

PETROLEUM STORAGE TANKS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Keven J. Stratton

LONG TITLE

Committee Note:

The Natural Resources, Agriculture, and Environment Interim Committee recommended this bill.

Legislative Vote: 14 voting for 1 voting against 4 absent

General Description:

This bill addresses regulation of aboveground petroleum storage tanks.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires owners or operators of certain aboveground petroleum storage tanks to notify the director of the Division of Environmental Response and Remediation and establish financial assurance;
- ▶ provides for rulemaking;
- ▶ addresses state owned or leased tanks;
- ▶ imposes restrictions on delivery of petroleum;
- ▶ addresses civil penalties; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **19-6-105**, as last amended by Laws of Utah 2020, Chapter 256

32 **19-6-402**, as last amended by Laws of Utah 2018, Chapter 281

33 **19-6-403**, as last amended by Laws of Utah 2012, Chapters 310 and 360

34 **19-6-407**, as last amended by Laws of Utah 2012, Chapter 360

35 **19-6-415**, as last amended by Laws of Utah 1997, Chapter 172

36 **19-6-415.5**, as enacted by Laws of Utah 1997, Chapter 172

37 **19-6-416**, as last amended by Laws of Utah 2012, Chapter 360

38 **19-6-420**, as last amended by Laws of Utah 2014, Chapter 227

39 **19-8-119**, as last amended by Laws of Utah 2014, Chapter 227



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

42 Section 1. Section **19-6-105** is amended to read:

43 **19-6-105. Rules of board.**

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

46 (a) establishing minimum standards for protection of human health and the
47 environment, for the storage, collection, transport, transfer, recovery, treatment, and disposal of
48 solid waste, including requirements for the approval by the director of plans for the
49 construction, extension, operation, and closure of solid waste disposal sites;

50 (b) identifying wastes that are determined to be hazardous, including wastes designated
51 as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of 1976, 42
52 U.S.C., Sec. 6921, et seq.;

53 (c) governing generators and transporters of hazardous wastes and owners and
54 operators of hazardous waste treatment, storage, and disposal facilities, including requirements
55 for keeping records, monitoring, submitting reports, and using a manifest, without treating
56 high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling
57 muds, and oil production brines in a manner more stringent than they are treated under federal
58 standards;

59 (d) requiring an owner or operator of a treatment, storage, or disposal facility that is
60 subject to a plan approval under Section 19-6-108 or that received waste after July 26, 1982, to
61 take appropriate corrective action or other response measures for releases of hazardous waste
62 or hazardous waste constituents from the facility, including releases beyond the boundaries of
63 the facility;

64 (e) specifying the terms and conditions under which the director shall approve,
65 disapprove, revoke, or review hazardous wastes operation plans;

66 (f) governing public hearings and participation under this part;

67 (g) establishing standards governing underground storage tanks and aboveground
68 petroleum storage tanks, in accordance with Title 19, Chapter 6, Part 4, Underground Storage
69 Tank Act;

70 (h) relating to the collection, transportation, processing, treatment, storage, and
71 disposal of infectious waste in health facilities in accordance with the requirements of Section
72 19-6-106;

73 (i) defining closure plans, modification requests, or both for hazardous waste, as class
74 I, class I with prior director approval, class II, or class III;

75 and

76 (j) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or
77 organic waste substance of any kind to be thrown, or remain upon or in a street, road, ditch,
78 canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or
79 well.

80 (2) If any of the following are determined to be hazardous waste and are therefore
81 subjected to the provisions of this part, the board shall, in the case of landfills or surface
82 impoundments that receive the solid wastes, take into account the special characteristics of the
83 wastes, the practical difficulties associated with applying requirements for other wastes to the
84 wastes, and site-specific characteristics, including the climate, geology, hydrology, and soil
85 chemistry at the site, if the modified requirements assure protection of human health and the
86 environment and are no more stringent than federal standards applicable to waste:

87 (a) solid waste from the extraction, beneficiation, or processing of ores and minerals,
88 including phosphate rock and overburden from the mining of uranium;

89 (b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste

90 generated primarily from the combustion of coal or other fossil fuels; and

91 (c) cement kiln dust waste.

92 (3) The board shall establish criteria for siting commercial hazardous waste treatment,
93 storage, and disposal facilities, including commercial hazardous waste incinerators. Those
94 criteria shall apply to any facility or incinerator for which plan approval is required under
95 Section 19-6-108.

96 Section 2. Section 19-6-402 is amended to read:

97 **19-6-402. Definitions.**

98 As used in this part:

99 (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:

100 (a) a release from an underground storage tank or petroleum storage tank; or

101 (b) the damage caused by that release.

102 (2) "Aboveground petroleum storage tank" means a storage tank that:

103 (a) is by volume at least 90% above ground, including the pipes connected to the
104 storage tank;

105 (b) contains regulated substances;

106 (c) has the capacity to hold 351 gallons or more; and

107 (d) is not:

108 (i) used in agricultural operations, as defined by the board by rule made in accordance
109 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

110 (ii) used for heating oil for consumptive use on the premises where stored;

111 (iii) part of a petroleum refinery; or

112 (iv) directly related to oil or gas production and gathering operations.

