of the board.

2436 Section 44. Section **19-5-115** is amended to read:

2437 **19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and**

2438 **rules of political subdivisions.**

2439 (1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in  
2440 Section 76-2-103.

2441 (2) Any person who violates this chapter, or any permit, rule, or order adopted under it,  
2442 upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not  
2443 to exceed \$10,000 per day of violation.

2444 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment  
2445 under Section 76-3-204 and a fine not exceeding \$25,000 per day who with criminal  
2446 negligence:

2447 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
2448 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2449 (ii) violates Section 19-5-113;

2450 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
2451 treatment works; or

2452 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2453 (b) A person is guilty of a third degree felony and is subject to imprisonment under  
2454 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

2455 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
2456 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2457 (ii) violates Section 19-5-113;

2458 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
2459 treatment works; or

2460 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2461 (4) A person is guilty of a third degree felony and subject to imprisonment under  
2462 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if  
2463 that person knowingly:

2464 (a) makes a false material statement, representation, or certification in any application,  
2465 record, report, plan, or other document filed or required to be maintained under this chapter, or



2466 by any permit, rule, or order issued under it; or

2467 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or  
2468 method required to be maintained under this chapter.

2469 (5) (a) As used in this section:

2470 (i) "Organization" means a legal entity, other than a government, established or  
2471 organized for any purpose, and includes a corporation, company, association, firm, partnership,  
2472 joint stock company, foundation, institution, trust, society, union, or any other association of  
2473 persons.

2474 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of  
2475 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
2476 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

2477 (b) A person is guilty of a second degree felony and, upon conviction, is subject to  
2478 imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

2479 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

2480 (ii) knows at that time that he is placing another person in imminent danger of death or  
2481 serious bodily injury.

2482 (c) If a person is an organization, it shall, upon conviction of violating Subsection  
2483 (5)(b), be subject to a fine of not more than \$1,000,000.

2484 (d) (i) A defendant who is an individual is considered to have acted knowingly if:

2485 (A) the defendant's conduct placed another person in imminent danger of death or  
2486 serious bodily injury; and

2487 (B) the defendant was aware of or believed that there was an imminent danger of death  
2488 or serious bodily injury to another person.

2489 (ii) Knowledge possessed by a person other than the defendant may not be attributed to  
2490 the defendant.

2491 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual  
2492 knowledge, including evidence that the defendant took affirmative steps to be shielded from  
2493 receiving relevant information.

2494 (e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the  
2495 conduct charged was consented to by the person endangered and that the danger and conduct  
2496 charged were reasonably foreseeable hazards of:

2497 (A) an occupation, a business, or a profession; or

2498 (B) medical treatment or medical or scientific experimentation conducted by  
2499 professionally approved methods and the other person was aware of the risks involved prior to  
2500 giving consent.

2501 (ii) The defendant has the burden of proof to establish any affirmative defense under  
2502 this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.

2503 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset  
2504 which leads to simultaneous violations of more than one pollutant parameter shall be treated as  
2505 a single violation.

2506 (7) (a) The ~~[board]~~ director may begin a civil action for appropriate relief, including a  
2507 permanent or temporary injunction, for any violation or threatened violation for which it is  
2508 authorized to issue a compliance order under Section 19-5-111.

2509 (b) Actions shall be brought in the district court where the violation or threatened  
2510 violation occurs.

2511 (8) (a) The attorney general is the legal advisor for the board and ~~[its executive~~  
2512 ~~secretary]~~ the director and shall defend them in all actions or proceedings brought against them.

2513 (b) The county attorney or district attorney as appropriate under Sections 17-18-1,  
2514 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action,  
2515 civil or criminal, requested by the ~~[board]~~ director, to abate a condition that exists in violation  
2516 of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules  
2517 of the board or the ~~[executive secretary]~~ director issued under this chapter.

2518 (c) The ~~[board]~~ director may ~~[itself]~~ initiate any action under this section and be  
2519 represented by the attorney general.

2520 (9) If any person fails to comply with a cease and desist order that is not subject to a  
2521 stay pending administrative or judicial review, the ~~[board]~~ director may~~[- through its executive~~

2522 ~~secretary,~~] initiate an action for and be entitled to injunctive relief to prevent any further or  
2523 continued violation of the order.

2524 (10) Any political subdivision of the state may enact and enforce ordinances or rules  
2525 for the implementation of this chapter that are not inconsistent with this chapter.

2526 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected  
2527 under the authority of this section shall be deposited in the General Fund.

2528 (b) The department may reimburse itself and local governments from money collected  
2529 from civil penalties for extraordinary expenses incurred in environmental enforcement  
2530 activities.

2531 (c) The department shall regulate reimbursements by making rules that:

2532 (i) define qualifying environmental enforcement activities; and

2533 (ii) define qualifying extraordinary expenses.

2534 Section 45. Section **19-6-102** is amended to read:

2535 **19-6-102. Definitions.**

2536 As used in this part:

2537 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
2538 19-1-106.

2539 (2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at  
2540 which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or  
2541 disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the  
2542 facility or site.

2543 (3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"  
2544 means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or  
2545 disposal.

2546 (b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"  
2547 does not include a facility that:

2548 (i) receives waste for recycling;

2549 (ii) receives waste to be used as fuel, in compliance with federal and state

2550 requirements; or

2551 (iii) is solely under contract with a local government within the state to dispose of  
2552 nonhazardous solid waste generated within the boundaries of the local government.

2553 (4) "Construction waste or demolition waste":

2554 (a) means waste from building materials, packaging, and rubble resulting from  
2555 construction, demolition, remodeling, and repair of pavements, houses, commercial buildings,  
2556 and other structures, and from road building and land clearing; and

2557 (b) does not include: asbestos; contaminated soils or tanks resulting from remediation  
2558 or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar  
2559 hazardous or potentially hazardous materials.

2560 (5) "Demolition waste" has the same meaning as the definition of construction waste in  
2561 this section.

2562 (6) "Director" means the director of the Division of Solid and Hazardous Waste.

2563 [~~(6)~~] (7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking,  
2564 or placing of any solid or hazardous waste into or on any land or water so that the waste or any  
2565 constituent of the waste may enter the environment, be emitted into the air, or discharged into  
2566 any waters, including groundwaters.

2567 (8) "Division" means the Division of Solid and Hazardous Waste, created in  
2568 Subsection 19-1-105(1)(e).

2569 [~~(7)~~] "~~Executive secretary" means the executive secretary of the board.~~"

2570 [~~(8)~~] (9) "Generation" or "generated" means the act or process of producing  
2571 nonhazardous solid or hazardous waste.

2572 [~~(9)~~] (10) "Hazardous waste" means a solid waste or combination of solid wastes other  
2573 than household waste which, because of its quantity, concentration, or physical, chemical, or  
2574 infectious characteristics may cause or significantly contribute to an increase in mortality or an  
2575 increase in serious irreversible or incapacitating reversible illness or may pose a substantial  
2576 present or potential hazard to human health or the environment when improperly treated,  
2577 stored, transported, disposed of, or otherwise managed.

2578            [~~(10)~~] (11) "Health facility" means hospitals, psychiatric hospitals, home health  
2579 agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care  
2580 facilities for people with an intellectual disability, residential health care facilities, maternity  
2581 homes or birthing centers, free standing ambulatory surgical centers, facilities owned or  
2582 operated by health maintenance organizations, and state renal disease treatment centers  
2583 including free standing hemodialysis units, the offices of private physicians and dentists  
2584 whether for individual or private practice, veterinary clinics, and mortuaries.

2585            [~~(11)~~] (12) "Household waste" means any waste material, including garbage, trash, and  
2586 sanitary wastes in septic tanks, derived from households, including single-family and  
2587 multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters,  
2588 campgrounds, picnic grounds, and day-use recreation areas.

2589            [~~(12)~~] (13) "Infectious waste" means a solid waste that contains or may reasonably be  
2590 expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by  
2591 a susceptible host could result in an infectious disease.

2592            [~~(13)~~] (14) "Manifest" means the form used for identifying the quantity, composition,  
2593 origin, routing, and destination of hazardous waste during its transportation from the point of  
2594 generation to the point of disposal, treatment, or storage.

2595            [~~(14)~~] (15) "Mixed waste" means any material that is a hazardous waste as defined in  
2596 this chapter and is also radioactive as defined in Section 19-3-102.

2597            [~~(15)~~] (16) "Modification plan" means a plan under Section 19-6-108 to modify a  
2598 facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or  
2599 disposing of hazardous waste.

2600            [~~(16)~~] (17) "Operation plan" or "nonhazardous solid or hazardous waste operation  
2601 plan" means a plan or approval under Section 19-6-108, including:

2602            (a) a plan to own, construct, or operate a facility or site for the purpose of disposing of  
2603 nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

2604            (b) a closure plan;

2605            (c) a modification plan; or

2606 (d) an approval that the [~~executive secretary~~] director is authorized to issue.

2607 [~~(17)~~] (18) "Permittee" means a person who is obligated under an operation plan.

2608 [~~(18)~~] (19) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from  
2609 a waste treatment plant, water supply treatment plant, or air pollution control facility, or other  
2610 discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting  
2611 from industrial, commercial, mining, or agricultural operations and from community activities  
2612 but does not include solid or dissolved materials in domestic sewage or in irrigation return  
2613 flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality  
2614 Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

2615 (b) "Solid waste" does not include any of the following wastes unless the waste causes  
2616 a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

2617 (i) certain large volume wastes, such as inert construction debris used as fill material;

2618 (ii) drilling muds, produced waters, and other wastes associated with the exploration,  
2619 development, or production of oil, gas, or geothermal energy;

2620 (iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste  
2621 generated primarily from the combustion of coal or other fossil fuels;

2622 (iv) solid wastes from the extraction, beneficiation, and processing of ores and  
2623 minerals; or

2624 (v) cement kiln dust.

2625 [~~(19)~~] (20) "Storage" means the actual or intended containment of solid or hazardous  
2626 waste either on a temporary basis or for a period of years in such a manner as not to constitute  
2627 disposal of the waste.

2628 [~~(20)~~] (21) "Transportation" means the off-site movement of solid or hazardous waste  
2629 to any intermediate point or to any point of storage, treatment, or disposal.

2630 [~~(21)~~] (22) "Treatment" means a method, technique, or process designed to change the  
2631 physical, chemical, or biological character or composition of any solid or hazardous waste so as  
2632 to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for  
2633 recovery, amenable to storage, or reduced in volume.

2634            [~~(22)~~] (23) "Underground storage tank" means a tank which is regulated under Subtitle  
2635 I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

2636            Section 46. Section **19-6-102.1** is amended to read:

2637            **19-6-102.1. Treatment and disposal -- Exclusions.**

2638            As used in Subsections 19-6-104[~~(1)(j)(ii)(B)~~] (1)(e)(ii)(B), 19-6-108(3)(b) and  
2639 (3)(c)(ii)(B), and 19-6-119(1)(a), the term "treatment and disposal" specifically excludes the  
2640 recycling, use, reuse, or reprocessing of fly ash waste, bottom ash waste, slag waste, or flue gas  
2641 emission control waste generated primarily from the combustion of coal or other fossil fuels;  
2642 waste from the extraction, beneficiation, and processing of ores and minerals; or cement kiln  
2643 dust, including recycle, reuse, use, or reprocessing for road sanding, sand blasting, road  
2644 construction, railway ballast, construction fill, aggregate, and other construction-related  
2645 purposes.

2646            Section 47. Section **19-6-102.6** is amended to read:

2647            **19-6-102.6. Legislative participation in landfill siting disputes.**

2648            (1) (a) Upon the Legislature's receipt of a written request by a county governing body  
2649 or a member of the Legislature whose district is involved in a landfill siting dispute, the  
2650 president of the Senate and the speaker of the House shall appoint a committee as described  
2651 under Subsection (2) and volunteers under Subsection (3) to actively seek an acceptable  
2652 location for a municipal landfill if there is a dispute between two or more counties regarding  
2653 the proposed site of a municipal landfill.

2654            (b) The president and the speaker shall consult with the legislators appointed under this  
2655 subsection regarding their appointment of members of the committee under Subsection (2), and  
2656 volunteers under Subsection (3).

2657            (2) The committee shall consist of the following members, appointed jointly by the  
2658 president and the speaker:

2659            (a) two members from the Senate:

2660            (i) one member from the county where the proposed landfill site is located; and

2661            (ii) one member from the other county involved in the dispute, but if more than one

2662 other county is involved, still only one senator from one of those counties;

2663 (b) two members from the House:

2664 (i) one member from the county where the proposed landfill site is located; and

2665 (ii) one member from the other county involved in the dispute, but if more than one

2666 other county is involved, still only one representative from one of those counties;

2667 (c) one individual whose current principal residence is within a community located

2668 within 20 miles of any exterior boundary of the proposed landfill site, but if no community is

2669 located within 20 miles of the community, then an individual whose current residence is in the

2670 community nearest the proposed landfill site;

2671 (d) two resident citizens from the county where the proposed landfill site is located;

2672 and

2673 (e) three resident citizens from the other county involved in the dispute, but if more

2674 than one other county is involved, still only three citizen representatives from those counties.

2675 (3) Two volunteers shall be appointed under Subsection (1). The volunteers shall be

2676 individuals who agree to assist, as requested, the committee members who represent the

2677 interests of the county where the proposed landfill site is located.

2678 (4) (a) Funding and staffing for the committee shall be provided jointly and equally by

2679 the Senate and the House.

2680 (b) The Department of Environmental Quality shall, at the request of the committee

2681 and as funds are available within the department's existing budget, provide support in arranging

2682 for committee hearings to receive public input and secretarial staff to make a record of those

2683 hearings.

2684 (5) The committee shall:

2685 (a) appoint a chair from among its members; and

2686 (b) meet as necessary, but not less often than once per month, until its work is

2687 completed.

2688 (6) The committee shall report in writing the results of its work and any

2689 recommendations it may have for legislative action to the interim committees of the Legislature



2690 as directed by the Legislative Management Committee.

2691 (7) (a) All action by the division, the [~~executive secretary~~] director, or the division  
2692 board of the Department of Environmental Quality regarding any proposed municipal landfill  
2693 site, regarding which a request has been submitted under Subsection (1), is tolled for one year  
2694 from the date the request is submitted, or until the committee completes its work under this  
2695 section, whichever occurs first. This Subsection (7) also tolls the time limits imposed by  
2696 Subsection 19-6-108(13).

2697 (b) This Subsection (7) applies to any proposed landfill site regarding which the  
2698 department has not granted final approval on or before March 21, 1995.

2699 (c) As used in this Subsection (7), "final approval" means final agency action taken  
2700 after conclusion of proceedings under Sections 63G-4-207 through 63G-4-405.

2701 (8) This section does not apply to a municipal solid waste facility that is, on or before  
2702 March 23, 1994:

2703 (a) operating under an existing permit or the renewal of an existing permit issued by  
2704 the local health department or other authority granted by the Department of Environmental  
2705 Quality; or

2706 (b) operating under the approval of the local health department, regardless of whether a  
2707 formal permit has been issued.

2708 Section 48. Section **19-6-103** is amended to read:

2709 **19-6-103. Solid and Hazardous Waste Control Board -- Members -- Terms --**  
2710 **Organization -- Meetings -- Per diem and expenses.**

2711 (1) The [~~Solid and Hazardous Waste Control Board created by Section 19-1-106~~  
2712 ~~comprises the~~] board consists of the following nine members:

2713 (a) the following non-voting member, except that the member may vote to break a tie  
2714 vote between the voting members:

2715 (i) the executive director [and 12]; or

2716 (ii) an employee of the department designated by the executive director; and

2717 (b) the following eight voting members appointed by the governor with the consent of

2718 the Senate[-];

2719 (i) one representative who:

2720 (A) is not connected with industry;

2721 (B) is an expert in waste management matters; and

2722 (C) is a Utah-licensed professional engineer;

2723 (ii) two government representatives who do not represent the federal government;

2724 (iii) one representative from the manufacturing, mining, or fuel industry;

2725 (iv) one representative from the private solid or hazardous waste disposal industry;

2726 (v) one representative from the private hazardous waste recovery industry;

2727 (vi) one representative from the public who represents:

2728 (A) an environmental nongovernmental organization; or

2729 (B) a nongovernmental organization that represents community interests and does not  
2730 represent industry interests; and

2731 (vii) one representative from the public who is trained and experienced in public  
2732 health.

2733 (2) ~~[The appointed members]~~ A member of the board shall:

2734 (a) be knowledgeable about solid and hazardous waste matters ~~[and consist of:]~~ as  
2735 evidenced by a professional degree, a professional accreditation, or documented experience;

2736 ~~[(a) one representative of municipal government;]~~

2737 ~~[(b) one representative of county government;]~~

2738 ~~[(c) one representative of the manufacturing or fuel industry;]~~

2739 ~~[(d) one representative of the mining industry;]~~

2740 ~~[(e) one representative of the private solid waste disposal or solid waste recovery~~  
2741 ~~industry;]~~

2742 ~~[(f) one registered professional engineer;]~~

2743 ~~[(g) one representative of a local health department;]~~

2744 ~~[(h) one representative of the hazardous waste disposal industry; and]~~

2745 ~~[(i) four representatives of the public, at least one of whom is a representative of~~

2746 ~~organized environmental interests.]~~

2747 (b) be a resident of Utah;

2748 (c) attend board meetings in accordance with the attendance rules made by the

2749 department under Subsection 19-1-201(1)(d)(i)(A); and

2750 (d) comply with all applicable statutes, rules, and policies, including the conflict of

2751 interest rules made by the department in accordance with Subsection 19-1-201(1)(d)(i)(B).

2752 (3) ~~[Not]~~ No more than ~~[six]~~ five of the appointed members may be from the same  
2753 political party.

2754 (4) (a) ~~[Except as required by Subsection (4)(b), members]~~ Members shall be  
2755 appointed for terms of four years each.

2756 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the  
2757 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
2758 board members are staggered so that ~~[approximately]~~ half of the appointed board is appointed  
2759 every two years.

2760 (c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is  
2761 appointed before March 1, 2013, shall expire on February 28, 2013.

2762 (ii) On March 1, 2013, the governor shall appoint or reappoint board members in  
2763 accordance with this section.

2764 (5) Each member is eligible for reappointment.

2765 (6) Board members shall continue in office until the expiration of their terms and until  
2766 their successors are appointed, but not more than 90 days after the expiration of their terms.

2767 (7) When a vacancy occurs in the membership for any reason, the replacement shall be  
2768 appointed for the unexpired term by the governor, after considering recommendations of the  
2769 board and with the consent of the Senate.

2770 (8) The board shall elect a chair and vice chair on or before April 1 of each year from  
2771 its membership.

2772 (9) A member may not receive compensation or benefits for the member's service, but  
2773 may receive per diem and travel expenses in accordance with:

2774 (a) Section 63A-3-106;  
2775 (b) Section 63A-3-107; and  
2776 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
2777 63A-3-107.

2778 (10) (a) The board shall hold a meeting at least once every three months including one  
2779 meeting during each annual general session of the Legislature.

2780 (b) Meetings shall be held on the call of the chair, the ~~[executive secretary]~~ director, or  
2781 any three of the members.

2782 (11) ~~[Seven]~~ Five members constitute a quorum at any meeting, and the action of the  
2783 majority of members present is the action of the board.

2784 Section 49. Section **19-6-104** is amended to read:

2785 **19-6-104. Powers of board -- Creation of statewide solid waste management plan.**

2786 (1) The board shall:

2787 (a) survey solid and hazardous waste generation and management practices within this  
2788 state and, after public hearing and after providing opportunities for comment by local  
2789 governmental entities, industry, and other interested persons, prepare and revise, as necessary, a  
2790 waste management plan for the state;

2791 ~~[(b) carry out inspections pursuant to Section 19-6-109;]~~

2792 ~~[(c) (i) hold a hearing that is not an adjudicative proceeding and compel the attendance  
2793 of witnesses, the production of documents, and other evidence, administer oaths and take  
2794 testimony, and receive evidence it finds proper, or appoint hearing officers to conduct a hearing  
2795 that is not an adjudicative proceeding who shall be delegated these powers;]~~

2796 ~~[(ii) receive a proposed dispositive action from an administrative law judge as provided  
2797 by Section 19-1-301; and]~~

2798 ~~[(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive  
2799 action; or]~~

2800 ~~[(B) return the proposed dispositive action to the administrative law judge for further  
2801 action as directed;]~~

2802           **(b) order the director to:**  
2803           ~~[(d)]~~ **(i)** issue orders necessary to effectuate the provisions of this part and  
2804 ~~[implementing]~~ rules ~~[and]~~ **made under this part:**  
2805           **(ii)** enforce ~~[them]~~ **the orders** by administrative and judicial proceedings~~[-and cause~~  
2806 ~~the initiation of]; or~~  
2807           **(iii)** initiate judicial proceedings to secure compliance with this part;  
2808           ~~[(e) settle or compromise any administrative or civil action initiated to compel~~  
2809 ~~compliance with this part and any rules adopted under this part;]~~  
2810           ~~[(f) require submittal of specifications or other information relating to hazardous waste~~  
2811 ~~plans for review, and approve, disapprove, revoke, or review the plans;]~~  
2812           ~~[(g) advise, consult, cooperate with, and provide technical assistance to other agencies~~  
2813 ~~of the state and federal government, other states, interstate agencies, and affected groups,~~  
2814 ~~political subdivisions, industries, and other persons in carrying out the purposes of this part;]~~  
2815           ~~[(h)]~~ **(c)** promote the planning and application of resource recovery systems to prevent  
2816 the unnecessary waste and depletion of natural resources;  
2817           ~~[(i)]~~ **(d)** meet the requirements of federal law related to solid and hazardous wastes to  
2818 insure that the solid and hazardous wastes program provided for in this part is qualified to  
2819 assume primacy from the federal government in control over solid and hazardous waste;  
2820           ~~[(j)]~~ **(e)** (i) require any facility, including those listed in Subsection (1)~~[(j)]~~**(e)**(ii), that is  
2821 intended for disposing of nonhazardous solid waste or wastes listed in Subsection  
2822 (1)~~[(j)]~~**(e)**(ii)(B) to submit plans, specifications, and other information required by the board to  
2823 the board prior to construction, modification, installation, or establishment of a facility to allow  
2824 the board to determine whether the proposed construction, modification, installation, or  
2825 establishment of the facility will be in accordance with rules made under this part;  
2826           (ii) facilities referred to in Subsection (1)~~[(j)]~~**(e)**(i) include:  
2827           (A) any incinerator that is intended for disposing of nonhazardous solid waste; and  
2828           (B) except for facilities that receive the following wastes solely for the purpose of  
2829 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,

2830 and with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas  
2831 emission control waste generated primarily from the combustion of coal or other fossil fuels;  
2832 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln  
2833 dust wastes; and

2834 ~~[(k) exercise all other incidental powers necessary to carry out the purposes of this~~  
2835 ~~part.]~~

2836 (f) to ensure compliance with applicable statutes and regulations:

2837 (i) review a settlement negotiated by the director in accordance with Subsection  
2838 19-6-107(3)(a) that requires a civil penalty of \$25,000 or more; and

2839 (ii) approve or disapprove the settlement.

2840 (2) The board may:

2841 (a) (i) hold a hearing that is not an adjudicative proceeding; or

2842 (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding;

2843 or

2844 (b) advise, consult, cooperate with, or provide technical assistance to other agencies of  
2845 the state or federal government, other states, interstate agencies, or affected groups, political  
2846 subdivisions, industries, or other persons in carrying out the purposes of this part.

2847 ~~[(2)]~~ (3) (a) The board shall establish a comprehensive statewide solid waste  
2848 management plan by January 1, 1994.

2849 (b) The plan shall:

2850 (i) incorporate the solid waste management plans submitted by the counties;

2851 (ii) provide an estimate of solid waste capacity needed in the state for the next 20  
2852 years;

2853 (iii) assess the state's ability to minimize waste and recycle;

2854 (iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste  
2855 needs and existing capacity;

2856 (v) evaluate facility siting, design, and operation;

2857 (vi) review funding alternatives for solid waste management; and

2858 (vii) address other solid waste management concerns that the board finds appropriate  
2859 for the preservation of the public health and the environment.

2860 (c) The board shall consider the economic viability of solid waste management  
2861 strategies prior to incorporating them into the plan and shall consider the needs of population  
2862 centers.

2863 (d) The board shall review and modify the comprehensive statewide solid waste  
2864 management plan no less frequently than every five years.

2865 [~~(3)~~] (4) (a) The board shall determine the type of solid waste generated in the state and  
2866 tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid  
2867 waste management plan.

2868 (b) The board shall review and modify the inventory no less frequently than once every  
2869 five years.

2870 [~~(4)~~] (5) Subject to the limitations contained in Subsection 19-6-102[~~(18)~~](19)(b), the  
2871 board shall establish siting criteria for nonhazardous solid waste disposal facilities, including  
2872 incinerators.

2873 (6) The board may not issue, amend, renew, modify, revoke, or terminate any of the  
2874 following that are subject to the authority granted to the director under Section 19-6-107:

2875 (a) a permit;

2876 (b) a license;

2877 (c) a registration;

2878 (d) a certification; or

2879 (e) another administrative authorization made by the director.

2880 (7) A board member may not speak or act for the board unless the board member is  
2881 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

2882 Section 50. Section **19-6-105** is amended to read:

2883 **19-6-105. Rules of board.**

2884 (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah  
2885 Administrative Rulemaking Act:

2886 (a) establishing minimum standards for protection of human health and the  
2887 environment, for the storage, collection, transport, recovery, treatment, and disposal of solid  
2888 waste, including requirements for the approval by the director of plans for the construction,  
2889 extension, operation, and closure of solid waste disposal sites;

2890 (b) identifying wastes which are determined to be hazardous, including wastes  
2891 designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of  
2892 1976, 42 U.S.C., Sec. 6921, et seq.;

2893 (c) governing generators and transporters of hazardous wastes and owners and  
2894 operators of hazardous waste treatment, storage, and disposal facilities, including requirements  
2895 for keeping records, monitoring, submitting reports, and using a manifest, without treating  
2896 high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling  
2897 muds, and oil production brines in a manner more stringent than they are treated under federal  
2898 standards;

2899 (d) requiring an owner or operator of a treatment, storage, or disposal facility that is  
2900 subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982,  
2901 to take appropriate corrective action or other response measures for releases of hazardous waste  
2902 or hazardous waste constituents from the facility, including releases beyond the boundaries of  
2903 the facility;

2904 (e) specifying the terms and conditions under which the [~~board~~] director shall approve,  
2905 disapprove, revoke, or review hazardous wastes operation plans;

2906 (f) governing public hearings and participation under this part;

2907 (g) establishing standards governing underground storage tanks, in accordance with  
2908 Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

2909 (h) relating to the collection, transportation, processing, treatment, storage, and  
2910 disposal of infectious waste in health facilities in accordance with the requirements of Section  
2911 19-6-106;

2912 (i) defining closure plans as major or minor;

2913 (j) defining modification plans as major or minor; and



2914 (k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or  
2915 organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch,  
2916 canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or  
2917 well.