113 [~~2~~] (3) "Board" means the Waste Management and Radiation Control Board created
114 in Section 19-1-106.

115 [~~3~~] (4) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a
116 person.

117 [~~4~~] (5) "Certificate of compliance" means a certificate issued to a facility by the
118 director:

119 (a) demonstrating that an owner or operator of a facility containing one or more
120 petroleum storage tanks has met the requirements of this part; and

121 (b) listing ~~at~~ the tanks at the facility, specifying:

122 (i) which tanks may receive petroleum; and

123 (ii) which tanks have not met the requirements for compliance.

124 ~~(5)~~ (6) "Certificate of registration" means a certificate issued to a facility by the
125 director demonstrating that an owner or operator of a facility containing one or more
126 underground storage tanks has:

127 (a) registered the tanks; and

128 (b) paid the annual underground storage tank fee.

129 ~~(6)~~ (7) (a) "Certified underground storage tank consultant" means a person who:

130 (i) for a fee, or in connection with services for which a fee is charged, provides or
131 contracts to provide information, opinions, or advice relating to underground storage tank
132 release:

133 (A) management;

134 (B) abatement;

135 (C) investigation;

136 (D) corrective action; or

137 (E) evaluation;

138 (ii) has submitted an application to the director;

139 (iii) received a written statement of certification from the director; and

140 (iv) meets the education and experience standards established by the board under

141 Subsection [19-6-403\(1\)\(a\)\(vii\)](#).

142 (b) "Certified underground storage tank consultant" does not include:

143 (i) (A) an employee of the owner or operator of the underground storage tank; or

144 (B) an employee of a business operation that has a business relationship with the owner
145 or operator of the underground storage tank, and markets petroleum products or manages
146 underground storage tanks; or

147 (ii) a person licensed to practice law in this state who offers only legal advice on
148 underground storage tank release:

149 (A) management;

150 (B) abatement;

151 (C) investigation;

152 (D) corrective action; or

153 (E) evaluation.

154 [~~7~~] (8) "Closed" means an underground storage tank or aboveground petroleum
155 storage tank that is no longer in use that has been:

156 (a) emptied and cleaned to remove ~~all~~ the liquids and accumulated sludges; and

157 (b) (i) removed from the ground with all underground components; or

158 (ii) filled with an inert solid material.

159 [~~8~~] (9) "Corrective action plan" means a plan for correcting a release from a
160 petroleum storage tank that includes provisions for any of the following:

161 (a) cleanup or removal of the release;

162 (b) containment or isolation of the release;

163 (c) treatment of the release;

164 (d) correction of the cause of the release;

165 (e) monitoring and maintenance of the site of the release;

166 (f) provision of alternative water supplies to a person whose drinking water has
167 become contaminated by the release; or

168 (g) temporary or permanent relocation, whichever is determined by the director to be
169 more cost-effective, of a person whose dwelling has been determined by the director to be no
170 longer habitable due to the release.

171 [~~9~~] (10) "Costs" means money expended for:

172 (a) investigation;

173 (b) abatement action;

174 (c) corrective action;

175 (d) judgments, awards, and settlements for bodily injury or property damage to third
176 parties;

177 (e) legal and claims adjusting costs incurred by the state in connection with judgments,
178 awards, or settlements for bodily injury or property damage to third parties; or

179 (f) costs incurred by the state risk manager in determining the actuarial soundness of
180 the fund.

181 [~~10~~] (11) "Covered by the fund" means the requirements of Section [19-6-424](#) have
182 been met.

183 ~~[(11)]~~ (12) "Director" means the director of the Division of Environmental Response
184 and Remediation.

185 ~~[(12)]~~ (13) "Division" means the Division of Environmental Response and
186 Remediation, created in Subsection 19-1-105(1)(c).

187 ~~[(13)]~~ (14) "Dwelling" means a building that is usually occupied by a person lodging
188 there at night.

189 ~~[(14)]~~ (15) "Enforcement proceedings" means a civil action or the procedures to
190 enforce orders established by Section 19-6-425.

191 ~~[(15)]~~ (16) "Facility" means ~~[a]t~~ the underground storage tanks located on a single
192 parcel of property or on any property adjacent or contiguous to that parcel.

193 ~~[(16)]~~ (17) "Fund" means the Petroleum Storage Tank Trust Fund created in Section
194 19-6-409.

195 ~~[(17)]~~ (18) "Operator" means a person in control of or who is responsible on a daily
196 basis for the maintenance of an underground storage tank or aboveground petroleum storage
197 tank that is in use for the storage, use, or dispensing of a regulated substance.