2918 (2) If any of the following are determined to be hazardous waste and are therefore  
2919 subjected to the provisions of this part, the board shall, in the case of landfills or surface  
2920 impoundments that receive the solid wastes, take into account the special characteristics of the  
2921 wastes, the practical difficulties associated with applying requirements for other wastes to the  
2922 wastes, and site specific characteristics, including the climate, geology, hydrology, and soil  
2923 chemistry at the site, if the modified requirements assure protection of human health and the  
2924 environment and are no more stringent than federal standards applicable to wastes:

2925 (a) solid waste from the extraction, beneficiation, or processing of ores and minerals,  
2926 including phosphate rock and overburden from the mining of uranium;

2927 (b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste  
2928 generated primarily from the combustion of coal or other fossil fuels; and

2929 (c) cement kiln dust waste.

2930 (3) The board shall establish criteria for siting commercial hazardous waste treatment,  
2931 storage, and disposal facilities, including commercial hazardous waste incinerators. Those  
2932 criteria shall apply to any facility or incinerator for which plan approval is required under  
2933 Section 19-6-108.

2934 Section 51. Section **19-6-107** is amended to read:

2935 **19-6-107. Director -- Appointment -- Powers.**

2936 [~~The executive secretary shall be appointed by the executive director with the approval~~  
2937 ~~of the board and shall serve under the administrative direction of the executive director. The~~  
2938 ~~executive secretary may:]~~

2939 (1) The executive director shall appoint the director. The director shall serve under the  
2940 administrative direction of the executive director.

2941 (2) The director shall:

- 2942           (a) carry out inspections pursuant to Section 19-6-109;
- 2943           (b) require submittal of specifications or other information relating to hazardous waste
- 2944 plans for review, and approve, disapprove, revoke, or review the plans;
- 2945           ~~[(1)]~~ (c) develop programs for solid waste and hazardous waste management and
- 2946 control within the state;
- 2947           ~~[(2)]~~ (d) advise, consult, and cooperate with other agencies of the state, the federal
- 2948 government, other states and interstate agencies, and with affected groups, political
- 2949 subdivisions, and industries in furtherance of the purposes of this part;
- 2950           (e) subject to the provisions of this part, enforce rules made or revised by the board
- 2951 through the issuance of orders;
- 2952           (f) review plans, specifications or other data relative to solid waste and hazardous
- 2953 waste control systems or any part of the systems as provided in this part;
- 2954           (g) under the direction of the executive director, represent the state in all matters
- 2955 pertaining to interstate solid waste and hazardous waste management and control including,
- 2956 under the direction of the board, entering into interstate compacts and other similar agreements;
- 2957 and
- 2958           (h) as authorized by the board and subject to the provisions of this part, act as
- 2959 executive secretary of the board under the direction of the chairman of the board.
- 2960           (3) The director may:
- 2961           (a) subject to Subsection 19-6-104(1)(f), settle or compromise any administrative or
- 2962 civil action initiated to compel compliance with this part and any rules adopted under this part;
- 2963           ~~[(3)]~~ (b) employ full-time employees necessary to carry out this part;
- 2964           ~~[(4)]~~ (c) as authorized by the board pursuant to the provisions of this part, authorize
- 2965 any employee or representative of the department to conduct inspections as permitted in this
- 2966 part;
- 2967           ~~[(5)]~~ (d) encourage, participate in, or conduct studies, investigations, research, and
- 2968 demonstrations relating to solid waste and hazardous waste management and control necessary
- 2969 for the discharge of duties assigned under this part;

2970           ~~[(6)] (e) collect and disseminate information relating to solid waste and hazardous~~  
2971 ~~waste management control; and~~

2972           ~~[(7) as authorized by the board pursuant to the provisions of this part, enforce rules~~  
2973 ~~made or revised by the board through the issuance of orders which may be subsequently~~  
2974 ~~amended or revoked by the board;]~~

2975           ~~[(8) review plans, specifications or other data relative to solid waste and hazardous~~  
2976 ~~waste control systems or any part of the systems as provided in this part;]~~

2977           ~~[(9)] (f) cooperate with any person in studies and research regarding solid waste and~~  
2978 ~~hazardous waste management and control[;].~~

2979           ~~[(10) represent the state with the specific concurrence of the executive director in all~~  
2980 ~~matters pertaining to interstate solid waste and hazardous waste management and control~~  
2981 ~~including, under the direction of the board, entering into interstate compacts and other similar~~  
2982 ~~agreements; and]~~

2983           ~~[(11) as authorized by the board and subject to the provisions of this chapter, exercise~~  
2984 ~~all incidental powers necessary to carry out the purposes of this chapter.]~~

2985           Section 52. Section **19-6-108** is amended to read:

2986           **19-6-108. New nonhazardous solid or hazardous waste operation plans for**  
2987 **facility or site -- Administrative and legislative approval required -- Exemptions from**  
2988 **legislative and gubernatorial approval -- Time periods for review -- Information required**  
2989 **-- Other conditions -- Revocation of approval -- Periodic review.**

2990           (1) For purposes of this section, the following items shall be treated as submission of a  
2991 new operation plan:

2992           (a) the submission of a revised operation plan specifying a different geographic site  
2993 than a previously submitted plan;

2994           (b) an application for modification of a commercial hazardous waste incinerator if the  
2995 construction or the modification would increase the hazardous waste incinerator capacity above  
2996 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in  
2997 the operation plan application as of January 1, 1990, if no operation plan approval has been

2998 issued as of January 1, 1990;

2999 (c) an application for modification of a commercial nonhazardous solid waste  
3000 incinerator if the construction of the modification would cost 50% or more of the cost of  
3001 construction of the original incinerator or the modification would result in an increase in the  
3002 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity  
3003 or throughput that was approved in the operation plan as of January 1, 1990, or the initial  
3004 approved operation plan if the initial approval is subsequent to January 1, 1990;

3005 (d) an application for modification of a commercial nonhazardous solid or hazardous  
3006 waste treatment, storage, or disposal facility, other than an incinerator, if the modification  
3007 would be outside the boundaries of the property owned or controlled by the applicant, as shown  
3008 in the application or approved operation plan as of January 1, 1990, or the initial approved  
3009 operation plan if the initial approval is subsequent to January 1, 1990; or

3010 (e) a submission of an operation plan to construct a facility, if previous approvals of the  
3011 operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

3012 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput  
3013 tonnage specified for the trial burn in the operation plan or the operation plan application if no  
3014 operation plan approval has been issued as of January 1, 1990, and on annual operations of  
3015 7,000 hours.

3016 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the  
3017 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of  
3018 hazardous waste without first submitting and receiving the approval of the [~~executive~~  
3019 ~~secretary~~] director for an operation plan for that facility or site.

3020 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an  
3021 operation plan may submit to the [~~executive secretary~~] director information, a report, a plan, or  
3022 other request for approval for a proposed activity under an operation plan:

3023 (I) after obtaining the consent of any other permittee who is a current owner of the  
3024 facility or site; and

3025 (II) without obtaining the consent of any other permittee who is not a current owner of

3026 the facility or site.

3027 (B) The [~~executive secretary~~] director may not:

3028 (I) withhold an approval of an operation plan requested by a permittee who is a current  
3029 owner of the facility or site on the grounds that another permittee who is not a current owner of  
3030 the facility or site has not consented to the request; or

3031 (II) give an approval of an operation plan requested by a permittee who is not a current  
3032 owner before receiving consent of the current owner of the facility or site.

3033 (b) (i) Except for facilities that receive the following wastes solely for the purpose of  
3034 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any  
3035 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any  
3036 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving  
3037 the approval of the [~~executive secretary~~] director for an operation plan for that facility site.

3038 (ii) Wastes referred to in Subsection (3)(b)(i) are:

3039 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste  
3040 generated primarily from the combustion of coal or other fossil fuels;

3041 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

3042 (C) cement kiln dust wastes.

3043 (c) (i) No person may construct a facility listed under Subsection (3)(c)(ii) until the  
3044 person receives:

3045 (A) local government approval and the approval described in Subsection (3)(a);

3046 (B) approval from the Legislature; and

3047 (C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B),  
3048 approval from the governor.

3049 (ii) A facility referred to in Subsection (3)(c)(i) is:

3050 (A) a commercial nonhazardous solid waste disposal facility;

3051 (B) except for facilities that receive the following wastes solely for the purpose of  
3052 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,  
3053 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas

3054 emission control waste generated primarily from the combustion of coal or other fossil fuels;  
3055 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln  
3056 dust wastes; or

3057 (C) a commercial hazardous waste treatment, storage, or disposal facility.

3058 (iii) The required approvals described in Subsection (3)(c)(i) for a facility described in  
3059 Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

3060 (A) the governor's approval is received on or after May 10, 2011, and the facility is not  
3061 operational within five years after the day on which the governor's approval is received; or

3062 (B) the governor's approval is received before May 10, 2011, and the facility is not  
3063 operational on or before May 10, 2016.

3064 (iv) The required approvals described in Subsection (3)(c)(i) for a facility described in  
3065 Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to  
3066 another person for five years after the day on which the governor's approval is received.

3067 (d) No person need obtain gubernatorial or legislative approval for the construction of  
3068 a hazardous waste facility for which an operating plan has been approved by or submitted for  
3069 approval to the executive secretary of the board under this section before April 24, 1989, and  
3070 which has been determined, on or before December 31, 1990, by the executive secretary of the  
3071 board to be complete, in accordance with state and federal requirements for operating plans for  
3072 hazardous waste facilities even if a different geographic site is subsequently submitted.

3073 (e) No person need obtain gubernatorial and legislative approval for the construction of  
3074 a commercial nonhazardous solid waste disposal facility for which an operation plan has been  
3075 approved by or submitted for approval to the executive secretary of the board under this section  
3076 on or before January 1, 1990, and which, on or before December 31, 1990, the executive  
3077 secretary of the board determines to be complete, in accordance with state and federal  
3078 requirements applicable to operation plans for nonhazardous solid waste facilities.

3079 (f) Any person owning or operating a facility or site on or before November 19, 1980,  
3080 who has given timely notification as required by Section 3010 of the Resource Conservation  
3081 and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed

3082 hazardous waste plan under this section for that facility or site, may continue to operate that  
3083 facility or site without violating this section until the plan is approved or disapproved under  
3084 this section.

3085 (g) (i) The [~~executive secretary~~] director shall suspend acceptance of further  
3086 applications for a commercial nonhazardous solid or hazardous waste facility upon a finding  
3087 that the [~~executive secretary~~] director cannot adequately oversee existing and additional  
3088 facilities for permit compliance, monitoring, and enforcement.

3089 (ii) The [~~executive secretary~~] director shall report any suspension to the Natural  
3090 Resources, Agriculture, and Environment Interim Committee.

3091 (4) The [~~executive secretary~~] director shall review each proposed nonhazardous solid  
3092 or hazardous waste operation plan to determine whether that plan complies with the provisions  
3093 of this part and the applicable rules of the board.

3094 (5) (a) If the facility is a class I or class II facility, the [~~executive secretary~~] director  
3095 shall approve or disapprove that plan within 270 days from the date it is submitted.

3096 (b) Within 60 days after receipt of the plans, specifications, or other information  
3097 required by this section for a class I or II facility, the [~~executive secretary~~] director shall  
3098 determine whether the plan is complete and contains all information necessary to process the  
3099 plan for approval.

3100 (c) (i) If the plan for a class I or II facility is determined to be complete, the [~~executive~~  
3101 ~~secretary~~] director shall issue a notice of completeness.

3102 (ii) If the plan is determined by the [~~executive secretary~~] director to be incomplete, the  
3103 [~~executive secretary~~] director shall issue a notice of deficiency, listing the additional  
3104 information to be provided by the owner or operator to complete the plan.

3105 (d) The [~~executive secretary~~] director shall review information submitted in response to  
3106 a notice of deficiency within 30 days after receipt.

3107 (e) The following time periods may not be included in the 270 day plan review period  
3108 for a class I or II facility:

3109 (i) time awaiting response from the owner or operator to requests for information

3110 issued by the [~~executive secretary~~] director;

3111 (ii) time required for public participation and hearings for issuance of plan approvals;

3112 and

3113 (iii) time for review of the permit by other federal or state government agencies.

3114 (6) (a) If the facility is a class III or class IV facility, the [~~executive secretary~~] director  
3115 shall approve or disapprove that plan within 365 days from the date it is submitted.

3116 (b) The following time periods may not be included in the 365 day review period:

3117 (i) time awaiting response from the owner or operator to requests for information

3118 issued by the [~~executive secretary~~] director;

3119 (ii) time required for public participation and hearings for issuance of plan approvals;

3120 and

3121 (iii) time for review of the permit by other federal or state government agencies.

3122 (7) If, within 365 days after receipt of a modification plan or closure plan for any  
3123 facility, the [~~executive secretary~~] director determines that the proposed plan, or any part of it,  
3124 will not comply with applicable rules, the [~~executive secretary~~] director shall issue an order  
3125 prohibiting any action under the proposed plan for modification or closure in whole or in part.

3126 (8) Any person who owns or operates a facility or site required to have an approved  
3127 hazardous waste operation plan under this section and who has pending a permit application  
3128 before the United States Environmental Protection Agency shall be treated as having an  
3129 approved plan until final administrative disposition of the permit application is made under this  
3130 section, unless the [~~board~~] director determines that final administrative disposition of the  
3131 application has not been made because of the failure of the owner or operator to furnish any  
3132 information requested, or the facility's interim status has terminated under Section 3005 (e) of  
3133 the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

3134 (9) No proposed nonhazardous solid or hazardous waste operation plan may be  
3135 approved unless it contains the information that the board requires, including:

3136 (a) estimates of the composition, quantities, and concentrations of any hazardous waste  
3137 identified under this part and the proposed treatment, storage, or disposal of it;



3138 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or  
3139 disposal of hazardous waste will not be done in a manner that may cause or significantly  
3140 contribute to an increase in mortality, an increase in serious irreversible or incapacitating  
3141 reversible illness, or pose a substantial present or potential hazard to human health or the  
3142 environment;

3143 (c) consistent with the degree and duration of risks associated with the disposal of  
3144 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,  
3145 evidence of financial responsibility in whatever form and amount that the [~~executive secretary~~]  
3146 director determines is necessary to insure continuity of operation and that upon abandonment,  
3147 cessation, or interruption of the operation of the facility or site, all reasonable measures  
3148 consistent with the available knowledge will be taken to insure that the waste subsequent to  
3149 being treated, stored, or disposed of at the site or facility will not present a hazard to the public  
3150 or the environment;

3151 (d) evidence that the personnel employed at the facility or site have education and  
3152 training for the safe and adequate handling of nonhazardous solid or hazardous waste;

3153 (e) plans, specifications, and other information that the [~~executive secretary~~] director  
3154 considers relevant to determine whether the proposed nonhazardous solid or hazardous waste  
3155 operation plan will comply with this part and the rules of the board; and

3156 (f) compliance schedules, where applicable, including schedules for corrective action  
3157 or other response measures for releases from any solid waste management unit at the facility,  
3158 regardless of the time the waste was placed in the unit.

3159 (10) The [~~executive secretary~~] director may not approve a commercial nonhazardous  
3160 solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it  
3161 contains the information required by the board, including:

3162 (a) evidence that the proposed commercial facility has a proven market of  
3163 nonhazardous solid or hazardous waste, including:

3164 (i) information on the source, quantity, and price charged for treating, storing, and  
3165 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

3166 (ii) a market analysis of the need for a commercial facility given existing and potential  
3167 generation of nonhazardous solid or hazardous waste in the state and regionally; and

3168 (iii) a review of other existing and proposed commercial nonhazardous solid or  
3169 hazardous waste facilities regionally and nationally that would compete for the treatment,  
3170 storage, or disposal of the nonhazardous solid or hazardous waste;

3171 (b) a description of the public benefits of the proposed facility, including:

3172 (i) the need in the state for the additional capacity for the management of nonhazardous  
3173 solid or hazardous waste;

3174 (ii) the energy and resources recoverable by the proposed facility;

3175 (iii) the reduction of nonhazardous solid or hazardous waste management methods,  
3176 which are less suitable for the environment, that would be made possible by the proposed  
3177 facility; and

3178 (iv) whether any other available site or method for the management of hazardous waste  
3179 would be less detrimental to the public health or safety or to the quality of the environment;  
3180 and

3181 (c) compliance history of an owner or operator of a proposed commercial  
3182 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be  
3183 applied by the [~~executive secretary~~] director in a nonhazardous solid or hazardous waste  
3184 operation plan decision, including any plan conditions.

3185 (11) The [~~executive secretary~~] director may not approve a commercial nonhazardous  
3186 solid or hazardous waste facility operation plan unless based on the application, and in addition  
3187 to the determination required in Subsections (9) and (10), the [~~executive secretary~~] director  
3188 determines that:

3189 (a) the probable beneficial environmental effect of the facility to the state outweighs  
3190 the probable adverse environmental effect; and

3191 (b) there is a need for the facility to serve industry within the state.

3192 (12) Approval of a nonhazardous solid or hazardous waste operation plan may be  
3193 revoked, in whole or in part, if the person to whom approval of the plan has been given fails to

3194 comply with that plan.

3195 (13) The [~~executive secretary~~] director shall review all approved nonhazardous solid  
3196 and hazardous waste operation plans at least once every five years.

3197 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste  
3198 facilities in existence or to applications filed or pending in the department prior to April 24,  
3199 1989, that are determined by the executive secretary of the board on or before December 31,  
3200 1990, to be complete, in accordance with state and federal requirements applicable to operation  
3201 plans for hazardous waste facilities.

3202 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous  
3203 solid waste facility in existence or to an application filed or pending in the department prior to  
3204 January 1, 1990, that is determined by the [~~executive secretary~~] director, on or before  
3205 December 31, 1990, to be complete in accordance with state and federal requirements  
3206 applicable to operation plans for nonhazardous solid waste facilities.

3207 (16) Nonhazardous solid waste generated outside of this state that is defined as  
3208 hazardous waste in the state where it is generated and which is received for disposal in this  
3209 state may not be disposed of at a nonhazardous waste disposal facility owned and operated by  
3210 local government or a facility under contract with a local government solely for disposal of  
3211 nonhazardous solid waste generated within the boundaries of the local government, unless  
3212 disposal is approved by the [~~executive secretary~~] director.

3213 (17) This section may not be construed to exempt any facility from applicable  
3214 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through  
3215 2114.

3216 Section 53. Section **19-6-108.3** is amended to read:

3217 **19-6-108.3. Director to issue written assurances, make determinations, and**  
3218 **partition operation plans -- Board to make rules.**

3219 (1) Based upon risk to human health or the environment from potential exposure to  
3220 hazardous waste, the [~~executive secretary~~] director may:

3221 (a) even if corrective action is incomplete, issue an enforceable written assurance to a

3222 person acquiring an interest in real property covered by an operation plan that the person to  
3223 whom the assurance is issued:

3224 (i) is not a permittee under the operation plan; and  
3225 (ii) will not be subject to an enforcement action under this part for contamination that  
3226 exists or for violations under this part that occurred before the person acquired the interest in  
3227 the real property covered by the operation plan;

3228 (b) determine that corrective action to the real property covered by the operation plan  
3229 is:

3230 (i) complete;  
3231 (ii) incomplete;  
3232 (iii) unnecessary with an environmental covenant; or  
3233 (iv) unnecessary without an environmental covenant; and  
3234 (c) partition from an operation plan a portion of real property subject to the operation  
3235 plan after determining that corrective action for that portion of real property is:

3236 (i) complete;  
3237 (ii) unnecessary with an environmental covenant; or  
3238 (iii) unnecessary without an environmental covenant.

3239 (2) If the [~~executive secretary~~] director determines that an environmental covenant is  
3240 necessary under Subsection (1)(b) or (c), the [~~executive secretary~~] director shall require that the  
3241 real property be subject to an environmental covenant according to Title 57, Chapter 25,  
3242 Uniform Environmental Covenants Act.

3243 (3) An assurance issued under Subsection (1) protects the person to whom the  
3244 assurance is issued from any cost recovery and contribution action under state law.

3245 (4) By following the procedures and requirements of Title 63G, Chapter 3, Utah  
3246 Administrative Rulemaking Act, the board may adopt rules to administer this section.

3247 Section 54. Section **19-6-109** is amended to read:

3248 **19-6-109. Inspections authorized.**

3249 Any duly authorized officer, employee, or representative of the [~~board~~] director may, at

3250 any reasonable time and upon presentation of appropriate credentials, enter upon and inspect  
3251 any property, premise, or place on or at which solid or hazardous wastes are generated,  
3252 transported, stored, treated, or disposed of, and have access to and the right to copy any records  
3253 relating to the wastes, for the purpose of ascertaining compliance with this part and the rules of  
3254 the board. Those persons referred to in this section may also inspect any waste and obtain  
3255 waste samples, including samples from any vehicle in which wastes are being transported or  
3256 samples of any containers or labels. Any person obtaining samples shall give to the owner,  
3257 operator, or agent a receipt describing the sample obtained and, if requested, a portion of each  
3258 sample of waste equal in volume or weight to the portion retained. If any analysis is made of  
3259 those samples, a copy of the results of that analysis shall be furnished promptly to the owner,  
3260 operator, or agent in charge.

3261 Section 55. Section **19-6-112** is amended to read:

3262 **19-6-112. Notice of violations -- Order for correction -- Civil action to enforce.**

3263 (1) Whenever the [board] director determines that any person is in violation of any  
3264 applicable approved hazardous wastes operation plan or solid waste plan, the requirements of  
3265 this part, or any of the board's rules, [it] the director may cause written notice of that violation  
3266 to be served upon the alleged violator. The notice shall specify the provisions of the plan, this  
3267 part or rule alleged to have been violated, and the facts alleged to constitute the violation.

3268 (2) The [board] director may:

3269 (a) issue an order requiring that necessary corrective action be taken within a  
3270 reasonable time; or

3271 (b) request the attorney general or the county attorney in the county in which the  
3272 violation is taking place to bring a civil action for injunctive relief and enforcement of this part.

3273 (3) Pending promulgation of rules for corrective action under Section 19-6-105, the  
3274 [board] director may issue corrective action orders on a case-by-case basis, as necessary to  
3275 carry out the purposes of this part.

3276 Section 56. Section **19-6-117** is amended to read:

3277 **19-6-117. Action against insurer or guarantor.**

3278 (1) The state may assert a cause of action directly against an insurer or guarantor of an  
3279 owner or operator if:

3280 (a) a cause of action exists against an owner or operator of a treatment, storage, or  
3281 disposal facility, based upon conduct for which the ~~[board]~~ director requires evidence of  
3282 financial responsibility under Section 19-6-108, and that owner or operator is in bankruptcy,  
3283 reorganization, or arrangement pursuant to the federal Bankruptcy Code; or

3284 (b) jurisdiction over an owner or operator, who is likely to be solvent at the time of  
3285 judgment, cannot be obtained in state or federal court.

3286 (2) In that action, the insurer or guarantor may assert all rights and defenses available  
3287 to the owner or operator, in addition to rights and defenses that would be available to the  
3288 insurer or guarantor in an action brought against him by the owner or operator.

3289 Section 57. Section **19-6-119** is amended to read:

3290 **19-6-119. Nonhazardous solid waste disposal fees.**

3291 (1) (a) Except as provided in Subsection (5), the owner or operator of a commercial  
3292 nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste  
3293 received for treatment or disposal at the facility if the facility or incinerator is required to have  
3294 operation plan approval under Section 19-6-108 and primarily receives waste generated by  
3295 off-site sources not owned, controlled, or operated by the facility or site owner or operator:

3296 (i) 13 cents per ton on all municipal waste and municipal incinerator ash;

3297 (ii) 50 cents per ton on the following wastes if the facility disposes of one or more of  
3298 the following wastes in a cell exclusively designated for the waste being disposed:

3299 (A) construction waste or demolition waste;

3300 (B) yard waste, including vegetative matter resulting from landscaping, land  
3301 maintenance, and land clearing operations;

3302 (C) dead animals;

3303 (D) waste tires and materials derived from waste tires disposed of in accordance with  
3304 Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and

3305 (E) petroleum contaminated soils that are approved by the ~~[executive secretary]~~

3306 director; and

3307 (iii) \$2.50 per ton on:

3308 (A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and

3309 (B) (I) fly ash waste;

3310 (II) bottom ash waste;

3311 (III) slag waste;

3312 (IV) flue gas emission control waste generated primarily from the combustion of coal

3313 or other fossil fuels;

3314 (V) waste from the extraction, beneficiation, and processing of ores and minerals; and

3315 (VI) cement kiln dust wastes.

3316 (b) A commercial nonhazardous solid waste disposal facility or incinerator subject to

3317 the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii)

3318 for those wastes described in Subsections (1)(a)(i) and (ii).

3319 (c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall

3320 pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.

3321 (2) (a) Except as provided in Subsections (2)(b) and (5), a waste facility that is owned

3322 by a political subdivision shall pay the following annual facility fee to the department by

3323 January 15 of each year:

3324 (i) \$800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal

3325 waste each year;

3326 (ii) \$1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of

3327 municipal waste each year;

3328 (iii) \$3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of

3329 municipal waste each year;

3330 (iv) \$12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of

3331 municipal waste each year;

3332 (v) \$14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of

3333 municipal waste each year;

3334 (vi) \$33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of  
3335 municipal waste each year; and

3336 (vii) \$66,000 if the facility receives 500,000 or more tons of municipal waste each  
3337 year.

3338 (b) Except as provided in Subsection (5), a waste facility that is owned by a political  
3339 subdivision shall pay \$2.50 per ton for:

3340 (i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii)  
3341 received for disposal if the waste is:

3342 (A) generated outside the boundaries of the political subdivision; and

3343 (B) received from a single generator and exceeds 500 tons in a calendar year; and

3344 (ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:

3345 (A) generated outside the boundaries of the political subdivision; and

3346 (B) received from a single generator and exceeds 500 tons in a calendar year.

3347 (c) Waste received at a facility owned by a political subdivision under Subsection  
3348 (2)(b) may not be counted as part of the total tonnage received by the facility under Subsection  
3349 (2)(a).

3350 (3) (a) As used in this Subsection (3):

3351 (i) "Recycling center" means a facility that extracts valuable materials from a waste  
3352 stream or transforms or remanufactures the material into a usable form that has demonstrated  
3353 or potential market value.

3354 (ii) "Transfer station" means a permanent, fixed, supplemental collection and  
3355 transportation facility that is used to deposit collected solid waste from off-site into a transfer  
3356 vehicle for transport to a solid waste handling or disposal facility.

3357 (b) Except as provided in Subsection (5), the owner or operator of a transfer station or  
3358 recycling center shall pay to the department the following fees on waste sent for disposal to a  
3359 nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this  
3360 section:

3361 (i) \$1.25 per ton on:



- 3362 (A) all nonhazardous solid waste; and
- 3363 (B) waste described in Subsection (1)(a)(iii)(B);
- 3364 (ii) 10 cents per ton on all construction and demolition waste; and
- 3365 (iii) 5 cents per ton on all municipal waste or municipal incinerator ash.
- 3366 (c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee
- 3367 required under Subsection (3)(b)(i).
- 3368 (4) If a facility required to pay fees under this section receives nonhazardous solid
- 3369 waste for treatment or disposal, and the fee required under this section is paid for that treatment
- 3370 or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees
- 3371 under this section.
- 3372 (5) The owner or operator of a waste disposal facility that receives waste described in
- 3373 Subsection (1)(a)(iii)(B) is not required to pay any fee on those wastes if received solely for the
- 3374 purpose of recycling, reuse, or reprocessing.
- 3375 (6) Except as provided in Subsection (2)(a), a facility required to pay fees under this
- 3376 section shall:
- 3377 (a) calculate the fees by multiplying the total tonnage of waste received during the
- 3378 calendar month, computed to the first decimal place, by the required fee rate;
- 3379 (b) pay the fees imposed by this section to the department by the 15th day of the month
- 3380 following the month in which the fees accrued; and
- 3381 (c) with the fees required under Subsection (6)(b), submit to the department, on a form
- 3382 prescribed by the department, information that verifies the amount of waste received and the
- 3383 fees that the owner or operator is required to pay.
- 3384 (7) The department shall:
- 3385 (a) deposit all fees received under this section into the Environmental Quality
- 3386 Restricted Account created in Section 19-1-108; and
- 3387 (b) in preparing its budget for the governor and the Legislature, separately indicate the
- 3388 amount of the department's budget necessary to administer the solid and hazardous waste
- 3389 program established by this part.

3390 (8) The department may contract or agree with a county to assist in performing  
3391 nonhazardous solid waste management activities, including agreements for:

3392 (a) the development of a solid waste management plan required under Section  
3393 17-15-23; and

3394 (b) pass-through of available funding.

3395 (9) This section does not exempt any facility from applicable regulation under the  
3396 Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

3397 Section 58. Section **19-6-120** is amended to read:

3398 **19-6-120. New hazardous waste operation plans -- Designation of hazardous**  
3399 **waste facilities -- Fees for filing and plan review.**

3400 (1) For purposes of this section, the following items shall be treated as submission of a  
3401 new hazardous waste operation plan:

3402 (a) the submission of a revised hazardous waste operation plan specifying a different  
3403 geographic site than a previously submitted plan;

3404 (b) an application for modification of a commercial hazardous waste incinerator if the  
3405 construction or the modification would increase the commercial hazardous waste incinerator  
3406 capacity above the capacity specified in the operation plan as of January 1, 1990, or the  
3407 capacity specified in the operation plan application as of January 1, 1990, if no operation plan  
3408 approval has been issued as of January 1, 1990; or

3409 (c) an application for modification of a commercial hazardous waste treatment, storage,  
3410 or disposal facility, other than an incinerator, if the modification would be outside the  
3411 boundaries of the property owned or controlled by the applicant, as shown in the application or  
3412 approved operation plan as of January 1, 1990, or the initial approved operation plan if initial  
3413 approval is subsequent to January 1, 1990.

3414 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput  
3415 tonnage specified for the trial burn in the operation plan or the operation plan application if no  
3416 operation plan approval has been issued as of January 1, 1990, and on annual operations of  
3417 7,000 hours.

3418 (3) (a) Hazardous waste facilities that are subject to payment of fees under this section  
3419 or Section 19-1-201 for plan reviews under Section 19-6-108 shall be designated by the  
3420 department as either class I, class II, class III, or class IV facilities.

3421 (b) The department shall designate commercial hazardous waste facilities containing  
3422 either landfills, surface impoundments, land treatment units, thermal treatment units,  
3423 incinerators, or underground injection wells, which primarily receive wastes generated by  
3424 off-site sources not owned, controlled, or operated by the facility owner or operator, as class I  
3425 facilities.

3426 (4) The maximum fee for filing and review of each class I facility operation plan is  
3427 \$200,000, and is due and payable as follows:

3428 (a) The owner or operator of a class I facility shall, at the time of filing for plan review,  
3429 pay to the department the nonrefundable sum of \$50,000.

3430 (b) Upon issuance by the [~~executive secretary~~] director of a notice of completeness  
3431 under Section 19-6-108, the owner or operator of the facility shall pay to the department an  
3432 additional nonrefundable sum of \$50,000.

3433 (c) The department shall bill the owner or operator of the facility for any additional  
3434 actual costs of plan review, up to an additional \$100,000.

3435 (5) (a) The department shall designate hazardous waste incinerators that primarily  
3436 receive wastes generated by sources owned, controlled, or operated by the facility owner or  
3437 operator as class II facilities.

3438 (b) The maximum fee for filing and review of each class II facility operation plan is  
3439 \$150,000, and shall be due and payable as follows:

3440 (i) The owner or operator of a class II facility shall, at the time of filing for plan review  
3441 under Section 19-6-108, pay to the department the nonrefundable sum of \$50,000.

3442 (ii) The department shall bill the owner or operator of the facility for any additional  
3443 actual costs of plan review, up to an additional \$100,000.

3444 (6) (a) The department shall designate hazardous waste facilities containing either  
3445 landfills, surface impoundments, land treatment units, thermal treatment units, or underground

3446 injection wells, that primarily receive wastes generated by sources owned, controlled, or  
3447 operated by the facility owner or operator, as class III facilities.

3448 (b) The maximum fee for filing and review of each class III facility operation plan is  
3449 \$100,000 and is due and payable as follows:

3450 (i) The owner or operator shall, at the time of filing for plan review, pay to the  
3451 department the nonrefundable sum of \$1,000.

3452 (ii) The department shall bill the owner or operator of each class III facility for actual  
3453 costs of operation plan review, up to an additional \$99,000.

3454 (7) (a) All other hazardous waste facilities are designated as class IV facilities.

3455 (b) The maximum fee for filing and review of each class IV facility operation plan is  
3456 \$50,000 and is due and payable as follows:

3457 (i) The owner or operator shall, at the time of filing for plan review, pay to the  
3458 department the nonrefundable sum of \$1,000.

3459 (ii) The department shall bill the owner or operator of each class IV facility for actual  
3460 costs of operation plan review, up to an additional \$49,000.

3461 (8) (a) The maximum fee for filing and review of each major modification plan and  
3462 major closure plan for a class I, class II, or class III facility is \$50,000 and is due and payable as  
3463 follows:

3464 (i) The owner or operator shall, at the time of filing for that review, pay to the  
3465 department the nonrefundable sum of \$1,000.

3466 (ii) The department shall bill the owner or operator of the hazardous waste facility for  
3467 actual costs of the review, up to an additional \$49,000.

3468 (b) The maximum fee for filing and review of each minor modification and minor  
3469 closure plan for a class I, class II, or class III facility, and of any modification or closure plan  
3470 for a class IV facility, is \$20,000, and is due and payable as follows:

3471 (i) The owner or operator shall, at the time of filing for that review, pay to the  
3472 department the nonrefundable sum of \$1,000.

3473 (ii) The department shall bill the owner or operator of the hazardous waste facility for

3474 actual costs of review up to an additional \$19,000.

3475 (c) The owner or operator of a thermal treatment unit shall submit a trial or test burn  
3476 schedule 90 days prior to any planned trial or test burn. At the time the schedule is submitted,  
3477 the owner or operator shall pay to the department the nonrefundable fee of \$25,000. The  
3478 department shall apply the fee to the costs of the review and processing of each trial or test  
3479 burn plan, trial or test burn, and trial or test burn data report. The department shall bill the  
3480 owner or operator of the facility for any additional actual costs of review and preparation.

3481 (9) (a) The owner or operator of a class III facility may obtain a plan review within the  
3482 time periods for a class II facility operation plan by paying, at the time of filing for plan review,  
3483 the maximum fee for a class II facility operation plan.

3484 (b) The owner or operator of a class IV facility may obtain a plan review within the  
3485 time periods for a class II facility operation plan by paying, at the time of filing for plan review,  
3486 the maximum fee for a class III facility operation plan.

3487 (c) An owner or operator of a class I, class II, or class III facility who submits a major  
3488 modification plan or a major closure plan may obtain a plan review within the time periods for  
3489 a class II facility operation plan by paying, at the time of filing for plan review, the maximum  
3490 fee for a class II facility operation plan.

3491 (d) An owner or operator of a class I, class II, or class III facility who submits a minor  
3492 modification plan or a minor closure plan, and an owner or operator of a class IV facility who  
3493 submits a modification plan or a closure plan, may obtain a plan review within the time periods  
3494 for a class II facility operation plan by paying, at the time of filing for plan review, the  
3495 maximum fee for a class III facility operation plan.

3496 (10) All fees received by the department under this section shall be deposited in the  
3497 General Fund as dedicated credits for hazardous waste plan reviews in accordance with  
3498 Subsection (12) and Section 19-6-108.

3499 (11) (a) (i) The [~~executive secretary~~] director shall establish an accounting procedure  
3500 that separately accounts for fees paid by each owner or operator who submits a hazardous  
3501 waste operation plan for approval under Section 19-6-108 and pays fees for hazardous waste

3502 plan reviews under this section or Section 19-1-201.

3503 (ii) The [~~executive secretary~~] director shall credit all fees paid by the owner or operator  
3504 to that owner or operator.

3505 (iii) The [~~executive secretary~~] director shall account for costs actually incurred in  
3506 reviewing each operation plan and may only use the fees of each owner or operator for review  
3507 of that owner or operator's plan.

3508 (b) If the costs actually incurred by the department in reviewing a hazardous waste  
3509 operation plan of any facility are less than the nonrefundable fee paid by the owner or operator  
3510 under this section, the department may, upon approval or disapproval of the plan by the board  
3511 or upon withdrawal of the plan by the owner or operator, use any remaining funds that have  
3512 been credited to that owner or operator for the purposes of administering provisions of the  
3513 hazardous waste programs and activities authorized by this part.

3514 (12) (a) With regard to any review of a hazardous waste operation plan, modification  
3515 plan, or closure plan that is pending on April 25, 1988, the [~~executive secretary~~] director may  
3516 assess fees for that plan review.

3517 (b) The total amount of fees paid by an owner or operator of a hazardous waste facility  
3518 whose plan review is affected by this subsection may not exceed the maximum fees allowable  
3519 under this section for the appropriate class of facility.

3520 (13) (a) The department shall maintain accurate records of its actual costs for each plan  
3521 review under this section.

3522 (b) Those records shall be available for public inspection.

3523 Section 59. Section **19-6-402** is amended to read:

3524 **19-6-402. Definitions.**

3525 As used in this part:

3526 (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a  
3527 release from an underground storage tank or petroleum storage tank, or to limit or reduce,  
3528 mitigate, or eliminate the damage caused by that release.

3529 (2) "Board" means the Solid and Hazardous Waste Control Board created in Section

3530 19-1-106.

3531 (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any  
3532 person.

3533 (4) "Certificate of compliance" means a certificate issued to a facility by the [~~executive~~  
3534 ~~secretary~~] director:

3535 (a) demonstrating that an owner or operator of a facility containing one or more  
3536 petroleum storage tanks has met the requirements of this part; and

3537 (b) listing all tanks at the facility, specifying which tanks may receive petroleum and  
3538 which tanks have not met the requirements for compliance.

3539 (5) "Certificate of registration" means a certificate issued to a facility by the [~~executive~~  
3540 ~~secretary~~] director demonstrating that an owner or operator of a facility containing one or more  
3541 underground storage tanks has:

3542 (a) registered the tanks; and

3543 (b) paid the annual underground storage tank fee.

3544 (6) (a) "Certified underground storage tank consultant" means any person who:

3545 (i) meets the education and experience standards established by the board under  
3546 Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions,  
3547 or advice relating to underground storage tank management, release abatement, investigation,  
3548 corrective action, or evaluation for a fee, or in connection with the services for which a fee is  
3549 charged; and

3550 (ii) has submitted an application to the [~~board~~] director and received a written  
3551 statement of certification from the [~~board~~] director.

3552 (b) "Certified underground storage tank consultant" does not include:

3553 (i) an employee of the owner or operator of the underground storage tank, or an  
3554 employee of a business operation that has a business relationship with the owner or operator of  
3555 the underground storage tank, and that markets petroleum products or manages underground  
3556 storage tanks; or

3557 (ii) persons licensed to practice law in this state who offer only legal advice on

3558 underground storage tank management, release abatement, investigation, corrective action, or  
3559 evaluation.

3560 (7) "Closed" means an underground storage tank no longer in use that has been:

3561 (a) emptied and cleaned to remove all liquids and accumulated sludges; and

3562 (b) either removed from the ground or filled with an inert solid material.

3563 (8) "Corrective action plan" means a plan for correcting a release from a petroleum

3564 storage tank that includes provisions for all or any of the following:

3565 (a) cleanup or removal of the release;

3566 (b) containment or isolation of the release;

3567 (c) treatment of the release;

3568 (d) correction of the cause of the release;

3569 (e) monitoring and maintenance of the site of the release;

3570 (f) provision of alternative water supplies to persons whose drinking water has become

3571 contaminated by the release; or

3572 (g) temporary or permanent relocation, whichever is determined by the [~~executive~~

3573 ~~secretary~~] director to be more cost-effective, of persons whose dwellings have been determined

3574 by the [~~executive secretary~~] director to be no longer habitable due to the release.

3575 (9) "Costs" means any money expended for:

3576 (a) investigation;

3577 (b) abatement action;

3578 (c) corrective action;

3579 (d) judgments, awards, and settlements for bodily injury or property damage to third

3580 parties;

3581 (e) legal and claims adjusting costs incurred by the state in connection with judgments,

3582 awards, or settlements for bodily injury or property damage to third parties; or

3583 (f) costs incurred by the state risk manager in determining the actuarial soundness of

3584 the fund.

3585 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been



3586 met.

3587 (11) "Director" means the director of the Division of Environmental Response and  
3588 Remediation.

3589 (12) "Division" means the Division of Environmental Response and Remediation,  
3590 created in Subsection 19-1-105(1)(c).

3591 [~~(11)~~] (13) "Dwelling" means a building that is usually occupied by a person lodging  
3592 there at night.

3593 [~~(12)~~] (14) "Enforcement proceedings" means a civil action or the procedures to  
3594 enforce orders established by Section 19-6-425.

3595 [~~(13)~~] ~~"Executive secretary" means the executive secretary of the board.]~~

3596 [~~(14)~~] (15) "Facility" means all underground storage tanks located on a single parcel of  
3597 property or on any property adjacent or contiguous to that parcel.

3598 [~~(15)~~] (16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section  
3599 19-6-409.

3600 [~~(16)~~] (17) "Loan fund" means the Petroleum Storage Tank Loan Fund created in  
3601 Section 19-6-405.3.

3602 [~~(17)~~] (18) "Operator" means any person in control of or who is responsible on a daily  
3603 basis for the maintenance of an underground storage tank that is in use for the storage, use, or  
3604 dispensing of a regulated substance.

3605 [~~(18)~~] (19) "Owner" means:

3606 (a) in the case of an underground storage tank in use on or after November 8, 1984, any  
3607 person who owns an underground storage tank used for the storage, use, or dispensing of a  
3608 regulated substance; and

3609 (b) in the case of any underground storage tank in use before November 8, 1984, but  
3610 not in use on or after November 8, 1984, any person who owned the tank immediately before  
3611 the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

3612 [~~(19)~~] (20) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at  
3613 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

3614            [~~(20)~~] (21) "Petroleum storage tank" means a tank that:

3615            (a) (i) is underground;

3616            (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42

3617 U.S.C. Section 6991c, et seq.; and

3618            (iii) contains petroleum; or

3619            (b) is a tank that the owner or operator voluntarily submits for participation in the

3620 Petroleum Storage Tank Trust Fund under Section 19-6-415.

3621            [~~(21)~~] (22) "Petroleum Storage Tank Restricted Account" means the account created in

3622 Section 19-6-405.5.

3623            [~~(22)~~] (23) "Program" means the Environmental Assurance Program under Section

3624 19-6-410.5.

3625            [~~(23)~~] (24) "Property damage" means physical injury to or destruction of tangible

3626 property including loss of use of that property.

3627            [~~(24)~~] (25) "Regulated substance" means petroleum and petroleum-based substances

3628 comprised of a complex blend of hydrocarbons derived from crude oil through processes of

3629 separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate

3630 fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

3631            [~~(25)~~] (26) "Release" means any spilling, leaking, emitting, discharging, escaping,

3632 leaching, or disposing from an underground storage tank or petroleum storage tank. The entire

3633 release is considered a single release.

3634            [~~(26)~~] (27) (a) "Responsible party" means any person who:

3635            (i) is the owner or operator of a facility;

3636            (ii) owns or has legal or equitable title in a facility or an underground storage tank;

3637            (iii) owned or had legal or equitable title in the facility at the time any petroleum was

3638 received or contained at the facility;

3639            (iv) operated or otherwise controlled activities at the facility at the time any petroleum

3640 was received or contained at the facility; or

3641            (v) is an underground storage tank installation company.

3642 (b) "Responsible party" as defined in Subsections [~~(26)~~] (27)(a)(i), (ii), and (iii) does  
3643 not include:

3644 (i) any person who is not an operator and, without participating in the management of a  
3645 facility and otherwise not engaged in petroleum production, refining, and marketing, holds  
3646 indicia of ownership:

3647 (A) primarily to protect his security interest in the facility; or

3648 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an  
3649 employee benefit plan; or

3650 (ii) governmental ownership or control of property by involuntary transfers as provided  
3651 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

3652 (c) The exemption created by Subsection [~~(26)~~](27)(b)(i)(B) does not apply to actions  
3653 taken by the state or its officials or agencies under this part.

3654 (d) The terms and activities "indicia of ownership," "primarily to protect a security  
3655 interest," "participation in management," and "security interest" under this part are in  
3656 accordance with 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

3657 (e) The terms "participate in management" and "indicia of ownership" as defined in 40  
3658 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the  
3659 fiduciaries listed in Subsection [~~(26)~~] (27)(b)(i)(B).

3660 [~~(27)~~] (28) "Soil test" means a test, established or approved by board rule, to detect the  
3661 presence of petroleum in soil.

3662 [~~(28)~~] (29) "State cleanup appropriation" means the money appropriated by the  
3663 Legislature to the department to fund the investigation, abatement, and corrective action  
3664 regarding releases not covered by the fund.

3665 [~~(29)~~] (30) "Underground storage tank" means any tank regulated under Subtitle I,  
3666 Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

3667 (a) a petroleum storage tank;

3668 (b) underground pipes and lines connected to a storage tank; and

3669 (c) any underground ancillary equipment and containment system.

3670            [~~(30)~~] (31) "Underground storage tank installation company" means any person, firm,  
3671 partnership, corporation, governmental entity, association, or other organization who installs  
3672 underground storage tanks.

3673            [~~(31)~~] (32) "Underground storage tank installation company permit" means a permit  
3674 issued to an underground storage tank installation company by the [~~executive secretary~~]  
3675 director.

3676            [~~(32)~~] (33) "Underground storage tank technician" means a person employed by and  
3677 acting under the direct supervision of a certified underground storage tank consultant to assist  
3678 in carrying out the functions described in Subsection (6)(a).

3679            Section 60. Section **19-6-403** is amended to read:

3680            **19-6-403. Powers and duties of board.**

3681            The board shall regulate an underground storage tank or petroleum storage tank by:

3682            (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
3683 making rules that:

3684            (a) provide for the:

3685            (i) certification of an installer, inspector, tester, or remover;

3686            (ii) registration of a tank;

3687            (iii) administration of the petroleum storage tank program;

3688            (iv) format of and required information in a record kept by a tank owner or operator

3689 who is participating in the fund;

3690            (v) voluntary participation in the fund for:

3691            (A) an above ground petroleum storage tank; and

3692            (B) a tank:

3693            (I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

3694            (II) specified in Section 19-6-415; and

3695            (vi) certification of an underground storage tank consultant including:

3696            (A) a minimum education or experience requirement; and

3697            (B) a recognition of the educational requirement of a professional engineer licensed

3698 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing  
3699 Act, as meeting the education requirement for certification;

3700 (b) adopt the requirements for an underground storage tank contained in:

3701 (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may  
3702 be amended in the future; and

3703 (ii) an applicable federal requirement authorized by the federal law referenced in  
3704 Subsection (1)(b)(i); and

3705 (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42  
3706 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of  
3707 primacy in the regulation of an underground storage tank; and

3708 (2) applying the provisions of this part.

3709 Section 61. Section **19-6-404** is amended to read:

3710 **19-6-404. Powers and duties of director.**

3711 (1) The [~~executive secretary~~] director shall:

3712 (a) administer the petroleum storage tank program established in this part[-]; and

3713 (b) as authorized by the board and subject to the provisions of this part, act as  
3714 executive secretary of the board under the direction of the chairman of the board.

3715 (2) As necessary to meet the requirements or carry out the purposes of this part, the  
3716 [~~executive secretary~~] director may:

3717 (a) advise, consult, and cooperate with other persons;

3718 (b) employ persons;

3719 (c) authorize a certified employee or a certified representative of the department to  
3720 conduct facility inspections and reviews of records required to be kept by this part and by rules  
3721 made under this part;

3722 (d) encourage, participate in, or conduct studies, investigation, research, and  
3723 demonstrations;

3724 (e) collect and disseminate information;

3725 (f) enforce rules made by the board and any requirement in this part by issuing notices

3726 and orders;

3727 (g) review plans, specifications, or other data;

3728 (h) under the direction of the executive director, represent the state in all matters  
3729 pertaining to interstate underground storage tank management and control, including~~[-with the~~  
3730 ~~concurrence of the executive director;]~~ entering into interstate compacts and other similar  
3731 agreements;

3732 (i) enter into contracts or agreements with political subdivisions for the performance of  
3733 any of the department's responsibilities under this part if:

3734 (i) the contract or agreement is not prohibited by state or federal law and will not result  
3735 in a loss of federal funding; and

3736 (ii) the ~~[executive secretary]~~ director determines that:

3737 (A) the political subdivision is willing and able to satisfactorily discharge its  
3738 responsibilities under the contract or agreement; and

3739 (B) the contract or agreement will be practical and effective;

3740 (j) take any necessary enforcement action authorized under this part;

3741 (k) require an owner or operator of an underground storage tank to:

3742 (i) furnish information or records relating to the tank, its equipment, and contents;

3743 (ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils,  
3744 air, or water; or

3745 (iii) provide access to the tank at reasonable times;

3746 (l) take any abatement, investigative, or corrective action as authorized in this part;

3747 ~~[and]~~ or

3748 (m) enter into agreements or issue orders to apportion percentages of liability of  
3749 responsible parties under Section 19-6-424.5.

3750 ~~[(3) Except as otherwise provided in Subsection 19-6-414(3), appeals of decisions~~  
3751 ~~made by the executive secretary under this part shall be made to the board.]~~

3752 Section 62. Section **19-6-405.3** is amended to read:

3753 **19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan**

3754 **eligibility -- Loan restrictions -- Rulemaking.**

3755 (1) There is created a revolving loan fund known as the Petroleum Storage Tank Loan  
3756 Fund.

3757 (2) The sources of money for the loan fund are:

3758 (a) appropriations to the loan fund;

3759 (b) principal and interest received from the repayment of loans made by the [~~executive~~  
3760 ~~secretary~~] director under Subsection (3); and

3761 (c) all investment income derived from money in the fund.

3762 (3) The [~~executive secretary~~] director may loan, in accordance with this section, money  
3763 available in the loan fund to a person to be used for:

3764 (a) upgrading a petroleum storage tank;

3765 (b) replacing an underground storage tank; or

3766 (c) permanently closing an underground storage tank.

3767 (4) A person may apply to the [~~executive secretary~~] director for a loan under  
3768 Subsection (3) if all tanks owned or operated by that person are in substantial compliance with  
3769 all state and federal requirements or will be brought into substantial compliance using money  
3770 from the loan fund.

3771 (5) The [~~executive secretary~~] director shall consider loan applications under Subsection  
3772 (4) to meet the following objectives:

3773 (a) support availability of gasoline in rural parts of the state;

3774 (b) support small businesses; and

3775 (c) reduce the threat of a petroleum release endangering the environment.

3776 (6) [~~Loans~~] (a) A loan made under this section may not be for more than:

3777 [~~(a) be for more than~~] (i) \$150,000 for all tanks at any one facility;

3778 [~~(b) be for more than~~] (ii) \$50,000 per tank; and

3779 [~~(c) be for more than~~] (iii) 80% of the total cost of:

3780 [(i)] (A) upgrading a tank;

3781 [(ii)] (B) replacing the underground storage tank; or

3782 [~~(iii)~~] (C) permanently closing the underground storage tank~~;~~].

3783 (b) A loan made under this section shall:

3784 [~~(d)~~] (i) have a fixed annual interest rate of 3%;

3785 [~~(e)~~] (ii) have a term no longer than 10 years;

3786 [~~(f)~~] (iii) be made on the condition the loan applicant obtains adequate security for the  
3787 loan as established by board rule under Subsection (7); and

3788 [~~(g)~~] (iv) comply with rules made by the board under Subsection (7).

3789 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
3790 board shall make rules establishing:

3791 (a) form, content, and procedure for a loan application;

3792 (b) criteria and procedures for prioritizing a loan application;

3793 (c) requirements and procedures for securing a loan;

3794 (d) procedures for making a loan;

3795 (e) procedures for administering and ensuring repayment of a loan, including late  
3796 payment penalties; and

3797 (f) procedures for recovering on a defaulted loan.

3798 (8) A decision by the [~~executive secretary~~] director to loan money from the loan fund  
3799 and otherwise administer the loan fund is not subject to Title 63G, Chapter 4, Administrative  
3800 Procedures Act.

3801 (9) The Legislature shall appropriate money from the loan fund to the department for  
3802 the administration of the loan.

3803 (10) The [~~executive secretary~~] director may enter into an agreement with a public entity  
3804 or private organization to perform a task associated with administration of the loan fund.

3805 Section 63. Section **19-6-405.7** is amended to read:

3806 **19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.**

3807 (1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank  
3808 Cleanup Fund," which is referred to in this section as the cleanup fund.

3809 (2) The cleanup fund sources of revenue are:



- 3810 (a) any voluntary contributions received by the department for the cleanup of facilities;
- 3811 (b) legislative appropriations made to the cleanup fund; and
- 3812 (c) costs recovered under this part.

3813 (3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

3814 (4) The [~~executive secretary~~] director may use the cleanup fund money for  
3815 administration, investigation, abatement action, and preparing and implementing a corrective  
3816 action plan regarding releases not covered by the Petroleum Storage Tank Trust Fund created  
3817 in Section 19-6-409.

3818 Section 64. Section **19-6-407** is amended to read:

3819 **19-6-407. Underground storage tank registration -- Change of ownership or**  
3820 **operation -- Civil penalty.**

3821 (1) (a) Each owner or operator of an underground storage tank shall register the tank  
3822 with the [~~executive secretary~~] director if the tank:

- 3823 (i) is in use; or
- 3824 (ii) was closed after January 1, 1974.

3825 (b) If a new person assumes ownership or operational responsibilities for an  
3826 underground storage tank, that person shall inform the executive secretary of the change within  
3827 30 days after the change occurs.

3828 (c) Each installer of an underground storage tank shall notify the [~~executive secretary~~]  
3829 director of the completed installation within 60 days following the installation of an  
3830 underground storage tank.

3831 (2) The [~~executive secretary~~] director may issue a notice of agency action assessing a  
3832 civil penalty in the amount of \$1,000 if an owner, operator, or installer, of a petroleum or  
3833 underground storage tank fails to register the tank or provide notice as required in Subsection  
3834 (1).

3835 (3) The penalties collected under authority of this section shall be deposited in the  
3836 Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

3837 Section 65. Section **19-6-408** is amended to read:

3838           **19-6-408. Underground storage tank registration fee -- Processing fee for tanks**  
3839 **not in the program.**

3840           (1) The department may assess an annual underground storage tank registration fee  
3841 against owners or operators of underground storage tanks that have not been closed. These fees  
3842 shall be:

3843           (a) billed per facility;

3844           (b) due on July 1 annually;

3845           (c) deposited with the department as dedicated credits;

3846           (d) used by the department for the administration of the underground storage tank  
3847 program outlined in this part; and

3848           (e) established under Section 63J-1-504.

3849           (2) (a) In addition to the fee under Subsection (1), an owner or operator who elects to  
3850 demonstrate financial assurance through a mechanism other than the Environmental Assurance  
3851 Program shall pay a processing fee of:

3852           (i) for fiscal year 1997-98, \$1,000 for each financial assurance mechanism document  
3853 submitted to the division for review; and

3854           (ii) on and after July 1, 1998, a processing fee established under Section 63J-1-504.

3855           (b) If a combination of financial assurance mechanisms is used to demonstrate  
3856 financial assurance, the fee under Subsection (2)(a) shall be paid for each document submitted.

3857           (c) As used in this Subsection (2), "financial assurance mechanism document" may be  
3858 a single document that covers more than one facility through a single financial assurance  
3859 mechanism.

3860           (3) Any funds provided for administration of the underground storage tank program  
3861 under this section that are not expended at the end of the fiscal year lapse into the Petroleum  
3862 Storage Tank Restricted Account created in Section 19-6-405.5.

3863           (4) The [~~executive secretary~~] director shall provide all owners or operators who pay the  
3864 annual underground storage tank registration fee a certificate of registration.

3865           (5) (a) The [~~executive secretary~~] director may issue a notice of agency action assessing

3866 a civil penalty of \$1,000 per facility if an owner or operator of an underground storage tank  
 3867 facility fails to pay the required fee within 60 days after the July 1 due date.

3868 (b) The registration fee and late payment penalty accrue interest at 12% per annum.

3869 (c) If the registration fee, late payment penalty, and interest accrued under this  
 3870 Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of  
 3871 compliance issued prior to the July 1 due date lapses. The [~~executive secretary~~] director may  
 3872 not reissue the certificate of compliance until full payment under this Subsection (5) is made to  
 3873 the department.

3874 (d) The [~~executive secretary~~] director may waive any penalty assessed under this  
 3875 Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

3876 Section 66. Section **19-6-409** is amended to read:

3877 **19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.**

3878 (1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage  
 3879 Tank Trust Fund."

3880 (b) The sole sources of revenues for the fund are:

3881 (i) petroleum storage tank fees paid under Section 19-6-411;

3882 (ii) underground storage tank installation company permit fees paid under Section  
 3883 19-6-411;

3884 (iii) the environmental assurance fee and penalties paid under Section 19-6-410.5; and

3885 (iv) interest accrued on revenues listed in this Subsection (1)(b).

3886 (c) Interest earned on fund money is deposited into the fund.

3887 (2) The [~~executive secretary~~] director may expend money from the fund to pay costs:

3888 (a) covered by the fund under Section 19-6-419;

3889 (b) of administering the:

3890 (i) fund; and

3891 (ii) environmental assurance program and fee under Section 19-6-410.5;

3892 (c) incurred by the state for a legal service or claim adjusting service provided in  
 3893 connection with a claim, judgment, award, or settlement for bodily injury or property damage

3894 to a third party;

3895 (d) incurred by the state risk manager in determining the actuarial soundness of the  
3896 fund;

3897 (e) incurred by a third party claiming injury or damages from a release reported on or  
3898 after May 11, 2010, for hiring a certified underground storage tank consultant:

3899 (i) to review an investigation or corrective action by a responsible party; and

3900 (ii) in accordance with Subsection (4); and

3901 (f) allowed under this part that are not listed under this Subsection (2).

3902 (3) Costs for the administration of the fund and the environmental assurance fee shall  
3903 be appropriated by the Legislature.

3904 (4) The [~~executive secretary~~] director shall:

3905 (a) in paying costs under Subsection (2)(e):

3906 (i) determine a reasonable limit on costs paid based on the:

3907 (A) extent of the release;

3908 (B) impact of the release; and

3909 (C) services provided by the certified underground storage tank consultant;

3910 (ii) pay, per release, costs for one certified underground storage tank consultant agreed  
3911 to by all third parties claiming damages or injury;

3912 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and

3913 (iv) not pay legal costs of third parties;

3914 (b) review and give careful consideration to reports and recommendations provided by  
3915 a certified underground storage tank consultant hired by a third party; and

3916 (c) make reports and recommendations provided under Subsection (4)(b) available on  
3917 the Division of Environmental Response and Remediation's website.

3918 Section 67. Section **19-6-411** is amended to read:

3919 **19-6-411. Petroleum storage tank fee for program participants.**

3920 (1) In addition to the underground storage tank registration fee paid in Section

3921 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the

3922 environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum  
3923 storage tank fee to the department for each facility as follows:

3924 (a) on and after July 1, 1990, through June 30, 1993, an annual fee of:

3925 (i) \$250 for each tank:

3926 (A) located at a facility engaged in petroleum production, refining, or marketing; or

3927 (B) with an annual monthly throughput of more than 10,000 gallons; and

3928 (ii) \$125 for each tank:

3929 (A) not located at a facility engaged in petroleum production, refining, or marketing;

3930 and

3931 (B) with an annual monthly throughput of 10,000 gallons or less;

3932 (b) on and after July 1, 1993, through June 30, 1994, an annual fee of:

3933 (i) \$150 for each tank:

3934 (A) located at a facility engaged in petroleum production, refining, or marketing; or

3935 (B) with an average monthly throughput of more than 10,000 gallons; and

3936 (ii) \$75 for each tank:

3937 (A) not located at a facility engaged in petroleum production, refining, or marketing;

3938 and

3939 (B) with an average monthly throughput of 10,000 gallons or less; and

3940 (c) on and after July 1, 1994, an annual fee of:

3941 (i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000  
3942 gallons or less;

3943 (ii) \$150 for each tank in a facility with an annual facility throughput rate of more than  
3944 400,000 gallons; and

3945 (iii) \$150 for each tank in a facility regarding which:

3946 (A) the facility's throughput rate is not reported to the department within 30 days after  
3947 the date this throughput information is requested by the department; or

3948 (B) the owner or operator elects to pay the fee under this subsection, rather than report  
3949 under Subsection (1)(c)(i) or (ii); and

3950 (d) on and after July 1, 1998, for any new tank:

3951 (i) which is installed to replace an existing tank at an existing facility, any annual  
3952 petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to  
3953 the new tank; and

3954 (ii) installed at a new facility or at an existing facility, which is not a replacement for  
3955 another existing tank, the fees are as provided in Subsection (1)(c) of this section.

3956 (2) (a) As a condition of receiving a permit and being eligible for benefits under  
3957 Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank  
3958 installation company shall pay to the department the following fees to be deposited in the fund:

3959 (i) an annual fee of:

3960 (A) \$2,000 per underground storage tank installation company if the installation  
3961 company has installed 15 or fewer underground storage tanks within the 12 months preceding  
3962 the fee due date; or

3963 (B) \$4,000 per underground storage tank installation company if the installation  
3964 company has installed 16 or more underground storage tanks within the 12 months preceding  
3965 the fee due date; and

3966 (ii) \$200 for each underground storage tank installed in the state, to be paid prior to  
3967 completion of installation.

3968 (b) The board shall make rules specifying which portions of an underground storage  
3969 tank installation shall be subject to the permitting fees when less than a full underground  
3970 storage tank system is installed.

3971 (3) (a) Fees under Subsection (1) are due on or before July 1 annually.

3972 (b) If the department does not receive the fee on or before July 1, the department shall  
3973 impose a late penalty of \$60 per facility.

3974 (c) (i) The fee and the late penalty accrue interest at 12% per annum.

3975 (ii) If the fee, the late penalty, and all accrued interest are not received by the  
3976 department within 60 days after July 1, the eligibility of the owner or operator to receive  
3977 payments for claims against the fund lapses on the 61st day after July 1.

3978 (iii) In order for the owner or operator to reinstate eligibility to receive payments for  
3979 claims against the fund, the owner or operator shall meet the requirements of Subsection  
3980 19-6-428(3).

3981 (4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the  
3982 department does not receive the fees on or before July 1, the department shall impose a late  
3983 penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per  
3984 annum.

3985 (ii) If the fee, late penalty, and all accrued interest due are not received by the  
3986 department within 60 days after July 1, the underground storage tank installation company's  
3987 permit and eligibility to receive payments for claims against the fund lapse on the 61st day after  
3988 July 1.

3989 (b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If  
3990 the department does not receive the fees prior to completion of installation, the department  
3991 shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at  
3992 12% per annum.

3993 (ii) If the fee, late penalty, and all accrued interest are not received by the department  
3994 within 60 days after the underground storage tank installation is completed, eligibility to  
3995 receive payments for claims against the fund for that tank lapse on the 61st day after the tank  
3996 installation is completed.

3997 (c) The [~~executive secretary~~] director may not reissue the underground storage tank  
3998 installation company permit until the fee, late penalty, and all accrued interest are received by  
3999 the department.

4000 (5) If the state risk manager determines the fees established in Subsections (1) and (2)  
4001 and the environmental assurance fee established in Section 19-6-410.5 are insufficient to  
4002 maintain the fund on an actuarially sound basis, he shall petition the Legislature to increase the  
4003 petroleum storage tank and underground storage tank installation company permit fees, and the  
4004 environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

4005 (6) The [~~executive secretary~~] director may waive all or part of the fees required to be

4006 paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has  
4007 been dispensed from the tank on or after July 1, 1991.

4008 (7) (a) Each petroleum storage tank or underground storage tank, for which payment of  
4009 fees has been made and other requirements have been met to qualify for a certificate of  
4010 compliance under this part, shall be issued a form of identification, as determined by the board  
4011 under Subsection (7)(b).

4012 (b) The board shall make rules providing for the identification, through a tag or other  
4013 readily identifiable method, of petroleum storage tanks or underground storage tanks under  
4014 Subsection (7)(a) that qualify for a certificate of compliance under this part.

4015 Section 68. Section **19-6-412** is amended to read:

4016 **19-6-412. Petroleum storage tank -- Certificate of compliance.**

4017 (1) (a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may  
4018 obtain a certificate of compliance for the facility.

4019 (b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall  
4020 have a certificate of compliance for the facility.

4021 (2) The [~~executive secretary~~] director shall issue a certificate of compliance if:

4022 (a) the owner or operator has a certificate of registration;

4023 (b) the owner or operator demonstrates it is participating in the Environmental  
4024 Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with  
4025 financial assurance requirements as defined by rule;

4026 (c) all state and federal statutes, rules, and regulations have been substantially complied  
4027 with; and

4028 (d) all tank test requirements of Section 19-6-413 have been met.

4029 (3) If the ownership of or responsibility for the petroleum storage tank changes, the  
4030 certificate of compliance is still valid unless it has been revoked or has lapsed.

4031 (4) The [~~executive secretary~~] director may issue a certificate of compliance for a period  
4032 of less than one year to maintain an administrative schedule of certification.

4033 (5) The [~~executive secretary~~] director shall reissue a certificate of compliance if the



4034 owner or operator of an underground storage tank has complied with the requirements of  
4035 Subsection (2).

4036 (6) If the owner or operator electing to participate in the program has a number of tanks  
4037 in an area where the [~~executive secretary~~] director finds it would be difficult to accurately  
4038 determine which of the tanks may be the source of a release, the owner may only elect to place  
4039 all of the tanks in the area in the program, but not just some of the tanks in the area.

4040 Section 69. Section **19-6-413** is amended to read:

4041 **19-6-413. Tank tightness test -- Actions required after testing.**

4042 (1) The owner or operator of any petroleum storage tank registered before July 1, 1991,  
4043 shall submit to the [~~executive secretary~~] director the results of a tank tightness test conducted:

4044 (a) on or after September 1, 1989, and before January 1, 1990, if the test meets  
4045 requirements set by rule regarding tank tightness tests that were applicable during that period;  
4046 or

4047 (b) on or after January 1, 1990, and before July 1, 1991.

4048 (2) The owner or operator of any petroleum storage tank registered on or after July 1,  
4049 1991, shall submit to the [~~executive secretary~~] director the results of a tank tightness test  
4050 conducted within the six months before the tank was registered or within 60 days after the date  
4051 the tank was registered.

4052 (3) If the tank test performed under Subsection (1) or (2) shows no release of  
4053 petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the  
4054 [~~executive secretary~~] director at the same time the owner or operator submits the test results,  
4055 stating that under customary business inventory practices standards, the owner or operator is  
4056 not aware of any release of petroleum from the tank.

4057 (4) (a) If the tank test shows a release of petroleum from the petroleum storage tank,  
4058 the owner or operator of the tank shall:

4059 (i) correct the problem; and

4060 (ii) submit evidence of the correction to the [~~executive secretary~~] director.

4061 (b) When the [~~executive secretary~~] director receives evidence from an owner or

4062 operator of a petroleum storage tank that the problem with the tank has been corrected, the  
4063 [~~executive secretary~~] director shall:

4064 (i) approve or disapprove the correction; and

4065 (ii) notify the owner or operator that the correction has been approved or disapproved.

4066 (5) The [~~executive secretary~~] director shall review the results of the tank tightness test  
4067 to determine compliance with this part and any rules adopted under the authority of Section  
4068 19-6-403.

4069 (6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D,  
4070 to perform release detection on the tank, the owner or operator shall submit the results of the  
4071 tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

4072 Section 70. Section **19-6-414** is amended to read:

4073 **19-6-414. Grounds for revocation of certificate of compliance and ineligibility for**  
4074 **payment of costs from fund.**

4075 (1) If the [~~executive secretary~~] director determines that any of the requirements of  
4076 Subsection 19-6-412(2) and Section 19-6-413 have not been met, the [~~executive secretary~~]  
4077 director shall notify the owner or operator by certified mail that:

4078 (a) his certificate of compliance may be revoked;

4079 (b) if he is participating in the program, he is violating the eligibility requirements for  
4080 the fund; and

4081 (c) he shall demonstrate his compliance with this part within 60 days after receipt of  
4082 the notification or his certificate of compliance will be revoked and if participating in the  
4083 program he will be ineligible to receive payment for claims against the fund.

4084 (2) If the [~~executive secretary~~] director determines the owner's or operator's compliance  
4085 problems have not been resolved within 60 days after receipt of the notification in Subsection  
4086 (1), the [~~executive secretary~~] director shall send written notice to the owner or operator that the  
4087 owner's or operator's certificate of compliance is revoked and he is no longer eligible for  
4088 payment of costs from the fund.

4089 (3) Revocation of certificates of compliance may be appealed to the executive director.

4090 Section 71. Section **19-6-416** is amended to read:

4091 **19-6-416. Restrictions on delivery of petroleum -- Civil penalty.**

4092 (1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or  
4093 accept petroleum for placement in a petroleum storage tank that is not identified in compliance  
4094 with Subsection 19-6-411(7).

4095 (2) Any person who delivers or accepts delivery of petroleum to a petroleum storage  
4096 tank or places petroleum, including waste petroleum substances, in an underground storage  
4097 tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each  
4098 occurrence.

4099 (3) The [~~executive secretary~~] director shall issue a notice of agency action assessing a  
4100 civil penalty of not more than \$500 against any person who delivers or accepts delivery of  
4101 petroleum to a petroleum storage tank or places petroleum, including waste petroleum  
4102 substances, in violation of Subsection (1) in a petroleum storage tank or underground storage  
4103 tank.

4104 (4) A civil penalty may not be assessed under this section against any person who in  
4105 good faith delivers or places petroleum in a petroleum storage tank or underground storage tank  
4106 that is identified in compliance with Subsection 19-6-411(7) and rules made under that  
4107 subsection, whether or not the tank is in actual compliance with the other requirements of  
4108 Section 19-6-411.

4109 Section 72. Section **19-6-416.5** is amended to read:

4110 **19-6-416.5. Restrictions on underground storage tank installation companies --**  
4111 **Civil penalty.**

4112 (1) After July 1, 1994, no individual or underground installation company may install  
4113 an underground storage tank without having a valid underground storage tank installation  
4114 company permit.

4115 (2) Any individual or underground storage tank installation company who installs an  
4116 underground storage tank in violation of Subsection (1) is subject to a civil penalty of \$500 per  
4117 underground storage tank.

4118 (3) The [~~executive secretary~~] director shall issue a notice of agency action assessing a  
4119 civil penalty of \$500 against any underground storage tank installation company or person who  
4120 installs an underground storage tank in violation of Subsection (1).

4121 Section 73. Section **19-6-417** is amended to read:

4122 **19-6-417. Use of fund revenues to investigate certain releases from petroleum**  
4123 **storage tank.**

4124 If the [~~executive secretary~~] director is notified of or otherwise becomes aware of a  
4125 release or suspected release of petroleum, he may expend revenues from the fund to investigate  
4126 the release or suspected release if he has reasonable cause to believe the release is from a tank  
4127 that is covered by the fund.

4128 Section 74. Section **19-6-418** is amended to read:

4129 **19-6-418. Recovery of costs by director.**

4130 (1) The [~~executive secretary~~] director may recover:

4131 (a) from a responsible party the proportionate share of costs the party is responsible for  
4132 as determined under Section 19-6-424.5;

4133 (b) any amount required to be paid by the owner under this part which the owner has  
4134 not paid; and

4135 (c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).

4136 (2) The [~~executive secretary~~] director may pursue an action or recover costs from any  
4137 other person if that person caused or substantially contributed to the release.

4138 (3) All costs recovered under this section shall be deposited in the Petroleum Storage  
4139 Tank Cleanup Fund created in Section 19-6-405.7.

4140 Section 75. Section **19-6-419** is amended to read:

4141 **19-6-419. Costs covered by the fund -- Costs paid by owner or operator --**  
4142 **Payments to third parties -- Apportionment of costs.**

4143 (1) If all requirements of this part have been met and a release occurs from a tank that  
4144 is covered by the fund, the costs per release are covered as provided under this section.

4145 (2) For releases reported before May 11, 2010, the responsible party shall pay:

- 4146 (a) the first \$10,000 of costs; and
- 4147 (b) (i) all costs over \$1,000,000, if the release was from a tank:
  - 4148 (A) located at a facility engaged in petroleum production, refining, or marketing; or
  - 4149 (B) with an average monthly facility throughput of more than 10,000 gallons; and
- 4150 (ii) all costs over \$500,000, if the release was from a tank:
  - 4151 (A) not located at a facility engaged in petroleum production, refining, or marketing;
  - 4152 and
  - 4153 (B) with an average monthly facility throughput of 10,000 gallons or less.
- 4154 (3) For releases reported before May 11, 2010, if money is available in the fund and the
- 4155 responsible party has paid costs of \$10,000, the ~~[executive secretary]~~ director shall pay costs
- 4156 from the fund in an amount not to exceed:
  - 4157 (a) \$990,000 if the release was from a tank:
    - 4158 (i) located at a facility engaged in petroleum production, refining, or marketing; or
    - 4159 (ii) with an average monthly facility throughput of more than 10,000 gallons; and
  - 4160 (b) \$490,000 if the release was from a tank:
    - 4161 (i) not located at a facility engaged in petroleum production, refining, or marketing;
    - 4162 and
    - 4163 (ii) with an average monthly facility throughput of 10,000 gallons or less.
- 4164 (4) For a release reported on or after May 11, 2010, the responsible party shall pay:
  - 4165 (a) the first \$10,000 of costs; and
  - 4166 (b) (i) all costs over \$2,000,000, if the release was from a tank:
    - 4167 (A) located at a facility engaged in petroleum production, refining, or marketing; or
    - 4168 (B) with an average monthly facility throughput of more than 10,000 gallons; and
  - 4169 (ii) all costs over \$1,000,000, if the release was from a tank:
    - 4170 (A) not located at a facility engaged in petroleum production, refining, or marketing;
    - 4171 and
    - 4172 (B) with an average monthly facility throughput of 10,000 gallons or less.
- 4173 (5) For a release reported on or after May 11, 2010, if money is available in the fund

4174 and the responsible party has paid costs of \$10,000, the [~~executive secretary~~] director shall pay  
4175 costs from the fund in an amount not to exceed:

4176 (a) \$1,990,000 if the release was from a tank:

4177 (i) located at a facility engaged in petroleum production, refining, or marketing; or

4178 (ii) with an average monthly facility throughput of more than 10,000 gallons; and

4179 (b) \$990,000 if the release was from a tank:

4180 (i) not located at a facility engaged in petroleum production, refining, or marketing;

4181 and

4182 (ii) with an average monthly facility throughput of 10,000 gallons or less.

4183 (6) The [~~executive secretary~~] director may pay fund money to a responsible party up to  
4184 the following amounts in a fiscal year:

4185 (a) \$1,990,000 to a responsible party owning or operating less than 100 petroleum  
4186 storage tanks; or

4187 (b) \$3,990,000 to a responsible party owning or operating 100 or more petroleum  
4188 storage tanks.

4189 (7) (a) In authorizing payments for costs from the fund, the [~~executive secretary~~]  
4190 director shall apportion money:

4191 (i) first, to the following type of expenses incurred by the state:

4192 (A) legal;

4193 (B) adjusting; and

4194 (C) actuarial;

4195 (ii) second, to costs incurred for:

4196 (A) investigation;

4197 (B) abatement action; and

4198 (C) corrective action; and

4199 (iii) third, to payment of:

4200 (A) judgments;

4201 (B) awards; and

4202 (C) settlements to third parties for bodily injury or property damage.

4203 (b) The board shall make rules governing the apportionment of costs among third party  
4204 claimants.

4205 Section 76. Section **19-6-420** is amended to read:

4206 **19-6-420. Releases -- Abatement actions -- Corrective actions.**

4207 (1) If the [~~executive secretary~~] director determines that a release from a petroleum  
4208 storage tank has occurred, he shall:

4209 (a) identify and name as many of the responsible parties as reasonably possible; and

4210 (b) determine which responsible parties, if any, are covered by the fund regarding the  
4211 release in question.

4212 (2) Regardless of whether the tank generating the release is covered by the fund, the  
4213 [~~executive secretary~~] director may:

4214 (a) order the owner or operator to take abatement, investigative, or corrective action,  
4215 including the submission of a corrective action plan; and

4216 (b) if the owner or operator fails to take any of the abatement, investigative, or  
4217 corrective action ordered by the [~~executive secretary~~] director, the [~~executive secretary~~] director  
4218 may take any one or more of the following actions:

4219 (i) subject to the conditions in this part, use money from the fund, if the tank involved  
4220 is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup  
4221 Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective  
4222 action;

4223 (ii) commence an enforcement proceeding;

4224 (iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or

4225 (iv) recover costs from responsible parties equal to their proportionate share of liability  
4226 as determined by Section 19-6-424.5.

4227 (3) (a) Subject to the limitations established in Section 19-6-419, the [~~executive~~  
4228 ~~secretary~~] director shall provide money from the fund for abatement action for a release  
4229 generated by a tank covered by the fund if:

- 4230 (i) the owner or operator takes the abatement action ordered by the [~~executive~~  
4231 ~~secretary~~] director; and
- 4232 (ii) the [~~executive secretary~~] director approves the abatement action.
- 4233 (b) If a release presents the possibility of imminent and substantial danger to the public  
4234 health or the environment, the owner or operator may take immediate abatement action and  
4235 petition the [~~executive secretary~~] director for reimbursement from the fund for the costs of the  
4236 abatement action. If the owner or operator can demonstrate to the satisfaction of the [~~executive~~  
4237 ~~secretary~~] director that the abatement action was reasonable and timely in light of  
4238 circumstances, the [~~executive secretary~~] director shall reimburse the petitioner for costs  
4239 associated with immediate abatement action, subject to the limitations established in Section  
4240 19-6-419.
- 4241 (c) The owner or operator shall notify the [~~executive secretary~~] director within 24 hours  
4242 of the abatement action taken.
- 4243 (4) (a) If the [~~executive secretary~~] director determines corrective action is necessary,  
4244 the [~~executive secretary~~] director shall order the owner or operator to submit a corrective action  
4245 plan to address the release.
- 4246 (b) If the owner or operator submits a corrective action plan, the [~~executive secretary~~]  
4247 director shall review the corrective action plan and approve or disapprove the plan.
- 4248 (c) In reviewing the corrective action plan, the [~~executive secretary~~] director shall  
4249 consider the following:
- 4250 (i) the threat to public health;
- 4251 (ii) the threat to the environment; and
- 4252 (iii) the cost-effectiveness of alternative corrective actions.
- 4253 (5) If the [~~executive secretary~~] director approves the corrective action plan or develops  
4254 his own corrective action plan, he shall:
- 4255 (a) approve the estimated cost of implementing the corrective action plan;
- 4256 (b) order the owner or operator to implement the corrective action plan;
- 4257 (c) (i) if the release is covered by the fund, determine the amount of fund money to be



4258 allocated to an owner or operator to implement a corrective action plan; and

4259 (ii) subject to the limitations established in Section 19-6-419, provide money from the  
4260 fund to the owner or operator to implement the corrective action plan.

4261 (6) (a) The [~~executive secretary~~] director may not distribute any money from the fund  
4262 for corrective action until the owner or operator obtains the [~~executive secretary's~~] director's  
4263 approval of the corrective action plan.

4264 (b) An owner or operator who begins corrective action without first obtaining approval  
4265 from the [~~executive secretary~~] director and who is covered by the fund may be reimbursed for  
4266 the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

4267 (i) the owner or operator submits the corrective action plan to the [~~executive secretary~~]  
4268 director within seven days after beginning corrective action; and

4269 (ii) the [~~executive secretary~~] director approves the corrective action plan.

4270 (7) If the [~~executive secretary~~] director disapproves the plan, he shall solicit a new  
4271 corrective action plan from the owner or operator.

4272 (8) If the [~~executive secretary~~] director disapproves the second corrective action plan,  
4273 or if the owner or operator fails to submit a second plan within a reasonable time, the  
4274 [~~executive secretary~~] director may:

4275 (a) develop his own corrective action plan; and

4276 (b) act as authorized under Subsections (2) and (5).

4277 (9) (a) When notified that the corrective action plan has been implemented, the  
4278 [~~executive secretary~~] director shall inspect the location of the release to determine whether or  
4279 not the corrective action has been properly performed and completed.

4280 (b) If the [~~executive secretary~~] director determines the corrective action has not been  
4281 properly performed or completed, he may issue an order requiring the owner or operator to  
4282 complete the corrective action within the time specified in the order.

4283 Section 77. Section **19-6-421** is amended to read:

4284 **19-6-421. Third party payment restrictions and requirements.**

4285 (1) If there are sufficient revenues in the fund, and subject to the provisions of Sections

4286 19-6-419, 19-6-422, and 19-6-423, the [~~executive secretary~~] director shall authorize payment  
4287 from the fund to third parties regarding a release covered by the fund as provided in Subsection  
4288 (2) if:

4289 (a) (i) he is notified that a final judgment or award has been entered against the  
4290 responsible party covered by the fund that determines liability for bodily injury or property  
4291 damage to third parties caused by a release from the tank; or

4292 (ii) approved by the state risk manager, the responsible party has agreed to pay an  
4293 amount in settlement of a claim arising from the release; and

4294 (b) the responsible party has failed to satisfy the judgment or award, or pay the amount  
4295 agreed to.

4296 (2) The [~~executive secretary~~] director shall authorize payment to the third parties of the  
4297 amount of the judgment, award, or amount agreed to subject to the limitations established in  
4298 Section 19-6-419.

4299 Section 78. Section **19-6-423** is amended to read:

4300 **19-6-423. Claim or suit against responsible parties -- Prerequisites for payment**  
4301 **from fund to responsible parties or third parties -- Limitations of liability for third party**  
4302 **claims.**

4303 (1) (a) The [~~executive secretary~~] director may authorize payments from the fund to a  
4304 responsible party if the responsible party receives actual or constructive notice:

4305 (i) of a release likely to give rise to a claim; or

4306 (ii) that in connection with a release a:

4307 (A) suit has been filed; or

4308 (B) claim has been made against the responsible party for:

4309 (I) bodily injury; or

4310 (II) property damage.

4311 (b) A responsible party described in Subsection (1)(a) shall:

4312 (i) inform the state risk manager immediately of a release, suit, or claim described in  
4313 Subsection (1)(a);

4314 (ii) allow the state risk manager and the state risk manager's legal counsel to participate  
4315 with the responsible party and the responsible party's legal counsel in:

- 4316 (A) the defense of a suit;
- 4317 (B) determination of legal strategy;
- 4318 (C) other decisions affecting the defense of a suit; and
- 4319 (D) settlement negotiations; and

4320 (iii) conduct the defense of a suit or claim in good faith.

4321 (2) The [~~executive secretary~~] director may authorize payment of fund money for a  
4322 judgment or award to third parties if the state risk manager:

- 4323 (a) is allowed to participate in the defense of the suit as required under Subsection  
4324 (1)(b); and
- 4325 (b) approves the settlement.

4326 (3) The [~~executive secretary~~] director may make a payment from the fund to a third  
4327 party pursuant to Section 19-6-421 or fund a corrective action plan pursuant to Section  
4328 19-6-420 if the payment or funding does not impose a liability or make a payment for:

- 4329 (a) an obligation of a responsible party for:
  - 4330 (i) workers' compensation benefits;
  - 4331 (ii) disability benefits;
  - 4332 (iii) unemployment compensation; or
  - 4333 (iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);
- 4334 (b) a bodily injury award to:

- 4335 (i) a responsible party's employee arising from and in the course of the employee's  
4336 employment; or

- 4337 (ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of the  
4338 employee described in Subsection (3)(b)(i);

- 4339 (c) bodily injury or property damage arising from the ownership, maintenance, use, or  
4340 entrustment to others of an aircraft, motor vehicle, or watercraft;

- 4341 (d) property damage to a property owned by, occupied by, rented to, loaned to, bailed

4342 to, or otherwise in the care, custody, or control of a responsible party except to the extent  
4343 necessary to complete a corrective action plan;

4344 (e) bodily injury or property damage for which a responsible party is obligated to pay  
4345 damages by reason of the assumption of liability in a contract or agreement unless the  
4346 responsible party entered into the contract or agreement to meet the financial responsibility  
4347 requirements of:

4348 (i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c et  
4349 seq., or regulations issued under this act; or

4350 (ii) this part, or rules made under this part;

4351 (f) bodily injury or property damage for which a responsible party is liable to a third  
4352 party solely on account of personal injury to the third party's spouse;

4353 (g) bodily injury, property damage, or the cost of corrective action caused by releases  
4354 reported before May 11, 2010 that are covered by the fund if the total amount previously paid  
4355 by the [~~executive secretary~~] director to compensate third parties and fund corrective action  
4356 plans for the releases equals:

4357 (i) \$990,000 for a single release; and

4358 (ii) for all releases by a responsible party in a fiscal year:

4359 (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;

4360 and

4361 (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks;

4362 and

4363 (h) bodily injury, property damage, or the cost of corrective action caused by releases  
4364 reported on or after May 11, 2010, covered by the fund if the total amount previously paid by  
4365 the [~~executive secretary~~] director to compensate third parties and fund corrective action plans  
4366 for the releases equals:

4367 (i) \$1,990,000 for a single release; and

4368 (ii) for all releases by a responsible party in a fiscal year:

4369 (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;

4370 and

4371 (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks.

4372 Section 79. Section **19-6-424** is amended to read:

4373 **19-6-424. Claims not covered by fund.**

4374 (1) The [~~executive secretary~~] director may not authorize payments from the fund

4375 unless:

4376 (a) the claim was based on a release occurring during a period for which that tank was  
4377 covered by the fund;

4378 (b) the claim was made:

4379 (i) during a period for which that tank was covered by the fund; or

4380 (ii) (A) within one year after that fund-covered tank is closed; or

4381 (B) within six months after the end of the period during which the tank was covered by  
4382 the fund; and

4383 (c) there are sufficient revenues in the fund.

4384 (2) The [~~executive secretary~~] director may not authorize payments from the fund for an  
4385 underground storage tank installation company unless:

4386 (a) the claim was based on a release occurring during the period prior to the issuance of  
4387 a certificate of compliance;

4388 (b) the claim was made within 12 months after the date the tank is issued a certificate  
4389 of compliance for that tank; and

4390 (c) there are sufficient revenues in the fund.

4391 (3) The [~~executive secretary~~] director may require the claimant to provide additional  
4392 information as necessary to demonstrate coverage by the fund at the time of submittal of the  
4393 claim.

4394 (4) If the Legislature repeals or refuses to reauthorize the program for petroleum  
4395 storage tanks established in this part, the [~~executive secretary~~] director may authorize payments  
4396 from the fund as provided in this part for claims made until the end of the time period  
4397 established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

4398 Section 80. Section **19-6-424.5** is amended to read:

4399 **19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies --**  
4400 **Amounts recovered.**

4401 (1) After providing notice and opportunity for comment to responsible parties  
4402 identified and named under Section 19-6-420, the [~~executive secretary~~] director may:

4403 (a) issue written orders determining responsible parties;

4404 (b) issue written orders apportioning liability among responsible parties; and

4405 (c) take action, including legal action or issuing written orders, to recover costs from  
4406 responsible parties, including costs of any investigation, abatement, and corrective action  
4407 performed under this part.

4408 (2) (a) In any apportionment of liability, whether made by the [~~executive secretary~~]  
4409 director or made in any administrative proceeding or judicial action, the following standards  
4410 apply:

4411 (i) liability shall be apportioned among responsible parties in proportion to their  
4412 respective contributions to the release; and

4413 (ii) the apportionment of liability shall be based on equitable factors, including the  
4414 quantity, mobility, persistence, and toxicity of regulated substances contributed by a  
4415 responsible party, and the comparative behavior of a responsible party in contributing to the  
4416 release, relative to other responsible parties.

4417 (b) (i) The burden of proving proportionate contribution shall be borne by each  
4418 responsible party.

4419 (ii) If a responsible party does not prove [~~his~~] the responsible party's proportionate  
4420 contribution, the court[, ~~the board,~~] or the [~~executive secretary~~] director shall apportion liability  
4421 to the party based on available evidence and the standards of Subsection (2)(a).

4422 (c) The court, the board, or the [~~executive secretary~~] director may not impose joint and  
4423 several liability.

4424 (d) Each responsible party is strictly liable for his share of costs.

4425 (3) The failure of the [~~executive secretary~~] director to name all responsible parties is

4426 not a defense to an action under this section.

4427 (4) The [~~executive secretary~~] director may enter into an agreement with any responsible  
4428 party regarding that party's proportionate share of liability or any action to be taken by that  
4429 party.

4430 (5) The [~~executive secretary~~] director and a responsible party may not enter into an  
4431 agreement under this part unless all responsible parties named and identified under Subsection  
4432 19-6-420(1)(a):

4433 (a) have been notified in writing by either the [~~executive secretary~~] director or the  
4434 responsible party of the proposed agreement; and

4435 (b) have been given an opportunity to comment on the proposed agreement prior to the  
4436 parties' entering into the agreement.

4437 (6) (a) Any party who incurs costs under this part in excess of his liability may seek  
4438 contribution from any other party who is or may be liable under this part for the excess costs in  
4439 the district court.

4440 (b) In resolving claims made under Subsection (6)(a), the court shall allocate costs  
4441 using the standards in Subsection (2).

4442 (7) (a) A party who has resolved his liability under this part is not liable for claims for  
4443 contribution regarding matters addressed in the agreement or order.

4444 (b) (i) An agreement or order determining liability under this part does not discharge  
4445 any of the liability of responsible parties who are not parties to the agreement or order, unless  
4446 the terms of the agreement or order expressly provide otherwise.

4447 (ii) An agreement or order determining liability made under this subsection reduces the  
4448 potential liability of other responsible parties by the amount of the agreement or order.

4449 (8) (a) If the [~~executive secretary~~] director obtains less than complete relief from a  
4450 party who has resolved his liability under this section, the [~~executive secretary~~] director may  
4451 bring an action against any party who has not resolved his liability as determined in an order.

4452 (b) In apportioning liability, the standards of Subsection (2) apply.

4453 (c) A party who resolved his liability for some or all of the costs under this part may

4454 seek contribution from any person who is not a party to the agreement or order.

4455 (9) (a) An agreement or order determining liability under this part may provide that the  
4456 [~~executive secretary~~] director will pay for costs of actions that the parties have agreed to  
4457 perform, but which the [~~executive secretary~~] director has agreed to finance, under the terms of  
4458 the agreement or order.

4459 (b) If the [~~executive secretary~~] director makes payments from the fund or state cleanup  
4460 appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this  
4461 section or any other applicable authority.

4462 (c) Any amounts recovered under this section shall be deposited in the Petroleum  
4463 Storage Tank Cleanup Fund created under Section 19-6-405.7.

4464 Section 81. Section **19-6-425** is amended to read:

4465 **19-6-425. Violation of part -- Civil penalty -- Suit in district court.**

4466 (1) Except as provided in Section 19-6-407, any person who violates any requirement  
4467 of this part or any order issued or rule made under the authority of this part is subject to a civil  
4468 penalty of not more than \$10,000 per day for each day of violation.

4469 (2) The [~~executive secretary~~] director may enforce any requirement, rule, agreement, or  
4470 order issued under this part by bringing a suit in the district court in the county where the  
4471 underground storage tank or petroleum storage tank is located.

4472 (3) The department shall deposit the penalties collected under this part in the  
4473 Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

4474 Section 82. Section **19-6-428** is amended to read:

4475 **19-6-428. Eligibility for participation in the fund.**

4476 (1) Subject to the requirements of Section 19-6-410.5, all owners and operators of  
4477 existing petroleum storage tanks that were covered by the fund on May 5, 1997, may elect to  
4478 continue to participate in the program by meeting the requirements of this part, including  
4479 paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and  
4480 19-6-411.

4481 (2) Any new petroleum storage tanks that were installed after May 5, 1997, or tanks



4482 eligible under Section 19-6-415, may elect to participate in the program by complying with the  
4483 requirements of this part.

4484 (3) (a) All owners and operators of petroleum storage tanks who elect to not participate  
4485 in the program, including by the use of an alternative financial assurance mechanism, shall, in  
4486 order to subsequently participate in the program:

- 4487 (i) perform a tank tightness test;
- 4488 (ii) except as provided in Subsection (3)(b), perform a site check, including soil and,  
4489 when applicable, groundwater samples, to demonstrate that no release of petroleum exists or  
4490 that there has been adequate remediation of releases as required by board rules;
- 4491 (iii) provide the required tests and samples to the ~~[executive secretary]~~ director; and
- 4492 (iv) comply with the requirements of this part.

4493 (b) A site check under Subsection (3)(a)(ii) is not required if the ~~[executive secretary]~~  
4494 director determines, with reasonable cause, that soil and groundwater samples are unnecessary  
4495 to establish that no petroleum has been released.

4496 (4) The ~~[executive secretary]~~ director shall review the tests and samples provided under  
4497 Subsection (3)(a)(iii) to determine:

- 4498 (a) whether or not any release of the petroleum has occurred; or
- 4499 (b) if the remediation is adequate.

4500 Section 83. Section **19-6-601** is amended to read:

4501 **19-6-601. Definitions.**

4502 As used in this part~~["board"]~~:

4503 (1) "Board" means the Solid and Hazardous Waste Control Board appointed under  
4504 Title 19, Chapter 6, Hazardous Substances.

4505 (2) "Director" means the director of the Division of Solid and Hazardous Waste.

4506 Section 84. Section **19-6-606** is amended to read:

4507 **19-6-606. Enforcement.**

4508 (1) The ~~[board]~~ director may authorize inspections under Section ~~[19-6-104]~~ 19-6-107  
4509 of any place, building, or premise where lead acid batteries are sold to determine compliance

4510 with this part. The ~~[board]~~ director may authorize inspections under this subsection only as  
4511 funding is available within the department's current budget.

4512 (2) Local health departments established under Title 26A, Local Health Authorities,  
4513 may enforce the provisions of this part.

4514 Section 85. Section **19-6-703** is amended to read:

4515 **19-6-703. Definitions.**

4516 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
4517 19-1-106.

4518 (2) "Commission" means the State Tax Commission.

4519 (3) "Department" means the Department of Environmental Quality created in Title 19,  
4520 Chapter 1, General Provisions.

4521 (4) "Director" means the director of the Division of Solid and Hazardous Waste.

4522 ~~[(4)]~~ (5) "Division" means the Division of Solid and Hazardous Waste ~~[as]~~, created in  
4523 ~~[Section]~~ Subsection 19-1-105(1)(e).

4524 ~~[(5)]~~ (6) "DIY" means do it yourself.

4525 ~~[(6)]~~ (7) "DIYer" means a person who generates used oil through household activities,  
4526 including maintenance of personal vehicles.

4527 ~~[(7)]~~ (8) "DIYer used oil" means used oil a person generates through household  
4528 activities, including maintenance of personal vehicles.

4529 ~~[(8)]~~ (9) "DIYer used oil collection center" means any site or facility that accepts or  
4530 aggregates and stores used oil collected only from DIYers.

4531 ~~[(9)] "Executive secretary" means the executive secretary of the board.]~~

4532 (10) "Hazardous waste" means any substance defined as hazardous waste under Title  
4533 19, Chapter 6, Hazardous Substances.

4534 (11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce  
4535 friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.

4536 (12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil  
4537 in Utah.

4538           (13) "Manifest" means the form used for identifying the quantity and composition and  
4539 the origin, routing, and destination of used oil during its transportation from the point of  
4540 collection to the point of storage, processing, use, or disposal.

4541           (14) "Off-specification used oil" means used oil that exceeds levels of constituents and  
4542 properties as specified by board rule and consistent with 40 CFR 279, Standards for the  
4543 Management of Used Oil.

4544           (15) "On-specification used oil" means used oil that does not exceed levels of  
4545 constituents and properties as specified by board rule and consistent with 40 CFR 279,  
4546 Standards for the Management of Used Oil.

4547           (16) (a) "Processing" means chemical or physical operations under Subsection (16)(b)  
4548 designed to produce from used oil, or to make used oil more amenable for production of:

- 4549           (i) gasoline, diesel, and other petroleum derived fuels;
- 4550           (ii) lubricants; or
- 4551           (iii) other products derived from used oil.

4552           (b) "Processing" includes:

- 4553           (i) blending used oil with virgin petroleum products;
- 4554           (ii) blending used oils to meet fuel specifications;
- 4555           (iii) filtration;
- 4556           (iv) simple distillation;
- 4557           (v) chemical or physical separation; and
- 4558           (vi) rerefining.

4559           (17) "Recycled oil" means oil reused for any purpose following its original use,  
4560 including:

- 4561           (a) the purpose for which the oil was originally used; and
- 4562           (b) used oil processed or burned for energy recovery.

4563           (18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum  
4564 distillation of filtered and dehydrated used oil. The composition varies with column operation  
4565 and feedstock.

4566 (19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been  
4567 used and as a result of that use is contaminated by physical or chemical impurities.

4568 (20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates,  
4569 or stores used oil collected only from other used oil generation sites owned or operated by the  
4570 owner or operator of the aggregation point, from which used oil is transported to the  
4571 aggregation point in shipments of no more than 55 gallons.

4572 (b) A used oil aggregation point may also accept oil from DIYers.

4573 (21) "Used oil burner" means a person who burns used oil for energy recovery.

4574 (22) "Used oil collection center" means any site or facility registered with the state to  
4575 manage used oil and that accepts or aggregates and stores used oil collected from used oil  
4576 generators, other than DIYers, who are regulated under this part and bring used oil to the  
4577 collection center in shipments of no more than 55 gallons and under the provisions of this part.  
4578 Used oil collection centers may accept DIYer used oil also.

4579 (23) "Used oil fuel marketer" means any person who:

4580 (a) directs a shipment of off-specification used oil from its facility to a used oil burner;  
4581 or

4582 (b) first claims the used oil to be burned for energy recovery meets the used oil fuel  
4583 specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil  
4584 is to be burned in accordance with rules for on-site burning in space heaters in accordance with  
4585 40 CFR 279.

4586 (24) "Used oil generator" means any person, by site, whose act or process produces  
4587 used oil or whose act first causes used oil to become subject to regulation.

4588 (25) "Used oil handler" means a person generating used oil, collecting used oil,  
4589 transporting used oil, operating a transfer facility or aggregation point, processing or rerefining  
4590 used oil, or marketing used oil.

4591 (26) "Used oil processor or rerefiner" means a facility that processes used oil.

4592 (27) "Used oil transfer facility" means any transportation-related facility, including  
4593 loading docks, parking areas, storage areas, and other areas where shipments of used oil are

4594 held for more than 24 hours during the normal course of transportation and not longer than 35  
4595 days.

4596 (28) (a) "Used oil transporter" means the following persons unless they are exempted  
4597 under Subsection (28)(b):

4598 (i) any person who transports used oil;

4599 (ii) any person who collects used oil from more than one generator and transports the  
4600 collected oil;

4601 (iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who  
4602 transports collected DIYer used oil from used oil generators, collection centers, aggregation  
4603 points, or other facilities required to be permitted or registered under this part and where  
4604 household DIYer used oil is collected; and

4605 (iv) owners and operators of used oil transfer facilities.

4606 (b) "Used oil transporter" does not include:

4607 (i) persons who transport oil on site;

4608 (ii) generators who transport shipments of used oil totalling 55 gallons or less from the  
4609 generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

4610 (iii) generators who transport shipments of used oil totalling 55 gallons or less from the  
4611 generator to a used oil aggregation point owned or operated by the same generator as allowed  
4612 under 40 CFR 279.24, Off-site Shipments;

4613 (iv) persons who transport used oil generated by DIYers from the initial generator to a  
4614 used oil generator, used oil collection center, used oil aggregation point, used oil processor or  
4615 rerefiner, or used oil burner subject to permitting or registration under this part; or

4616 (v) railroads that transport used oil and are regulated under 49 U.S.C. Subtitle V, Rail  
4617 Programs, and 49 U.S.C. 5101 et seq., federal Hazardous Materials Transportation Uniform  
4618 Safety Act.

4619 Section 86. Section **19-6-704** is amended to read:

4620 **19-6-704. Powers and duties of the board.**

4621 (1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative

4622 Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279,  
4623 Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil  
4624 under 40 CFR 279. For these purposes the board shall:

4625 ~~[(a) (i) receive a proposed dispositive action from an administrative law judge as~~  
4626 ~~provided by Section 19-1-301; and]~~

4627 ~~[(ii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~  
4628 ~~action; or]~~

4629 ~~[(B) return the proposed dispositive action to the administrative law judge for further~~  
4630 ~~action as directed;]~~

4631 ~~[(b)]~~ (a) establish by rule conditions and procedures for registration and revocation of  
4632 registration as a used oil collection center, used oil aggregation point, or DIYer used oil  
4633 collection center;

4634 ~~[(c)]~~ (b) provide by rule that used oil aggregation points that do not accept DIYer used  
4635 oil are required to comply with used oil collection standards under this part, but are not  
4636 required to be permitted or registered;

4637 ~~[(d)]~~ (c) establish by rule conditions and fees required to obtain permits and operate as  
4638 used oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil  
4639 fuel marketers;

4640 ~~[(e)]~~ (d) establish by rule the amount of liability insurance or other financial  
4641 responsibility the applicant shall have to qualify for a permit under Subsection (1)~~[(d)]~~(c);

4642 ~~[(f)]~~ (e) establish by rule the form and amount of reclamation surety required for  
4643 reclamation of any site or facility required to be permitted under this part;

4644 ~~[(g) after public notice and opportunity for a public hearing, hear and act on permit~~  
4645 ~~issues appealed under Subsection 19-6-712(2);]~~

4646 ~~[(h)]~~ (f) establish by rule standards for tracking, analysis, and recordkeeping regarding  
4647 used oil subject to regulation under this part, including:

4648 (i) manifests for handling and transferring used oil;

4649 (ii) analyses necessary to determine if used oil is on-specification or off-specification;

4650 (iii) records documenting date, quantities, and character of used oil transported,  
4651 processed, transferred, or sold;

4652 (iv) records documenting persons between whom transactions under this subsection  
4653 occurred; and

4654 (v) exemption of DIYer used oil collection centers from this subsection except as  
4655 necessary to verify volumes of used oil picked up by a permitted transporter and the  
4656 transporter's name and federal EPA identification number;

4657 ~~(f)~~ (g) authorize inspections and audits of facilities, centers, and operations subject to  
4658 regulation under this part;

4659 ~~(f)~~ (h) establish by rule standards for:

4660 (i) used oil generators;

4661 (ii) used oil collection centers;

4662 (iii) DIYer used oil collection centers;

4663 (iv) aggregation points;

4664 (v) curbside used oil collection programs;

4665 (vi) used oil transporters;

4666 (vii) used oil transfer facilities;

4667 (viii) used oil burners;

4668 (ix) used oil processors and rerefiners; and

4669 (x) used oil marketers;

4670 ~~(k)~~ (i) establish by rule standards for determining on-specification and  
4671 off-specification used oil and specified mixtures of used oil, subject to Section 19-6-707  
4672 regarding rebuttable presumptions;

4673 ~~(l)~~ (j) establish by rule standards for closure, remediation, and response to releases  
4674 involving used oil; and

4675 ~~(m)~~ (k) establish a public education program to promote used oil recycling and use of  
4676 used oil collection centers.

4677 (2) The board may:

4678 (a) ~~[(i)]~~ hold a hearing that is not an adjudicative proceeding relating to any aspect of  
4679 or matter in the administration of this part ~~[and compel the attendance of witnesses and the~~  
4680 ~~production of documents and other evidence, administer oaths and take testimony, and receive~~  
4681 ~~evidence as necessary];~~

4682 ~~[(ii) receive a proposed dispositive action from an administrative law judge as provided~~  
4683 ~~by Section 19-1-301; and]~~

4684 ~~[(iii) (A) approve, approve with modifications, or disapprove a proposed dispositive~~  
4685 ~~action; or]~~

4686 ~~[(B) return the proposed dispositive action to the administrative law judge for further~~  
4687 ~~action as directed;]~~

4688 (b) require retention and submission of records required under this part; ~~[and]~~ or

4689 (c) require audits of records and recordkeeping procedures required under this part and  
4690 rules made under this part, except that audits of records regarding the fee imposed and  
4691 collected by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the  
4692 commission under Section 19-6-716.

4693 Section 87. Section **19-6-705** is amended to read:

4694 **19-6-705. Powers and duties of the director**

4695 (1) The ~~[executive secretary]~~ director shall:

4696 (a) administer and enforce the rules and orders of the board;

4697 (b) issue and revoke registration numbers for DIYer used oil collection centers and  
4698 used oil collection centers;

4699 (c) after public notice and opportunity for a public hearing:

4700 (i) issue or modify a permit under this part;

4701 (ii) deny a permit when the ~~[executive secretary]~~ director finds the application is not  
4702 complete; and

4703 (iii) revoke a permit issued under this section upon a finding the permit holder has  
4704 failed to ensure compliance with this part;

4705 (d) (i) coordinate with federal, state, and local government, and other agencies,



4706 including entering into memoranda of understanding, to ensure effective regulation of used oil  
4707 under this part, minimize duplication of regulation, and encourage responsible recycling of  
4708 used oil; and

4709 (ii) as the department finds appropriate to the implementation of this part, enter into  
4710 contracts with local health departments to carry out specified functions under this part and be  
4711 reimbursed by the department in accordance with the contract;

4712 (e) require forms, analyses, documents, maps, and other records as the [~~executive~~  
4713 ~~secretary~~] director finds necessary to permit and inspect an operation regulated under this part;

4714 (f) establish a toll-free telephone line to provide information to the public regarding  
4715 management of used oil and locations of used oil collection centers; and

4716 (g) accept, receive, and administer grants or other funds or gifts from public and  
4717 private agencies, including the federal government, for the purpose of carrying out any of the  
4718 functions of this part.

4719 (2) The [~~executive secretary~~] director may:

4720 (a) authorize any employee of the division to enter any facility regulated under this part  
4721 at reasonable times and upon presentation of credentials for the purpose of inspection, audit, or  
4722 sampling of the used oil site or facility, records, operations, or product;

4723 (b) direct a person whose activities are regulated under this part to take samples for a  
4724 stated purpose and cause them to be analyzed at that person's expense; and

4725 (c) [~~as authorized by the board under this part,~~] enforce board rules by issuing orders  
4726 [~~which the board may subsequently amend or revoke~~].

4727 Section 88. Section **19-6-706** is amended to read:

4728 **19-6-706. Disposal of used oil -- Prohibitions.**

4729 (1) (a) Except as authorized by the [~~board~~] director, or by rule of the board, or as  
4730 exempted in this section, a person may not place, discard, or otherwise dispose of used oil:

4731 (i) in any solid waste treatment, storage, or disposal facility operated by a political  
4732 subdivision or a private entity, except as authorized for the disposal of used oil that is  
4733 hazardous waste under state law;

4734 (ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses,  
4735 or any body of water; or

4736 (iii) on the ground.

4737 (b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i)  
4738 is not guilty of a violation of this section.

4739 (2) (a) A person may dispose of an item or substance that contains de minimis amounts  
4740 of oil in disposal facilities under Subsection (1)(a)(i) if:

4741 (i) to the extent reasonably possible all oil has been removed from the item or  
4742 substance; and

4743 (ii) no free flowing oil remains in the item or substance.

4744 (b) (i) A nonterne plated used oil filter complies with this section if it is not mixed with  
4745 hazardous waste and the oil filter has been gravity hot-drained by one of the following  
4746 methods:

4747 (A) puncturing the filter antidrain back valve or the filter dome end and gravity  
4748 hot-draining;

4749 (B) gravity hot-draining and crushing;

4750 (C) dismantling and gravity hot-draining; or

4751 (D) any other equivalent gravity hot-draining method that will remove used oil from  
4752 the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

4753 (ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less  
4754 than 12 hours near operating temperature but above 60 degrees Fahrenheit.

4755 (3) A person may not mix or commingle used oil with the following substances, except  
4756 as incidental to the normal course of processing, mechanical, or industrial operations:

4757 (a) solid waste that is to be disposed of in any solid waste treatment, storage, or  
4758 disposal facility, except as authorized by the [board] director under this chapter; or

4759 (b) any hazardous waste so the resulting mixture may not be recycled or used for other  
4760 beneficial purpose as authorized under this part.

4761 (4) (a) This section does not apply to releases to land or water of de minimis quantities

4762 of used oil, except:

4763 (i) the release of de minimis quantities of used oil is subject to any regulation or  
4764 prohibition under the authority of the department; and

4765 (ii) the release of de minimis quantities of used oil is subject to any rule made by the  
4766 board under this part prohibiting the release of de minimis quantities of used oil to the land or  
4767 water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise  
4768 managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

4769 (b) As used in this Subsection (4), "de minimis quantities of used oil:"

4770 (i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other  
4771 similar equipment during normal operations; and

4772 (ii) does not include used oil discarded as a result of abnormal operations resulting in  
4773 substantial leaks, spills, or other releases.

4774 (5) Used oil may not be used for road oiling, dust control, weed abatement, or other  
4775 similar uses that have the potential to release used oil in the environment, except in compliance  
4776 with Section 19-6-711 and board rule.

4777 (6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply  
4778 to the [~~executive secretary~~] director for an extension of time beyond that date to meet the  
4779 requirements of this section.

4780 (ii) The [~~executive secretary~~] director may grant an extension of time beyond July 1,  
4781 1993, upon a finding of need under Subsection (6)(b) or (c).

4782 (iii) The total of all extensions of time granted to one applicant under this Subsection  
4783 (6)(a) may not extend beyond January 1, 1995.

4784 (b) The [~~executive secretary~~] director upon receipt of a request for an extension of time  
4785 may request from the facility any information the [~~executive secretary~~] director finds  
4786 reasonably necessary to evaluate the need for an extension. This information may include:

4787 (i) why the facility is unable to comply with the requirements of this section on or  
4788 before July 1, 1993;

4789 (ii) the processes or functions which prevent compliance on or before July 1, 1993;

4790 (iii) measures the facility has taken and will take to achieve compliance; and  
4791 (iv) a proposed compliance schedule, including a proposed date for being in  
4792 compliance with this section.

4793 (c) Additional extensions of time may be granted by the [~~executive secretary~~] director  
4794 upon application by the facility and a showing by the facility that:

4795 (i) the additional extension is reasonably necessary; and  
4796 (ii) the facility has made a diligent and good faith effort to comply with this section  
4797 within the time frame of the prior extension.

4798 Section 89. Section **19-6-710** is amended to read:

4799 **19-6-710. Registration and permitting of used oil handlers.**

4800 (1) (a) A person may not operate a DIYer used oil collection center or used oil  
4801 collection center without holding a registration number issued by the [~~executive secretary~~]  
4802 director.

4803 (b) The application for registration shall include the following information regarding  
4804 the DIYer used oil collection center or used oil collection center:

- 4805 (i) the name and address of the operator;
- 4806 (ii) the location of the center;
- 4807 (iii) whether the center will accept DIYer used oil;
- 4808 (iv) the type of containment or storage to be used;
- 4809 (v) the status of business, zoning, and other applicable licenses and permits required by  
4810 federal, state, and local governmental entities;
- 4811 (vi) emergency spill containment plan;
- 4812 (vii) proof of liability insurance or other means of financial responsibility in an amount  
4813 determined by board rule for any liability that may be incurred in collecting or storing the used  
4814 oil, unless waived by the board; and
- 4815 (viii) any other information the [~~executive secretary~~] director finds necessary to ensure  
4816 the safe handling of used oil.

4817 (c) The owner or operator of the center shall notify the [~~executive secretary~~] director in

4818 writing of any changes in the information submitted to apply for registration within 20 days of  
4819 the change.

4820 (d) To be reimbursed under Section 19-6-717 for collected DIYer used oil, the operator  
4821 of the DIYer used oil collection center shall maintain and submit to the [~~executive secretary~~]  
4822 director records of volumes of DIYer used oil picked up by a permitted used oil transporter, the  
4823 dates of pickup, and the name and federal EPA identification number of the transporter.

4824 (2) (a) A person may not act as a used oil transporter or operate a transfer facility  
4825 without holding a permit issued by the [~~executive secretary~~] director.

4826 (b) The application for a permit shall include the following information regarding  
4827 acting as a transporter or operating a transfer facility:

4828 (i) the name and address of the operator;

4829 (ii) the location of the transporter's base of operations or the location of the transfer  
4830 facility;

4831 (iii) maps of all transfer facilities;

4832 (iv) the methods to be used for collecting, storing, and delivering used oil;

4833 (v) the methods to be used to determine if used oil received by the transporter or  
4834 facility is on-specification or off-specification;

4835 (vi) the type of containment or storage to be used;

4836 (vii) the methods of disposing of the waste by-products;

4837 (viii) the status of business, zoning, and other applicable licenses and permits required  
4838 by federal, state, and local government entities;

4839 (ix) emergency spill containment plan;

4840 (x) proof of liability insurance or other means of financial responsibility in an amount  
4841 determined by board rule for any liability that may be incurred in collecting, transporting, or  
4842 storing the used oil;

4843 (xi) proof of form and amount of reclamation surety for any facility used in conjunction  
4844 with transportation or storage of used oil; and

4845 (xii) any other information the [~~executive secretary~~] director finds necessary to ensure

4846 the safe handling of used oil.

4847 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director  
4848 in writing of any changes in the information submitted to apply for a permit within 20 days of  
4849 the change.

4850 (3) (a) A person may not operate a used oil processing or rerefining facility without  
4851 holding a permit issued by the [~~executive secretary~~] director.

4852 (b) The application for a permit shall include the following information regarding the  
4853 used oil processing or rerefining facility:

- 4854 (i) the name and address of the operator;
- 4855 (ii) the location of the facility;
- 4856 (iii) a map of the facility;
- 4857 (iv) methods to be used to determine if used oil is on-specification or off-specification;
- 4858 (v) the type of containment or storage to be used;
- 4859 (vi) the grades of oil to be produced;
- 4860 (vii) the methods of disposing of the waste by-products;
- 4861 (viii) the status of business, zoning, and other applicable licenses and permits required  
4862 by federal, state, and local governmental entities;
- 4863 (ix) emergency spill containment plan;
- 4864 (x) proof of liability insurance or other means of financial responsibility in an amount  
4865 determined by board rule for any liability that may be incurred in processing or rerefining used  
4866 oil;
- 4867 (xi) proof of form and amount of reclamation surety; and
- 4868 (xii) any other information the [~~executive secretary~~] director finds necessary to ensure  
4869 the safe handling of used oil.

4870 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director  
4871 in writing of any changes in the information submitted to apply for a permit within 20 days of  
4872 the change.

4873 (4) (a) A person may not act as a used oil fuel marketer without holding a registration

4874 number issued by the [~~executive secretary~~] director.

4875 (b) The application for a registration number shall include the following information  
4876 regarding acting as a used oil fuel marketer:

4877 (i) the name and address of the marketer;

4878 (ii) the location of any facilities used by the marketer to collect, transport, process, or  
4879 store used oil subject to separate permits under this part;

4880 (iii) the status of business, zoning, and other applicable licenses and permits required  
4881 by federal, state, and local governmental entities, including any registrations or permits  
4882 required under this part to collect, process, transport, or store used oil; and

4883 (iv) any other information the [~~executive secretary~~] director finds necessary to ensure  
4884 the safe handling of used oil.

4885 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director  
4886 in writing of any changes in the information submitted to apply for a permit within 20 days of  
4887 the change.

4888 (5) (a) Unless exempted under Subsection 19-6-708(2), a person may not burn used oil  
4889 for energy recovery without holding a permit issued by the [~~executive secretary~~] director or an  
4890 authorization from the department.

4891 (b) The application for a permit shall include the following information regarding the  
4892 used oil burning facility:

4893 (i) the name and address of the operator;

4894 (ii) the location of the facility;

4895 (iii) methods to be used to determine if used oil is on-specification or off-specification;

4896 (iv) the type of containment or storage to be used;

4897 (v) the type of burner to be used;

4898 (vi) the methods of disposing of the waste by-products;

4899 (vii) the status of business, zoning, and other applicable licenses and permits required  
4900 by federal, state, and local governmental entities;

4901 (viii) emergency spill containment plan;

4902 (ix) proof of liability insurance or other means of financial responsibility in an amount  
4903 determined by board rule for any liability that may be incurred in processing or rerefining used  
4904 oil;

4905 (x) proof of form and amount of reclamation surety for any facility receiving and  
4906 burning used oil; and

4907 (xi) any other information the [~~executive secretary~~] director finds necessary to ensure  
4908 the safe handling of used oil.

4909 (c) The owner or operator of the facility shall notify the [~~executive secretary~~] director  
4910 in writing of any changes in the information submitted to apply for a permit within 20 days of  
4911 the change.

4912 Section 90. Section **19-6-711** is amended to read:

4913 **19-6-711. Application of used oil to the land -- Limitations.**

4914 (1) A person may not apply used oil to the land as a dust or weed suppressant or for  
4915 other similar applications to the land unless the person has obtained:

4916 (a) written authorization as required under this chapter; and

4917 (b) a permit from the [~~executive secretary~~] director.

4918 (2) The applicant for a permit under this section shall demonstrate:

4919 (a) the used oil is not mixed with any hazardous waste;

4920 (b) the used oil does not exhibit any hazardous characteristic other than ignitability;

4921 and

4922 (c) how the applicant will minimize the impact on the environment of the use of used  
4923 oil as a dust or weed suppressant or for other similar applications to the land.

4924 (3) Prior to acting on the application, the [~~executive secretary~~] director shall provide  
4925 public notice of the application and shall provide opportunity for public comment under  
4926 Section 19-6-712.

4927 Section 91. Section **19-6-712** is amended to read:

4928 **19-6-712. Issuance of permits -- Public comments and hearing.**

4929 (1) In considering permit applications under this part, the [~~executive secretary~~] director



4930 shall:

4931 (a) ensure the application is complete prior to acting on it;

4932 (b) (i) publish notice of the permit application and the opportunity for public comment

4933 in:

4934 (A) a newspaper of general circulation in the state; and

4935 (B) a newspaper of general circulation in the county where the operation for which the

4936 application is submitted is located; and

4937 (ii) as required in Section 45-1-101;

4938 (c) allow the public to submit written comments to the ~~[executive secretary]~~ director

4939 within 15 days after date of publication;

4940 (d) consider timely submitted public comments and the criteria established in this part

4941 and by rule in determining whether to grant the permit; and

4942 (e) send a written copy of the decision to the applicant and to persons submitting

4943 timely comments under Subsection (1)(c).

4944 (2) The ~~[executive secretary's]~~ director's decision under this section may be appealed to

4945 the ~~[board only within the 30 days after the day the decision is mailed to the applicant]~~

4946 executive director as provided by rule.

4947 Section 92. Section **19-6-717** is amended to read:

4948 **19-6-717. Used oil collection incentive payment.**

4949 (1) (a) The division shall pay a recycling incentive to registered DIYer used oil

4950 collection centers and curbside collection programs approved by the ~~[executive secretary]~~

4951 director for each gallon of used oil collected from DIYer used oil generators on and after July

4952 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor,

4953 rerefiner, burner, or to another disposal method authorized by board rule.

4954 (b) Payment of the incentive is subject to Section 19-6-720 regarding priorities.

4955 (2) The board shall by rule establish the amount of the payment, which shall be \$.16

4956 per gallon unless the board determines the incentive should be:

4957 (a) reduced to ensure adequate funds to meet priorities set in Section 19-6-720 and to

4958 reimburse all qualified operations under this section; or

4959 (b) increased to promote collection of used oil under this part and the funds are  
4960 available in the account created under Section 19-6-719 after meeting the priorities set in  
4961 Section 19-6-720.

4962 Section 93. Section **19-6-718** is amended to read:

4963 **19-6-718. Limitations on liability of operator of collection center.**

4964 (1) Subject to Subsection (2), a person may not recover from the owner, operator, or  
4965 lessor of a DIYer used oil collection center any costs of response actions at another location  
4966 resulting from a release or threatened release of used oil collected at the center if the owner,  
4967 operator, or lessor:

4968 (a) operates the DIYer used oil collection center in compliance with this part and rules  
4969 made under this part and the [~~executive secretary~~] director upon inspection finds the center is in  
4970 compliance with this part and rules made under this part;

4971 (b) does not mix any used oil collected with any hazardous waste or PCBs or with any  
4972 material that would render the resulting mixture as a hazardous waste;

4973 (c) does not knowingly accept any used oil containing hazardous waste or PCBs;

4974 (d) ensures the used oil is transported from the center by a permitted used oil  
4975 transporter; and

4976 (e) complies with Section 114(c) of the federal Comprehensive Environmental  
4977 Response, Compensation, and Liability Act of 1980, as amended.

4978 (2) (a) This section applies only to that portion of a used oil collection center used for  
4979 the collection of DIYer used oil under this part.

4980 (b) This section does not apply to willful or grossly negligent activities of the owner,  
4981 operator, or lessor in operating the DIYer used oil collection center.

4982 (c) This section does not affect or modify in any way the obligations or liability of any  
4983 person other than the owner, operator, or lessor under any other provisions of state or federal  
4984 law, including common law, for injury or damage resulting from a release of used oil or  
4985 hazardous waste.

4986 (d) For the purposes of this section, the owner, operator, or lessor of a DIYer used oil  
4987 collection center may presume a quantity of not more than five gallons, except under  
4988 Subsection (2)(e), of used oil accepted from a member of the public is not mixed with a  
4989 hazardous waste or PCBs if:

4990 (i) the oil is accepted in accordance with the inspection and identification procedures  
4991 required by board rule; and

4992 (ii) the owner, operator, or lessor operates the DIYer used oil collection center in good  
4993 faith and in compliance with this part and rules made under this part.

4994 (e) The owner, operator, or lessor of a DIYer used oil collection center may claim the  
4995 presumption under Subsection (2)(d) for a quantity of more than five gallons but not more than  
4996 55 gallons, if the quantity received is:

4997 (i) from a farmer exempted under Subsection 19-6-708(1)(b);

4998 (ii) generated by farming equipment; and

4999 (iii) handled in accordance with all requirements of this section.

5000 (f) This section does not affect or modify the obligations or liability of any owner,  
5001 operator, or lessor of a DIYer used oil collection center regarding that person's services or  
5002 functions other than accepting DIYer used oil under this part.

5003 Section 94. Section **19-6-721** is amended to read:

5004 **19-6-721. Violations -- Proceedings -- Orders.**

5005 (1) A person who violates any provision of this part or any order, permit, rule, or other  
5006 requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not  
5007 more than \$10,000 per day for each day of violation, in addition to any fine otherwise imposed  
5008 for violation of this part.

5009 (2) (a) The [~~board~~] director may bring suit in the name of the state to restrain the  
5010 person from continuing the violation and to require the person to perform necessary  
5011 remediation.

5012 (b) Suit under Subsection (2)(a) may be brought in any court in the state having  
5013 jurisdiction in the county of residence of the person charged or in the county where the

5014 violation is alleged to have occurred.

5015 (c) The court may grant prohibitory and mandatory injunctions, including temporary  
5016 restraining orders.

5017 (3) When the [~~executive secretary~~] director finds a situation exists in violation of this  
5018 part that presents an immediate threat to the public health or welfare, the [~~executive secretary~~]  
5019 director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures  
5020 Act.

5021 (4) All penalties collected under this section shall be deposited in the account created  
5022 in Section 19-6-719.

5023 Section 95. Section **19-6-803** is amended to read:

5024 **19-6-803. Definitions.**

5025 As used in this part:

5026 (1) "Abandoned waste tire pile" means a waste tire pile regarding which the local  
5027 department of health has not been able to:

5028 (a) locate the persons responsible for the tire pile; or

5029 (b) cause the persons responsible for the tire pile to remove it.

5030 (2) (a) "Beneficial use" means the use of chipped tires in a manner that is not recycling,  
5031 storage, or disposal, but that serves as a replacement for another product or material for specific  
5032 purposes.

5033 (b) "Beneficial use" includes the use of chipped tires:

5034 (i) as daily landfill cover;

5035 (ii) for civil engineering purposes;

5036 (iii) as low-density, light-weight aggregate fill; or

5037 (iv) for septic or drain field construction.

5038 (c) "Beneficial use" does not include the use of waste tires or material derived from  
5039 waste tires:

5040 (i) in the construction of fences; or

5041 (ii) as fill, other than low-density, light-weight aggregate fill.

5042 (3) "Board" means the Solid and Hazardous Waste Control Board created under  
5043 Section 19-1-106.

5044 (4) "Chip" or "chipped tire" means a two inch square or smaller piece of a waste tire.

5045 (5) "Commission" means the Utah State Tax Commission.

5046 (6) (a) "Consumer" means a person who purchases a new tire to satisfy a direct need,  
5047 rather than for resale.

5048 (b) "Consumer" includes a person who purchases a new tire for a motor vehicle to be  
5049 rented or leased.

5050 (7) "Crumb rubber" means waste tires that have been ground, shredded, or otherwise  
5051 reduced in size such that the particles are less than or equal to 3/8 inch in diameter and are 98%  
5052 wire free by weight.

5053 (8) "Director" means the director of the Division of Solid and Hazardous Waste.

5054 ~~[(8)]~~ (9) "Disposal" means the deposit, dumping, or permanent placement of any waste  
5055 tire in or on any land or in any water in the state.

5056 ~~[(9)]~~ (10) "Dispose of" means to deposit, dump, or permanently place any waste tire in  
5057 or on any land or in any water in the state.

5058 ~~[(10)]~~ (11) "Division" means the Division of Solid and Hazardous Waste, created in  
5059 ~~[Section 19-1-105, within the Department of Environmental Quality]~~ Subsection  
5060 19-1-105(1)(e).

5061 ~~[(11)] "Executive secretary" means the executive secretary of the Solid and Hazardous~~  
5062 ~~Waste Control Board created in Section 19-1-106.]~~

5063 (12) "Fund" means the Waste Tire Recycling Fund created in Section 19-6-807.

5064 (13) "Landfill waste tire pile" means a waste tire pile:

5065 (a) located within the permitted boundary of a landfill operated by a governmental  
5066 entity; and

5067 (b) consisting solely of waste tires brought to a landfill for disposal and diverted from  
5068 the landfill waste stream to the waste tire pile.

5069 (14) "Local health department" means the local health department, as defined in

5070 Section 26A-1-102, with jurisdiction over the recycler.

5071 (15) "Materials derived from waste tires" means tire sections, tire chips, tire  
5072 shreadings, rubber, steel, fabric, or other similar materials derived from waste tires.

5073 (16) "Mobile facility" means a mobile facility capable of cutting waste tires on site so  
5074 the waste tires may be effectively disposed of by burial, such as in a landfill.

5075 (17) "New motor vehicle" means a motor vehicle which has never been titled or  
5076 registered.

5077 (18) "Passenger tire equivalent" means a measure of mixed sizes of tires where each 25  
5078 pounds of whole tires or material derived from waste tires is equal to one waste tire.

5079 (19) "Proceeds of the fee" means the money collected by the commission from  
5080 payment of the recycling fee including interest and penalties on delinquent payments.

5081 (20) "Recycler" means a person who:

5082 (a) annually uses, or can reasonably be expected within the next year to use, a  
5083 minimum of 100,000 waste tires generated in the state or 1,000 tons of waste tires generated in  
5084 the state to recover energy or produce energy, crumb rubber, chipped tires, or an ultimate  
5085 product; and

5086 (b) is registered as a recycler in accordance with Section 19-6-806.

5087 (21) "Recycling fee" means the fee provided for in Section 19-6-805.

5088 (22) "Shredded waste tires" means waste tires or material derived from waste tires that  
5089 has been reduced to a six inch square or smaller.

5090 (23) (a) "Storage" means the placement of waste tires in a manner that does not  
5091 constitute disposal of the waste tires.

5092 (b) "Storage" does not include:

5093 (i) the use of waste tires as ballast to maintain covers on agricultural materials or to  
5094 maintain covers at a construction site; or

5095 (ii) the storage for five or fewer days of waste tires or material derived from waste tires  
5096 that are to be recycled or applied to a beneficial use.

5097 (24) (a) "Store" means to place waste tires in a manner that does not constitute disposal

5098 of the waste tires.

5099 (b) "Store" does not include:

5100 (i) to use waste tires as ballast to maintain covers on agricultural materials or to  
5101 maintain covers at a construction site; or

5102 (ii) to store for five or fewer days waste tires or material derived from waste tires that  
5103 are to be recycled or applied to a beneficial use.

5104 (25) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a  
5105 vehicle in which a person or property is or may be transported or drawn upon a highway.

5106 (26) "Tire retailer" means any person engaged in the business of selling new tires either  
5107 as replacement tires or as part of a new vehicle sale.

5108 (27) (a) "Ultimate product" means a product that has as a component materials derived  
5109 from waste tires and that the [~~executive secretary~~] director finds has a demonstrated market.

5110 (b) "Ultimate product" includes pyrolyzed materials derived from:

5111 (i) waste tires; or

5112 (ii) chipped tires.

5113 (c) "Ultimate product" does not include a product regarding which a waste tire remains  
5114 after the product is disposed of or disassembled.

5115 (28) "Waste tire" means a tire that is no longer suitable for its original intended  
5116 purpose because of wear, damage, or defect.

5117 (29) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.

5118 (30) (a) "Waste tire transporter" means a person or entity engaged in picking up or  
5119 transporting at one time more than 10 whole waste tires, or the equivalent amount of material  
5120 derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal.

5121 (b) "Waste tire transporter" includes any person engaged in the business of collecting,  
5122 hauling, or transporting waste tires or who performs these functions for another person, except  
5123 as provided in Subsection (30)(c).

5124 (c) "Waste tire transporter" does not include:

5125 (i) a person transporting waste tires generated solely by:

- 5126 (A) that person's personal vehicles;
- 5127 (B) a commercial vehicle fleet owned or operated by that person or that person's
- 5128 employer;
- 5129 (C) vehicles sold, leased, or purchased by a motor vehicle dealership owned or
- 5130 operated by that person or that person's employer; or
- 5131 (D) a retail tire business owned or operated by that person or that person's employer;
- 5132 (ii) a solid waste collector operating under a license issued by a unit of local
- 5133 government as defined in Section 63M-5-103, or a local health department;
- 5134 (iii) a recycler of waste tires;
- 5135 (iv) a person transporting tires by rail as a common carrier subject to federal regulation;
- 5136 or
- 5137 (v) a person transporting processed or chipped tires.

5138 Section 96. Section **19-6-804** is amended to read:

5139 **19-6-804. Restrictions on disposal of tires -- Penalties.**

5140 (1) (a) After January 1, 1994, an individual, including a waste tire transporter, may not

5141 dispose of more than four whole tires at one time in a landfill or any other location in the state

5142 authorized by the [~~executive secretary~~] director to receive waste tires, except for purposes

5143 authorized by board rule.

5144 (b) Tires are exempt from this Subsection (1) if the original tire has a rim diameter

5145 greater than 24.5 inches.

5146 (c) No person, including a waste tire transporter, may dispose of waste tires or store

5147 waste tires in any manner not allowed under this part or rules made under this part.

5148 (2) The operator of the landfill or other authorized location shall direct that the waste

5149 tires be disposed in a designated area to facilitate retrieval if a market becomes available for the

5150 disposed waste tires or material derived from waste tires.

5151 (3) An individual, including a waste tire transporter, may dispose of shredded waste

5152 tires in a landfill in accordance with Section 19-6-812, and may also, without reimbursement,

5153 dispose in a landfill materials derived from waste tires that do not qualify for reimbursement



5154 under Section 19-6-812, but the landfill shall dispose of the material in accordance with  
5155 Section 19-6-812.

5156 (4) (a) An individual, including a waste tire transporter, violating this section is subject  
5157 to enforcement proceedings and a civil penalty of not more than \$100 per waste tire or per  
5158 passenger tire equivalent disposed of in violation of this section. A warning notice may be  
5159 issued prior to taking further enforcement action under this Subsection (4).

5160 (b) A civil proceeding to enforce this section and collect penalties under this section  
5161 may be brought in the district court where the violation occurred by the [~~board~~] director, the  
5162 local health department, or the county attorney having jurisdiction over the location where the  
5163 tires were disposed in violation of this section.

5164 (c) Penalties collected under this section shall be deposited in the fund.

5165 Section 97. Section **19-6-806** is amended to read:

5166 **19-6-806. Registration of waste tire transporters and recyclers.**

5167 (1) (a) The [~~executive secretary~~] director shall register each applicant for registration to  
5168 act as a waste tire transporter if the applicant meets the requirements of this section.

5169 (b) An applicant for registration as a waste tire transporter shall:

5170 (i) submit an application in a form prescribed by the [~~executive secretary~~] director;

5171 (ii) pay a fee as determined by the board under Section 63J-1-504;

5172 (iii) provide the name and business address of the operator;

5173 (iv) provide proof of liability insurance or other form of financial responsibility in an  
5174 amount determined by board rule, but not more than \$300,000, for any liability the waste tire  
5175 transporter may incur in transporting waste tires; and

5176 (v) meet requirements established by board rule.

5177 (c) The holder of a registration under this section shall advise the [~~executive secretary~~]  
5178 director in writing of any changes in application information provided to the [~~executive~~  
5179 ~~secretary~~] director within 20 days of the change.

5180 (d) If the [~~executive secretary~~] director has reason to believe a waste tire transporter has  
5181 disposed of tires other than as allowed under this part, the [~~executive secretary~~] director shall

5182 conduct an investigation and, after complying with the procedural requirements of Title 63G,  
5183 Chapter 4, Administrative Procedures Act, may revoke the registration.

5184 (2) (a) The [~~executive secretary~~] director shall register each applicant for registration to  
5185 act as a waste tire recycler if the applicant meets the requirements of this section.

5186 (b) An applicant for registration as a waste tire recycler shall:

5187 (i) submit an application in a form prescribed by the [~~executive secretary~~] director;

5188 (ii) pay a fee as determined by the board under Section 63J-1-504;

5189 (iii) provide the name and business address of the operator of the recycling business;

5190 (iv) provide proof of liability insurance or other form of financial responsibility in an  
5191 amount determined by board rule, but not more than \$300,000, for any liability the waste tire  
5192 recycler may incur in storing and recycling waste tires;

5193 (v) engage in activities as described under the definition of recycler in Section  
5194 19-6-803; and

5195 (vi) meet requirements established by board rule.

5196 (c) The holder of a registration under this section shall advise the [~~executive secretary~~]  
5197 director in writing of any changes in application information provided to the [~~executive~~  
5198 secretary] director within 20 days of the change.

5199 (d) If the [~~executive secretary~~] director has reason to believe a waste tire recycler has  
5200 falsified any information provided in an application for partial reimbursement under this  
5201 section, the [~~executive secretary~~] director shall, after complying with the procedural  
5202 requirements of Title 63G, Chapter 4, Administrative Procedures Act, revoke the registration.

5203 (3) The board shall establish a uniform fee for registration which shall be imposed by  
5204 any unit of local government or local health department that requires a registration fee as part  
5205 of the registration of waste tire transporters or waste tire recyclers.

5206 Section 98. Section **19-6-811** is amended to read:

5207 **19-6-811. Funding for management of certain landfill or abandoned waste tire**  
5208 **piles -- Limitations.**

5209 (1) (a) A county or municipality may apply to the [~~executive secretary~~] director for

5210 payment from the fund for costs of a waste tire transporter or recycler to remove waste tires  
5211 from an abandoned waste tire pile or a landfill waste tire pile operated by a state or local  
5212 governmental entity and deliver the waste tires to a recycler.

5213 (b) The [~~executive secretary~~] director may authorize a maximum reimbursement of:

5214 (i) 100% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to  
5215 remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the  
5216 waste tires to a recycler, if no waste tires have been added to the abandoned waste tire pile or  
5217 landfill waste tire pile on or after July 1, 2001; or

5218 (ii) 60% of a waste tire transporter's or recycler's costs allowed under Subsection (2) to  
5219 remove waste tires from an abandoned waste tire pile or landfill waste tire pile and deliver the  
5220 waste tires to a recycler, if waste tires have been added to the abandoned waste tire pile or  
5221 landfill waste tire pile on or after July 1, 2001.

5222 (c) The [~~executive secretary~~] director may deny an application for payment of waste  
5223 tire pile removal and delivery costs, if the [~~executive secretary~~] director determines that  
5224 payment of the costs will result in there not being sufficient money in the fund to pay expected  
5225 reimbursements for recycling or beneficial use under Section 19-6-809 during the next quarter.

5226 (2) (a) The maximum number of miles for which the [~~executive secretary~~] director may  
5227 reimburse for transportation costs incurred by a waste tire transporter under this section, is the  
5228 number of miles, one way, between the location of the waste tire pile and the State Capitol  
5229 Building, in Salt Lake City, Utah, or to the recycler, whichever is less.

5230 (b) This maximum number of miles available for reimbursement applies regardless of  
5231 the location of the recycler to which the waste tires are transported under this section.

5232 (c) The [~~executive secretary~~] director shall, upon request, advise any person preparing a  
5233 bid under this section of the maximum number of miles available for reimbursement under this  
5234 Subsection (2).

5235 (d) The cost under this Subsection (2) shall be calculated based on the cost to transport  
5236 one ton of waste tires one mile.

5237 (3) (a) The county or municipality shall through a competitive bidding process make a

5238 good faith attempt to obtain a bid for the removal of the landfill or abandoned waste tire pile  
5239 and transport to a recycler.

5240 (b) The county or municipality shall submit to the [~~executive secretary~~] director:

5241 (i) (A) (I) a statement from the local health department stating the landfill waste tire  
5242 pile is operated by a state or local governmental entity and consists solely of waste tires  
5243 diverted from the landfill waste stream;

5244 (II) a description of the size and location of the landfill waste tire pile; and

5245 (III) landfill records showing the origin of the waste tires; or

5246 (B) a statement from the local health department that the waste tire pile is abandoned;

5247 and

5248 (ii) (A) the bid selected by the county or municipality; or

5249 (B) if no bids were received, a statement to that fact.

5250 (4) (a) If a bid is submitted, the [~~executive secretary~~] director shall determine if the bid  
5251 is reasonable, taking into consideration:

5252 (i) the location and size of the landfill or abandoned waste tire pile;

5253 (ii) the number and size of any other landfill or abandoned waste tire piles in the area;

5254 and

5255 (iii) the current market for waste tires of the type in the landfill or abandoned waste tire  
5256 pile.

5257 (b) The [~~executive secretary~~] director shall advise the county or municipality within 30  
5258 days of receipt of the bid whether or not the bid is determined to be reasonable.

5259 (5) (a) If the bid is found to be reasonable, the county or municipality may proceed to  
5260 have the landfill or abandoned waste tire pile removed pursuant to the bid.

5261 (b) The county or municipality shall advise the [~~executive secretary~~] director that the  
5262 landfill or abandoned waste tire pile has been removed.

5263 (6) The recycler or waste tire transporter that removed the landfill or abandoned waste  
5264 tires pursuant to the bid shall submit to the [~~executive secretary~~] director a copy of the  
5265 manifest, which shall state:

- 5266 (a) the number or tons of waste tires transported;
- 5267 (b) the location from which they were removed;
- 5268 (c) the recycler to which the waste tires were delivered; and
- 5269 (d) the amount charged by the transporter or recycler.
- 5270 (7) Upon receipt of the information required under Subsection (6), and determination
- 5271 that the information is complete, the [~~executive secretary~~] director shall, within 30 days after
- 5272 receipt authorize the Division of Finance to reimburse the waste tire transporter or recycler the
- 5273 amount established under this section.

5274 Section 99. Section **19-6-817** is amended to read:

5275 **19-6-817. Administrative fees to local health departments -- Reporting by local**  
5276 **health departments.**

5277 (1) (a) The Division of Finance shall pay quarterly to the local health departments from  
5278 the fund \$5 per ton of tires for which a partial reimbursement is made under this part.

5279 (b) The payment under Subsection (1)(a) shall be allocated among the local health  
5280 departments in accordance with recommendations of the Utah Association of Local Health  
5281 Officers.

5282 (c) The recommendation shall be based on the efforts expended and the costs incurred  
5283 by the local health departments in enforcing this part and rules made under this part.

5284 (2) (a) Each local health department shall track all waste tires removed from  
5285 abandoned waste tire piles within its jurisdiction, to determine the amount of waste tires  
5286 removed and the recycler to which they are transported.

5287 (b) The local health department shall report this information quarterly to the [~~executive~~  
5288 ~~secretary~~] director.

5289 Section 100. Section **19-6-819** is amended to read:

5290 **19-6-819. Powers and duties of the board.**

5291 (1) The board shall make rules under Title 63G, Chapter 3, Utah Administrative  
5292 Rulemaking Act, as necessary to administer this part. For these purposes the board shall  
5293 establish by rule:

5294 (a) conditions and procedures for acting to issue or revoke a registration as a waste tire  
5295 recycler or transporter under Section 19-6-806;

5296 (b) the amount of liability insurance or other financial responsibility the applicant is  
5297 required to have to qualify for registration under Section 19-6-806, which amount may not be  
5298 more than \$300,000 for any liability the waste tire transporter or recycler may incur in  
5299 recycling or transporting waste tires;

5300 (c) the form and amount of financial assurance required for a site or facility used to  
5301 store waste tires, which amount shall be sufficient to ensure the cleanup or removal of waste  
5302 tires from that site or facility;

5303 (d) standards and required documentation for tracking and record keeping of waste  
5304 tires subject to regulation under this part, including:

5305 (i) manifests for handling and transferring waste tires;

5306 (ii) records documenting date, quantities, and size or type of waste tires transported,  
5307 processed, transferred, or sold;

5308 (iii) records documenting persons between whom transactions under this Subsection  
5309 (1)(d) occurred and the amounts of waste tires involved in those transactions; and

5310 (iv) requiring that documentation under this Subsection (1)(d) be submitted on a  
5311 quarterly basis, and that this documentation be made available for public inspection;

5312 (e) authorize inspections and audits of waste tire recycling, transportation, or storage  
5313 facilities and operations subject to this part;

5314 (f) standards for payments authorized under Sections 19-6-809, 19-6-810, 19-6-811,  
5315 and 19-6-812;

5316 (g) regarding applications to the [~~executive secretary~~] director for reimbursements  
5317 under Section 19-6-811, the content of the reimbursement application form and the procedure  
5318 to apply for reimbursement;

5319 (h) requirements for the storage of waste tires, including permits for storage;

5320 (i) the types of energy recovery or other appropriate environmentally compatible uses  
5321 eligible for reimbursement, which:

- 5322 (i) shall include pyrolization, but not retreading; and
- 5323 (ii) shall apply to all waste tire recycling and beneficial use reimbursements within the
- 5324 state;
- 5325 (j) the applications of waste tires that are not eligible for reimbursement;
- 5326 (k) the applications of waste tires that are considered to be the storage or disposal of
- 5327 waste tires; and
- 5328 (l) provisions governing the storage or disposal of waste tires, including the process for
- 5329 issuing permits for waste tire storage sites.

- 5330 (2) The board may:
- 5331 (a) require retention and submission of the records required under this part;
- 5332 (b) require audits of the records and record keeping procedures required under this part
- 5333 and rules made under this part, except that audits of records regarding the fee imposed and
- 5334 collected by the commission under Sections 19-6-805 and 19-6-808 are the responsibility of the
- 5335 commission; and

- 5336 (c) as necessary, make rules requiring additional information as the board determines
- 5337 necessary to effectively administer Section 19-6-812, which rules may not place an undue
- 5338 burden on the operation of landfills.

5339 Section 101. Section **19-6-820** is amended to read:

5340 **19-6-820. Powers and duties of the director.**

- 5341 (1) The [~~executive secretary~~] director shall:
- 5342 (a) administer and enforce the rules and orders of the board;
- 5343 (b) issue and revoke registrations for waste tire recyclers and transporters; and
- 5344 (c) require forms, analyses, documents, maps, and other records as the [~~executive~~
- 5345 ~~secretary~~] director finds necessary to:
- 5346 (i) issue recycler and transporter registrations;
- 5347 (ii) authorize reimbursements under Section 19-6-811;
- 5348 (iii) inspect a site, facility, or activity regulated under this part; and
- 5349 (iv) issue permits for and inspect waste tire storage sites.

5350 (2) The [~~executive secretary~~] director may:

5351 (a) authorize any division employee to enter any site or facility regulated under this  
5352 part at reasonable times and upon presentation of credentials, for the purpose of inspection,  
5353 audit, or sampling:

5354 (i) at the site or facility; or

5355 (ii) of the records, operations, or products;

5356 (b) as authorized by the board, enforce board rules by issuing orders which are  
5357 subsequently subject to the board's amendment or revocation; and

5358 (c) coordinate with federal, state, and local governments, and other agencies, including  
5359 entering into memoranda of understanding, to:

5360 (i) ensure effective regulation of waste tires under this part;

5361 (ii) minimize duplication of regulation; and

5362 (iii) encourage responsible recycling of waste tires.

5363 Section 102. Section **19-6-821** is amended to read:

5364 **19-6-821. Violations -- Civil proceedings and penalties -- Orders.**

5365 (1) A person who violates any provision of this part or any order, permit, plan  
5366 approval, or rule issued or adopted under this part is subject to a civil penalty of not more than  
5367 \$10,000 per day for each day of violation as determined in a civil hearing under Title 63G,  
5368 Chapter 4, Administrative Procedures Act, except:

5369 (a) any violation of Subsection 19-6-804(1) or (3), regarding landfills, is subject to the  
5370 penalty under Subsection 19-6-804(4) rather than the penalties under this section; and

5371 (b) any violation of Subsection 19-6-808(1), (2), or (3) regarding payment of the  
5372 recycling fee by the tire retailer is subject to penalties as provided in Subsection 19-6-808(4)  
5373 rather than the penalties under this section.

5374 (2) The [~~board~~] director may bring an action in the name of the state to restrain a  
5375 person from continuing a violation of this part and to require the person to perform necessary  
5376 remediation regarding a violation of this part.

5377 (3) When the [~~executive secretary~~] director finds a situation exists in violation of this



5378 part that presents an immediate threat to the public health or welfare, the ~~[executive secretary]~~  
5379 director may issue an emergency order under Title 63G, Chapter 4, Administrative Procedures  
5380 Act.

5381 (4) The ~~[executive secretary]~~ director may revoke the registration of a waste tire  
5382 recycler or transporter who violates any provision of this part or any order, plan approval,  
5383 permit, or rule issued or adopted under this part.

5384 (5) The ~~[executive secretary]~~ director may revoke the tire storage permit for a storage  
5385 facility that is in violation of any provision of this part or any order, plan approval, permit, or  
5386 rule issued or adopted under this part.

5387 (6) If a person has been convicted of violating a provision of this part prior to a finding  
5388 by the ~~[executive secretary]~~ director of a violation of the same provision in an administrative  
5389 hearing, the ~~[executive secretary]~~ director may not assess a civil monetary penalty under this  
5390 section for the same offense for which the conviction was obtained.

5391 (7) All penalties collected under this section shall be deposited in the fund.

5392 Section 103. Section **19-6-1002** is amended to read:

5393 **19-6-1002. Definitions.**

5394 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
5395 ~~[19-6-103]~~ 19-1-106.

5396 ~~[(2) "Executive secretary" means the executive secretary of the Solid and Hazardous  
5397 Waste Control Board appointed under Section 19-6-107.]~~

5398 (2) "Director" means the director of the Division of Solid and Hazardous Waste.

5399 (3) "Division" means the Division of Solid and Hazardous Waste, created in  
5400 Subsection 19-1-105(1)(e).

5401 ~~[(3)]~~ (4) "Manufacturer" means the last person in the production or assembly process of  
5402 a vehicle.

5403 ~~[(4)]~~ (5) "Mercury switch" means a mercury-containing capsule that is part of a  
5404 convenience light switch assembly installed in a vehicle's hood or trunk.

5405 ~~[(5)]~~ (6) "Person" means an individual, a firm, an association, a partnership, a

5406 corporation, the state, or a local government.

5407           ~~[(6)]~~ (7) "Plan" means a plan for removing and collecting mercury switches from  
5408 vehicles.

5409           ~~[(7)]~~ (8) "Vehicle" means any passenger automobile or car, station wagon, truck, van,  
5410 or sport utility vehicle that may contain one or more mercury switches.

5411           Section 104. Section **19-6-1003** is amended to read:

5412           **19-6-1003. Board and director powers.**

5413           (1) By following the procedures and requirements of Title 63G, Chapter 3, Utah  
5414 Administrative Rulemaking Act, the board shall make rules:

5415           (a) governing administrative proceedings under this part;

5416           (b) specifying the terms and conditions under which the ~~[executive secretary]~~ director  
5417 shall approve, disapprove, revoke, or review a plan submitted by a manufacturer; and

5418           (c) governing reports and educational materials required by this part.

5419           (2) These rules shall include:

5420           (a) time requirements for plan submission, review, approval, and implementation;

5421           (b) a public notice and comment period for a proposed plan; and

5422           (c) safety standards for the collection, packaging, transportation, storage, recycling, and  
5423 disposal of mercury switches.

5424           ~~[(3) The board may request the attorney general to bring an action for injunctive relief  
5425 and enforcement of this part, including, without limitation, imposition of the penalty provided  
5426 in Section 19-6-1006.]~~

5427           ~~[(4) As authorized by the board, the executive secretary may:]~~

5428           (3) The director may:

5429           (a) review and approve or disapprove plans, specifications, or other data related to  
5430 mercury switch removal;

5431           (b) enforce a rule by issuing a notice, an order, or both~~[- which may be subsequently  
5432 amended or revoked by the board, and];~~

5433           (c) initiate an administrative action to compel compliance with this part and any rules

5434 adopted under this part[-]; or

5435 (d) request the attorney general to bring an action for injunctive relief and enforcement  
5436 of this part, including imposition of the penalty described in Section 19-6-1006.

5437 [~~5~~] (4) The [~~executive secretary~~] director shall establish a fee to cover the costs of a  
5438 plan's review by following the procedures and requirements of Section 63J-1-504.

5439 Section 105. Section **19-6-1004** is amended to read:

5440 **19-6-1004. Mercury switch collection plan -- Reimbursement for mercury switch**  
5441 **removal.**

5442 (1) (a) Each manufacturer of any vehicle sold within this state, individually or in  
5443 cooperation with other manufacturers, shall submit a plan, accompanied by a fee, to the  
5444 [~~executive secretary~~] director.

5445 (b) If the [~~executive secretary~~] director disapproves a plan, the manufacturer shall  
5446 submit an amended plan within 90 days.

5447 (c) A manufacturer shall submit an updated plan within 90 days of any change in the  
5448 information required by Subsection (2).

5449 (d) The [~~executive secretary~~] director may require the manufacturer to modify the plan  
5450 at any time upon finding that an approved plan as implemented has failed to meet the  
5451 requirements of this part.

5452 (e) If the manufacturer does not know or is uncertain about whether or not a switch  
5453 contains mercury, the plan shall presume that the switch contains mercury.

5454 (2) The plan shall include:

5455 (a) the make, model, and year of any vehicle, including current and anticipated future  
5456 production models, sold by the manufacturer that may contain one or more mercury switches;

5457 (b) the description and location of each mercury switch for each make, model, and year  
5458 of vehicle;

5459 (c) education materials that include:

5460 (i) safe and environmentally sound methods for mercury switch removal; and

5461 (ii) information about hazards related to mercury and the proper handling of mercury;

5462 (d) a method for storage and disposal of the mercury switches, including packaging and  
5463 shipping of mercury switches to an authorized recycling, storage, or disposal facility;

5464 (e) a procedure for the transfer of information among persons involved with the plan to  
5465 comply with reporting requirements; and

5466 (f) a method to implement and finance the plan, which shall include the prompt  
5467 reimbursement by the manufacturer of costs incurred by a person removing and collecting  
5468 mercury switches.

5469 (3) In order to ensure that the costs of removal and collection of mercury switches are  
5470 not borne by any other person, the manufacturers of vehicles sold in the state shall pay:

5471 (a) a minimum of \$5 for each mercury switch removed by a person as partial  
5472 compensation for the labor and other costs incurred in removing the mercury switch;

5473 (b) the cost of packaging necessary to store or transport mercury switches to recycling,  
5474 storage, or disposal facilities;

5475 (c) the cost of shipping mercury switches to recycling, storage, or disposal facilities;

5476 (d) the cost of recycling, storage, or disposal of mercury switches;

5477 (e) the cost of the preparation and distribution of educational materials; and

5478 (f) the cost of maintaining all appropriate record-keeping systems.

5479 (4) Manufacturers of vehicles sold within this state shall reimburse a person for each  
5480 mercury switch removed and collected without regard to the date on which the mercury switch  
5481 is removed and collected.

5482 (5) The manufacturer shall ensure that plan implementation occurs by July 1, 2007.

5483 Section 106. Section **19-6-1005** is amended to read:

5484 **19-6-1005. Reporting requirements.**

5485 (1) Each manufacturer that is required to implement a plan shall submit, either  
5486 individually or in cooperation with other manufacturers, an annual report on the plan's  
5487 implementation to the [~~executive secretary~~] director within 90 days after the anniversary of the  
5488 date on which the manufacturer is required to begin plan implementation.

5489 (2) The report shall include:

- 5490 (a) the number of mercury switches collected;
- 5491 (b) the number of mercury switches for which the manufacturer has provided
- 5492 reimbursement;
- 5493 (c) a description of the successes and failures of the plan; and
- 5494 (d) a statement that details the costs required to implement the plan.
- 5495 Section 107. Section **19-6-1102** is amended to read:
- 5496 **19-6-1102. Definitions.**
- 5497 As used in this part:
- 5498 (1) "Board" means the Solid and Hazardous Waste Control Board created under
- 5499 Section 19-1-106.
- 5500 [~~(2) "Executive secretary" means the executive secretary of the board.~~]
- 5501 (2) "Director" means the director of the Division of Solid and Hazardous Waste.
- 5502 (3) "Division" means the Division of Solid and Hazardous Waste, created in
- 5503 Subsection 19-1-105(1)(e).
- 5504 [~~(3)~~] (4) (a) "Industrial byproduct" means an industrial residual, including:
- 5505 (i) inert construction debris;
- 5506 (ii) fly ash;
- 5507 (iii) bottom ash;
- 5508 (iv) slag;
- 5509 (v) flue gas emission control residuals generated primarily from the combustion of coal
- 5510 or other fossil fuel;
- 5511 (vi) residual from the extraction, beneficiation, and processing of an ore or mineral;
- 5512 (vii) cement kiln dust; or
- 5513 (viii) contaminated soil extracted as a result of a corrective action subject to an
- 5514 operation plan under Part 1, Solid and Hazardous Waste Act.
- 5515 (b) "Industrial byproduct" does not include material that:
- 5516 (i) causes a public nuisance or public health hazard; or
- 5517 (ii) is a hazardous waste under Part 1, Solid and Hazardous Waste Act.

5518            [~~(4)~~] (5) "Public project" means a project of the Department of Transportation to  
5519 construct:

- 5520            (a) a highway or road;
- 5521            (b) a curb;
- 5522            (c) a gutter;
- 5523            (d) a walkway;
- 5524            (e) a parking facility;
- 5525            (f) a public transportation facility; or
- 5526            (g) a facility, infrastructure, or transportation improvement that benefits the public.

5527            [~~(5)~~] (6) "Reuse" means to use an industrial byproduct in place of a raw material.

5528            Section 108. Section **19-6-1104** is amended to read:

5529            **19-6-1104. Applications for industrial byproduct reuse -- Approval by the**  
5530 **director.**

5531            (1) A person may submit to the [~~executive secretary~~] director an application for reuse  
5532 of an industrial byproduct from an inactive industrial site, as defined in Section 17C-1-102.

5533            (2) The [~~executive secretary~~] director shall respond to an application submitted under  
5534 Subsection (1) within 60 days of the day on which the [~~executive secretary~~] director determines  
5535 the application is complete.

5536            (3) The [~~executive secretary~~] director shall approve an application submitted under  
5537 Subsection (1) if the applicant shows:

- 5538            (a) the industrial byproduct meets the applicable health risk standard;
- 5539            (b) the industrial byproduct satisfies the applicable toxicity characteristic leaching  
5540 procedure; and
- 5541            (c) the proposed method of installation and type of reuse meet the applicable health  
5542 risk standard.

5543            Section 109. Section **19-8-106** is amended to read:

5544            **19-8-106. Rejection of application -- Notice to applicant -- Resubmission**  
5545 **procedure.**

5546 (1) The executive director may in his sole discretion reject an application prior to  
5547 accepting the application fee, and return the application fee to the applicant if:

5548 (a) the executive director has reason to believe that a working relationship with the  
5549 applicant cannot be achieved; or

5550 (b) the application site is not eligible under Section 19-8-105.

5551 (2) (a) The executive director may reject an application after processing the application  
5552 if [~~the executive secretary determines~~]:

5553 (i) the application is not complete or is not accurate; or

5554 (ii) the applicant has not demonstrated financial capability to perform the voluntary  
5555 cleanup.

5556 (b) The applicant is not entitled to refund of an application fee for an application  
5557 rejected under this Subsection (2).

5558 (3) An application rejected under Subsection (1) or (2) shall be promptly returned to  
5559 the applicant with a letter of explanation.

5560 (4) (a) If the executive director rejects an application because it is incomplete or  
5561 inaccurate, the executive director shall, not later than 60 days after receipt of the application,  
5562 provide to the applicant a list in writing of all information needed to make the application  
5563 complete or accurate, as appropriate.

5564 (b) The applicant may submit for a second time an application rejected due to  
5565 inaccuracy or incompleteness without submitting an additional application fee.

5566 Section 110. Section **19-8-119** is amended to read:

5567 **19-8-119. Apportionment or contribution.**

5568 (1) Any party who incurs costs under a voluntary agreement entered into under this part  
5569 in excess of his liability may seek contribution in an action in district court from any other  
5570 party who is or may be liable under Subsection 19-6-302(21) or [~~19-6-402(26)~~] 19-6-402(27)  
5571 for the excess costs after providing written notice to any other party that the party bringing the  
5572 action has entered into a voluntary agreement and will incur costs.

5573 (2) In resolving claims made under Subsection (1), the court shall allocate costs using

5574 the standards in Subsection 19-6-310(2).

5575 Section 111. Section **41-6a-1644** is amended to read:

5576 **41-6a-1644. Diesel emissions program -- Implementation -- Monitoring --**  
5577 **Exemptions.**

5578 (1) The legislative body of each county required by the comprehensive plan for air  
5579 pollution control developed by the [~~Air Quality Board under Subsection 19-2-104(3)(e)~~]  
5580 director of the Division of Air Quality in accordance with Subsection 19-2-107(2)(a)(i) to use  
5581 an emissions opacity inspection and maintenance program for diesel-powered motor vehicles  
5582 shall:

5583 (a) make regulations or ordinances to implement and enforce the requirement  
5584 established by the Air Quality Board;

5585 (b) collect information about and monitor the program; and

5586 (c) by August 1 of each year, supply written information to the Department of  
5587 Environmental Quality to identify program status.

5588 (2) The following vehicles are exempt from an emissions opacity inspection and  
5589 maintenance program for diesel-powered motor vehicles established by a legislative body of a  
5590 county under Subsection (1):

5591 (a) an implement of husbandry; and

5592 (b) a motor vehicle that:

5593 (i) meets the definition of a farm truck under Section 41-1a-102; and

5594 (ii) has a gross vehicle weight rating of 12,001 pounds or more.

5595 (3) (a) The legislative body of a county identified in Subsection (1) shall exempt a  
5596 pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or  
5597 less from the emissions opacity inspection and maintenance program requirements of this  
5598 section, if the registered owner of the pickup truck provides a signed statement to the  
5599 legislative body stating the truck is used:

5600 (i) by the owner or operator of a farm located on property that qualifies as land in  
5601 agricultural use under Sections 59-2-502 and 59-2-503; and



5602 (ii) exclusively for the following purposes in operating the farm:  
5603 (A) for the transportation of farm products, including livestock and its products,  
5604 poultry and its products, and floricultural and horticultural products; and  
5605 (B) for the transportation of farm supplies, including tile, fence, and every other thing  
5606 or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production  
5607 and maintenance.

5608 (b) The county shall provide to the registered owner who signs and submits a signed  
5609 statement under this section a certificate of exemption from emissions opacity inspection and  
5610 maintenance program requirements for purposes of registering the exempt vehicle.

5611 Section 112. Section **59-1-403** is amended to read:

5612 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

5613 (1) (a) Any of the following may not divulge or make known in any manner any  
5614 information gained by that person from any return filed with the commission:

- 5615 (i) a tax commissioner;
- 5616 (ii) an agent, clerk, or other officer or employee of the commission; or
- 5617 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or  
5618 town.

5619 (b) An official charged with the custody of a return filed with the commission is not  
5620 required to produce the return or evidence of anything contained in the return in any action or  
5621 proceeding in any court, except:

- 5622 (i) in accordance with judicial order;
- 5623 (ii) on behalf of the commission in any action or proceeding under:
  - 5624 (A) this title; or
  - 5625 (B) other law under which persons are required to file returns with the commission;
- 5626 (iii) on behalf of the commission in any action or proceeding to which the commission  
5627 is a party; or
- 5628 (iv) on behalf of any party to any action or proceeding under this title if the report or  
5629 facts shown by the return are directly involved in the action or proceeding.

5630 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may  
5631 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically  
5632 pertinent to the action or proceeding.

5633 (2) This section does not prohibit:

5634 (a) a person or that person's duly authorized representative from receiving a copy of  
5635 any return or report filed in connection with that person's own tax;

5636 (b) the publication of statistics as long as the statistics are classified to prevent the  
5637 identification of particular reports or returns; and

5638 (c) the inspection by the attorney general or other legal representative of the state of the  
5639 report or return of any taxpayer:

5640 (i) who brings action to set aside or review a tax based on the report or return;

5641 (ii) against whom an action or proceeding is contemplated or has been instituted under  
5642 this title; or

5643 (iii) against whom the state has an unsatisfied money judgment.

5644 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the  
5645 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative  
5646 Rulemaking Act, provide for a reciprocal exchange of information with:

5647 (i) the United States Internal Revenue Service; or

5648 (ii) the revenue service of any other state.

5649 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
5650 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,  
5651 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and  
5652 other written statements with the federal government, any other state, any of the political  
5653 subdivisions of another state, or any political subdivision of this state, except as limited by  
5654 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal  
5655 government grant substantially similar privileges to this state.

5656 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and  
5657 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,

5658 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the  
5659 identity and other information of taxpayers who have failed to file tax returns or to pay any tax  
5660 due.

5661 (d) Notwithstanding Subsection (1), the commission shall provide to the [~~Solid and~~  
5662 ~~Hazardous Waste Control Board executive secretary~~] director of the Division of Solid and  
5663 Hazardous Waste, as defined in Section 19-6-102, as requested by the [~~executive secretary~~]  
5664 director of the Division of Solid and Hazardous Waste, any records, returns, or other  
5665 information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or  
5666 Section 19-6-410.5 regarding the environmental assurance program participation fee.

5667 (e) Notwithstanding Subsection (1), at the request of any person the commission shall  
5668 provide that person sales and purchase volume data reported to the commission on a report,  
5669 return, or other information filed with the commission under:

- 5670 (i) Chapter 13, Part 2, Motor Fuel; or
- 5671 (ii) Chapter 13, Part 4, Aviation Fuel.

5672 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,  
5673 as defined in Section 59-22-202, the commission shall report to the manufacturer:

5674 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
5675 manufacturer and reported to the commission for the previous calendar year under Section  
5676 59-14-407; and

5677 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the  
5678 manufacturer for which a tax refund was granted during the previous calendar year under  
5679 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

5680 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,  
5681 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited  
5682 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

5683 (h) Notwithstanding Subsection (1), the commission may:

5684 (i) provide to the Division of Consumer Protection within the Department of  
5685 Commerce and the attorney general data:

5686 (A) reported to the commission under Section 59-14-212; or

5687 (B) related to a violation under Section 59-14-211; and

5688 (ii) upon request, provide to any person data reported to the commission under

5689 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

5690 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee

5691 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning

5692 and Budget, provide to the committee or office the total amount of revenues collected by the

5693 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period

5694 specified by the committee or office.

5695 (j) Notwithstanding Subsection (1), the commission shall make the directory required

5696 by Section 59-14-603 available for public inspection.

5697 (k) Notwithstanding Subsection (1), the commission may share information with

5698 federal, state, or local agencies as provided in Subsection 59-14-606(3).

5699 (l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of

5700 Recovery Services within the Department of Human Services any relevant information

5701 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer

5702 who has become obligated to the Office of Recovery Services.

5703 (ii) The information described in Subsection (3)(l)(i) may be provided by the Office of

5704 Recovery Services to any other state's child support collection agency involved in enforcing

5705 that support obligation.

5706 (m) (i) Notwithstanding Subsection (1), upon request from the state court

5707 administrator, the commission shall provide to the state court administrator, the name, address,

5708 telephone number, county of residence, and Social Security number on resident returns filed

5709 under Chapter 10, Individual Income Tax Act.

5710 (ii) The state court administrator may use the information described in Subsection

5711 (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

5712 (n) Notwithstanding Subsection (1), the commission shall at the request of a

5713 committee, commission, or task force of the Legislature provide to the committee, commission,

5714 or task force of the Legislature any information relating to a tax imposed under Chapter 9,  
5715 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

5716 (o) (i) As used in this Subsection (3)(o), "office" means the:

5717 (A) Office of the Legislative Fiscal Analyst; or

5718 (B) Office of Legislative Research and General Counsel.

5719 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii),

5720 the commission shall at the request of an office provide to the office all information:

5721 (A) gained by the commission; and

5722 (B) required to be attached to or included in returns filed with the commission.

5723 (iii) (A) An office may not request and the commission may not provide to an office a  
5724 person's:

5725 (I) address;

5726 (II) name;

5727 (III) Social Security number; or

5728 (IV) taxpayer identification number.

5729 (B) The commission shall in all instances protect the privacy of a person as required by  
5730 Subsection (3)(o)(iii)(A).

5731 (iv) An office may provide information received from the commission in accordance  
5732 with this Subsection (3)(o) only:

5733 (A) as:

5734 (I) a fiscal estimate;

5735 (II) fiscal note information; or

5736 (III) statistical information; and

5737 (B) if the information is classified to prevent the identification of a particular return.

5738 (v) (A) A person may not request information from an office under Title 63G, Chapter  
5739 2, Government Records Access and Management Act, or this section, if that office received the  
5740 information from the commission in accordance with this Subsection (3)(o).

5741 (B) An office may not provide to a person that requests information in accordance with

5742 Subsection (3)(o)(v)(A) any information other than the information the office provides in  
5743 accordance with Subsection (3)(o)(iv).

5744 (p) Notwithstanding Subsection (1), the commission may provide to the governing  
5745 board of the agreement or a taxing official of another state, the District of Columbia, the United  
5746 States, or a territory of the United States:

5747 (i) the following relating to an agreement sales and use tax:

5748 (A) information contained in a return filed with the commission;

5749 (B) information contained in a report filed with the commission;

5750 (C) a schedule related to Subsection (3)(p)(i)(A) or (B); or

5751 (D) a document filed with the commission; or

5752 (ii) a report of an audit or investigation made with respect to an agreement sales and  
5753 use tax.

5754 (q) Notwithstanding Subsection (1), the commission may provide information  
5755 concerning a taxpayer's state income tax return or state income tax withholding information to  
5756 the Driver License Division if the Driver License Division:

5757 (i) requests the information; and

5758 (ii) provides the commission with a signed release form from the taxpayer allowing the  
5759 Driver License Division access to the information.

5760 (r) Notwithstanding Subsection (1), the commission shall provide to the Utah 911  
5761 Committee the information requested by the Utah 911 Committee under Subsection  
5762 53-10-602(3).

5763 (s) Notwithstanding Subsection (1), the commission shall provide to the Utah  
5764 Educational Savings Plan information related to a resident or nonresident individual's  
5765 contribution to a Utah Educational Savings Plan account as designated on the resident or  
5766 nonresident's individual income tax return as provided under Section 59-10-1313.

5767 (t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under  
5768 Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the  
5769 Department of Health or its designee with the adjusted gross income of an individual if:

5770 (i) an eligibility worker with the Department of Health or its designee requests the  
5771 information from the commission; and

5772 (ii) the eligibility worker has complied with the identity verification and consent  
5773 provisions of Sections 26-18-2.5 and 26-40-105.

5774 (u) Notwithstanding Subsection (1), the commission may provide to a county, as  
5775 determined by the commission, information declared on an individual income tax return in  
5776 accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption  
5777 authorized under Section 59-2-103.

5778 (4) (a) Each report and return shall be preserved for at least three years.

5779 (b) After the three-year period provided in Subsection (4)(a) the commission may  
5780 destroy a report or return.

5781 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

5782 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,  
5783 the person shall be dismissed from office and be disqualified from holding public office in this  
5784 state for a period of five years thereafter.

5785 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in  
5786 accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with  
5787 Subsection (3)(o)(v):

5788 (i) is not guilty of a class A misdemeanor; and

5789 (ii) is not subject to:

5790 (A) dismissal from office in accordance with Subsection (5)(b); or

5791 (B) disqualification from holding public office in accordance with Subsection (5)(b).

5792 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.  
5793 Section 113. Section **72-6-106.5** is amended to read:

5794 **72-6-106.5. Reuse of industrial byproducts.**

5795 (1) As used in this section:

5796 (a) [~~"Executive secretary" has the same meaning~~] "Director" is as defined in Section  
5797 19-6-1102.

5798 (b) "Industrial byproduct" has the same meaning as defined in Section 19-6-1102.

5799 (c) "Public project" has the same meaning as defined in Section 19-6-1102.

5800 (d) "Reuse" has the same meaning as defined in Section 19-6-1102.

5801 (2) Consistent with the protection of public health and the environment and generally  
5802 accepted engineering practices, the department shall, to the maximum extent possible  
5803 considering budgetary factors:

5804 (a) allow and encourage the reuse of an industrial byproduct in:

5805 (i) a plan, specification, and estimate for a public project; and

5806 (ii) advertising for a bid for a public project;

5807 (b) allow for the reuse of an industrial byproduct in, among other uses:

5808 (i) landscaping;

5809 (ii) a general geotechnical fill;

5810 (iii) a structural fill;

5811 (iv) concrete or asphalt;

5812 (v) a base or subbase; and

5813 (vi) geotechnical drainage materials; and

5814 (c) promulgate and apply public project specifications that allow reuse of an industrial  
5815 byproduct based upon:

5816 (i) cost;

5817 (ii) performance; and

5818 (iii) engineered equivalency in lifespan, durability, and maintenance.

5819 (3) After the [~~executive secretary~~] director issues an approval under Section 19-6-1104  
5820 and the department uses the industrial byproduct in compliance with the [~~executive secretary's~~]  
5821 director's approval:

5822 (a) the department is not responsible for further management of the industrial  
5823 byproduct; and

5824 (b) the generator or originator of the industrial byproduct is not responsible for the  
5825 industrial byproduct under Title 19, Environmental Quality Code.



5826 Section 114. **Effective date.**

5827 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

5828 (2) The amendments to Sections 19-5-102 (Effective 07/01/12) and 19-5-104

5829 (Effective 07/01/12) take effect on July 1, 2012.

5830 Section 115. **Coordinating S.B. 21 with S.B. 11 -- Substantive and technical**  
5831 **amendments.**

5832 If this S.B. 21 and S.B. 11, Department of Environmental Quality Boards Adjudicative  
5833 Proceedings, both pass and become law, the Legislature intends that the Office of Legislative  
5834 Research and General Counsel shall prepare the Utah Code database for publication as follows:

5835 (1) amend Subsection 19-1-201(1)(d)(ii) to read as follows:

5836 "(ii) procedural rules that govern:

5837 (A) an adjudicative proceeding, consistent with Section 19-1-301; and

5838 (B) a permit review adjudicative proceeding, consistent with Section 19-1-301.5.";

5839 (2) delete Subsection 19-1-301(12); and

5840 (3) amend Section 19-1-301.5 to read as follows:

5841 "19-1-301.5. Permit review adjudicative proceedings.

5842 (1) As used in this section:

5843 (a) "Dispositive action" means a final agency action that:

5844 (i) the executive director takes as part of a permit review adjudicative proceeding; and

5845 (ii) is subject to judicial review, in accordance with Subsection (14).

5846 (b) "Dispositive motion" means a motion that is equivalent to:

5847 (i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);

5848 (ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule

5849 12(c); or

5850 (iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.

5851 (c) "Party" means:

5852 (i) the director who issued the permit order being challenged in the permit review

5853 adjudicative proceeding;

- 5854 (ii) the permittee;  
5855 (iii) the person who applied for the permit, if the permit was denied; or  
5856 (iv) a person granted intervention by the administrative law judge.  
5857 (d) "Permit" means any of the following issued under this title:  
5858 (i) a permit;  
5859 (ii) a plan;  
5860 (iii) a license;  
5861 (iv) an approval order; or  
5862 (v) another administrative authorization made by a director.  
5863 (e) (i) "Permit order" means an order issued by a director that:  
5864 (A) approves a permit;  
5865 (B) renews a permit;  
5866 (C) denies a permit;  
5867 (D) modifies or amends a permit; or  
5868 (E) revokes and reissues a permit.  
5869 (ii) "Permit order" does not include an order terminating a permit.  
5870 (f) "Permit review adjudicative proceeding" means a proceeding to resolve a challenge  
5871 to a permit order.  
5872 (2) This section governs permit review adjudicative proceedings.  
5873 (3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4,  
5874 Administrative Procedures Act, do not apply to a permit review adjudicative proceeding.  
5875 (4) If a public comment period was provided during the permit application process, a  
5876 person who challenges a permit order, including the permit applicant, may only raise an issue  
5877 or argument during the permit review adjudicative proceeding that:  
5878 (a) the person raised during the public comment period; and  
5879 (b) was supported with sufficient information or documentation to enable the director  
5880 to fully consider the substance and significance of the issue.  
5881 (5) The executive director shall appoint an administrative law judge, in accordance

5882 with Subsections 19-1-301(5) and (6), to conduct a permit review adjudicative proceeding.

5883 (6) (a) Only the following may file a request for agency action seeking review of a  
5884 permit order:

5885 (i) a party; or

5886 (ii) a person who is seeking to intervene under Subsection (7).

5887 (b) A person who files a request for agency action seeking review of a permit order  
5888 shall file the request:

5889 (i) within 30 days after the day on which the permit order is issued; and

5890 (ii) in accordance with Subsections 63G-4-201(3)(a) through (c).

5891 (c) A person may not raise an issue or argument in a request for agency action unless  
5892 the issue or argument:

5893 (i) was preserved in accordance with Subsection (4); or

5894 (ii) was not reasonably ascertainable before or during the public comment period.

5895 (d) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative  
5896 Rulemaking Act, make rules allowing the extension of the filing deadline described in  
5897 Subsection (6)(b)(i).

5898 (7) (a) A person who is not a party may not participate in a permit review adjudicative  
5899 proceeding unless the person is granted the right to intervene under this Subsection (7).

5900 (b) A person who seeks to intervene in a permit review adjudicative proceeding under  
5901 this section shall, within 30 days after the day on which the permit order being challenged was  
5902 issued, file:

5903 (i) a petition to intervene that:

5904 (A) meets the requirements of Subsection 63G-4-207(1); and

5905 (B) demonstrates that the person is entitled to intervention under Subsection (7)(c)(ii);

5906 and

5907 (ii) a timely request for agency action.

5908 (c) An administrative law judge shall grant a petition to intervene in a permit review  
5909 adjudicative proceeding, if:

5910 (i) the petition to intervene is timely filed; and

5911 (ii) the petitioner:

5912 (A) demonstrates that the petitioner's legal interests may be substantially affected by  
5913 the permit review adjudicative proceeding;

5914 (B) demonstrates that the interests of justice and the orderly and prompt conduct of the  
5915 permit review adjudicative proceeding will not be materially impaired by allowing the  
5916 intervention; and

5917 (C) in the petitioner's request for agency action, raises issues or arguments that are  
5918 preserved in accordance with Subsection (4).

5919 (d) An administrative law judge:

5920 (i) shall issue an order granting or denying a petition to intervene in accordance with  
5921 Subsection 63G-4-207(3)(a); and

5922 (ii) may impose conditions on intervenors as described in Subsections 63G-4-207(3)(b)  
5923 and (c).

5924 (e) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative  
5925 Rulemaking Act, make rules allowing the extension of the filing deadline described in  
5926 Subsection (7)(b).

5927 (8) (a) An administrative law judge shall conduct a permit review adjudicative  
5928 proceeding based only on the administrative record and not as a trial de novo.

5929 (b) To the extent relative to the issues and arguments raised in the request for agency  
5930 action, the administrative record shall consist of the following items, if they exist:

5931 (i) the permit application, draft permit, and final permit;

5932 (ii) each statement of basis, fact sheet, engineering review, or other substantive  
5933 explanation designated by the director as part of the basis for the decision relating to the permit  
5934 order;

5935 (iii) the notice and record of each public comment period;

5936 (iv) the notice and record of each public hearing, including oral comments made during  
5937 the public hearing;

5938 (v) written comments submitted during the public comment period;  
5939 (vi) responses to comments that are designated by the director as part of the basis for  
5940 the decision relating to the permit order;  
5941 (vii) any information that is:  
5942 (A) requested by and submitted to the director; and  
5943 (B) designated by the director as part of the basis for the decision relating to the permit  
5944 order;  
5945 (viii) any additional information specified by rule;  
5946 (ix) any additional documents agreed to by the parties; and  
5947 (x) information supplementing the record under Subsection (8)(c).  
5948 (c) (i) There is a rebuttable presumption against supplementing the record.  
5949 (ii) A party may move to supplement the record described in Subsection (8)(b) with  
5950 technical or factual information.  
5951 (iii) The administrative law judge may grant a motion to supplement the record  
5952 described in Subsection (8)(b) with technical or factual information if the moving party proves  
5953 that:  
5954 (A) good cause exists for supplementing the record;  
5955 (B) supplementing the record is in the interest of justice; and  
5956 (C) supplementing the record is necessary for resolution of the issues.  
5957 (iv) The administrative law judge may supplement the record with technical or factual  
5958 information on the administrative law judge's own motion if the administrative law judge  
5959 determines that adequate grounds exist to supplement the record under Subsections  
5960 (8)(c)(iii)(A) through (C).  
5961 (v) In supplementing the record with testimonial evidence, the administrative law judge  
5962 may administer an oath or take testimony as necessary.  
5963 (vi) The department may, in accordance with Title 63G, Chapter 3, Utah  
5964 Administrative Rulemaking Act, make rules permitting further supplementation of the record.  
5965 (9) (a) The administrative law judge shall review and respond to a request for agency

5966 action in accordance with Subsections 63G-4-201(3)(d) and (e), following the relevant  
5967 procedures for formal adjudicative proceedings.

5968 (b) The administrative law judge shall require the parties to file responsive pleadings in  
5969 accordance with Section 63G-4-204.

5970 (c) If an administrative law judge enters an order of default against a party, the  
5971 administrative law judge shall enter the order of default in accordance with Section 63G-4-209,  
5972 following the relevant procedures for formal adjudicative proceedings.

5973 (d) The administrative law judge, in conducting a permit review adjudicative  
5974 proceeding:

5975 (i) may not participate in an ex parte communication with a party to the permit review  
5976 adjudicative proceeding regarding the merits of the permit review adjudicative proceeding  
5977 unless notice and an opportunity to be heard are afforded to all parties; and

5978 (ii) shall, upon receiving an ex parte communication, place the communication in the  
5979 public record of the proceeding and afford all parties an opportunity to comment on the  
5980 information.

5981 (e) In conducting a permit review adjudicative proceeding, the administrative law  
5982 judge may take judicial notice of matters not in the administrative record, in accordance with  
5983 Utah Rules of Evidence, Rule 201.

5984 (f) An administrative law judge may take any action in a permit review adjudicative  
5985 proceeding that is not a dispositive action.

5986 (10) (a) A person who files a request for agency action has the burden of demonstrating  
5987 that an issue or argument raised in the request for agency action has been preserved in  
5988 accordance with Subsection (4).

5989 (b) The administrative law judge shall dismiss, with prejudice, any issue or argument  
5990 raised in a request for agency action that has not been preserved in accordance with Subsection  
5991 (4).

5992 (11) In response to a dispositive motion, the administrative law judge may submit a  
5993 proposed dispositive action to the executive director recommending full or partial resolution of

5994 the permit review adjudicative proceeding, that includes:

5995 (a) written findings of fact;

5996 (b) written conclusions of law; and

5997 (c) a recommended order.

5998 (12) For each issue or argument that is not dismissed or otherwise resolved under

5999 Subsection (10)(b) or (11), the administrative law judge shall:

6000 (a) provide the parties an opportunity for briefing and oral argument;

6001 (b) conduct a review of the director's determination, based on the record described in

6002 Subsections (8)(b), (8)(c), and (9)(e); and

6003 (c) submit to the executive director a proposed dispositive action, that includes:

6004 (i) written findings of fact;

6005 (ii) written conclusions of law; and

6006 (iii) a recommended order.

6007 (13) (a) When the administrative law judge submits a proposed dispositive action to

6008 the executive director, the executive director may:

6009 (i) adopt, adopt with modifications, or reject the proposed dispositive action; or

6010 (ii) return the proposed dispositive action to the administrative law judge for further  
6011 action as directed.

6012 (b) On review of a proposed dispositive action, the executive director shall uphold all  
6013 factual, technical, and scientific agency determinations that are supported by substantial  
6014 evidence taken from the record as a whole.

6015 (c) (i) The executive director may not participate in an ex parte communication with a  
6016 party to the permit review adjudicative proceeding regarding the merits of the permit review  
6017 adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties.

6018 (ii) Upon receiving an ex parte communication, the executive director shall place the  
6019 communication in the public record of the proceeding and afford all parties an opportunity to  
6020 comment on the information.

6021 (d) In reviewing a proposed dispositive action during a permit review adjudicative

6022 proceeding, the executive director may take judicial notice of matters not in the record, in  
6023 accordance with Utah Rules of Evidence, Rule 201.

6024 (e) The executive director may use the executive director's technical expertise in  
6025 making a determination.

6026 (14) (a) A party may seek judicial review in the Utah Court of Appeals of a dispositive  
6027 action in a permit review adjudicative proceeding, in accordance with Sections 63G-4-401,  
6028 63G-4-403, and 63G-4-405.

6029 (b) An appellate court shall limit its review of a dispositive action of a permit review  
6030 adjudicative proceeding to:

6031 (i) the record described in Subsections (8)(b), (8)(c), (9)(e), and (13)(d); and

6032 (ii) the record made by the administrative law judge and the executive director during  
6033 the permit review adjudicative proceeding.

6034 (c) During judicial review of a dispositive action, the appellate court shall:

6035 (i) review all agency determinations in accordance with Subsection 63G-4-403(4),  
6036 recognizing that the agency has been granted substantial discretion to interpret its governing  
6037 statutes and rules; and

6038 (ii) uphold all factual, technical, and scientific agency determinations that are  
6039 supported by substantial evidence viewed in light of the record as a whole.

6040 (15) (a) The filing of a request for agency action does not stay a permit or delay the  
6041 effective date of a permit.

6042 (b) A permit may not be stayed or delayed unless a stay is granted under this  
6043 Subsection (15).

6044 (c) The administrative law judge shall:

6045 (i) consider a party's motion to stay a permit during a permit review adjudicative  
6046 proceeding; and

6047 (ii) submit a proposed determination on the stay to the executive director.

6048 (d) The administrative law judge may not recommend to the executive director a stay  
6049 of a permit, or a portion of a permit, unless:



- 6050            (i) all parties agree to the stay; or
- 6051            (ii) the party seeking the stay demonstrates that:
- 6052            (A) the party seeking the stay will suffer irreparable harm unless the stay is issued;
- 6053            (B) the threatened injury to the party seeking the stay outweighs whatever damage the
- 6054 proposed stay is likely to cause the party restrained or enjoined;
- 6055            (C) the stay, if issued, would not be adverse to the public interest; and
- 6056            (D) there is a substantial likelihood that the party seeking the stay will prevail on the
- 6057 merits of the underlying claim, or the case presents serious issues on the merits, which should
- 6058 be the subject of further adjudication.
- 6059            (e) A party may appeal the executive director's decision regarding a stay of a permit to
- 6060 the Utah Court of Appeals, in accordance with Section 78A-4-103."