198 ~~[(18)]~~ (19) "Owner" means:

199 (a) in the case of an underground storage tank in use on or after November 8, 1984, a
200 person who owns an underground storage tank used for the storage, use, or dispensing of a
201 regulated substance; ~~[and]~~

202 (b) in the case of an underground storage tank in use before November 8, 1984, but not
203 in use on or after November 8, 1984, a person who owned the tank immediately before the
204 discontinuance of its use for the storage, use, or dispensing of a regulated substance~~[-];~~ and

205 (c) in the case of an aboveground petroleum storage tank, a person who owns the
206 aboveground petroleum storage tank.

207 ~~[(19)]~~ (20) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:

208 (a) 60 degrees Fahrenheit; and

209 (b) a pressure of 14.7 pounds per square inch absolute.

210 ~~[(20)]~~ (21) "Petroleum storage tank" means a tank that:

211 (a) (i) is underground;

212 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42

213 U.S.C. Sec. 6991c, et seq.; and

214 (iii) contains petroleum; or
215 (b) the owner or operator voluntarily submits for participation in the Petroleum Storage
216 Tank Trust Fund under Section 19-6-415.

217 [~~21~~] (22) "Petroleum Storage Tank Restricted Account" means the account created in
218 Section 19-6-405.5.

219 [~~22~~] (23) "Program" means the Environmental Assurance Program under Section
220 19-6-410.5.

221 [~~23~~] (24) "Property damage" means physical injury to, destruction of, or loss of use of
222 tangible property.

223 [~~24~~] (25) (a) "Regulated substance" means petroleum and petroleum-based
224 substances comprised of a complex blend of hydrocarbons derived from crude oil through
225 processes of separation, conversion, upgrading, and finishing.

226 (b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual
227 fuel oils, lubricants, petroleum solvents, and used oils.

228 [~~25~~] (26) (a) "Release" means spilling, leaking, emitting, discharging, escaping,
229 leaching, or disposing a regulated substance from an underground storage tank or petroleum
230 storage tank.

231 (b) A release of a regulated substance from an underground storage tank or petroleum
232 storage tank is considered a single release from that tank system.

233 [~~26~~] (27) (a) "Responsible party" means a person who:

- 234 (i) is the owner or operator of a facility;
235 (ii) owns or has legal or equitable title in a facility or an underground storage tank;
236 (iii) owned or had legal or equitable title in a facility at the time petroleum was
237 received or contained at the facility;

238 (iv) operated or otherwise controlled activities at a facility at the time petroleum was
239 received or contained at the facility; or

240 (v) is an underground storage tank installation company.

241 (b) "Responsible party" is as defined in Subsections [~~26~~] (27)(a)(i), (ii), and (iii) does
242 not include:

243 (i) a person who is not an operator and, without participating in the management of a
244 facility and otherwise not engaged in petroleum production, refining, and marketing, holds

245 indicia of ownership:

246 (A) primarily to protect the person's security interest in the facility; or

247 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an
248 employee benefit plan; or

249 (ii) governmental ownership or control of property by involuntary transfers as provided
250 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

251 (c) The exemption created by Subsection [~~26~~] (27)(b)(i)(B) does not apply to actions
252 taken by the state or its officials or agencies under this part.

253 (d) The terms and activities "indicia of ownership," "primarily to protect a security
254 interest," "participation in management," and "security interest" under this part are in
255 accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

256 (e) The terms "participate in management" and "indicia of ownership" as defined in 40
257 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to
258 the fiduciaries listed in Subsection [~~26~~] (27)(b)(i)(B).

259 (28) "Rests directly on the ground" means that at least some portion of an aboveground
260 petroleum storage tank is in contact with soil.

261 [~~27~~] (29) "Soil test" means a test, established or approved by board rule, to detect the
262 presence of petroleum in soil.

263 [~~28~~] (30) "State cleanup appropriation" means money appropriated by the Legislature
264 to the department to fund the investigation, abatement, and corrective action regarding releases
265 not covered by the fund.

266 (31) "Underground piping" means piping that is buried underground and connected to
267 an aboveground petroleum storage tank.

268 [~~29~~] (32) "Underground storage tank" means a tank regulated under Subtitle I,
269 Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

270 (a) a petroleum storage tank;

271 (b) underground pipes and lines connected to a storage tank;

272 (c) underground ancillary equipment;

273 (d) a containment system; and

274 (e) each compartment of a multi-compartment storage tank.

275 [~~30~~] (33) "Underground storage tank installation company" means a person, firm,

276 partnership, corporation, governmental entity, association, or other organization that installs
277 underground storage tanks.

278 ~~[(31)]~~ (34) "Underground storage tank installation company permit" means a permit
279 issued to an underground storage tank installation company by the director.

280 ~~[(32)]~~ (35) "Underground storage tank technician" means a person employed by and
281 acting under the direct supervision of a certified underground storage tank consultant to assist
282 in carrying out the functions described in Subsection (6)(a).

283 Section 3. Section **19-6-403** is amended to read:

284 **19-6-403. Powers and duties of board.**

285 The board shall regulate an underground storage tank or petroleum storage tank by:

286 (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
287 making rules that:

288 (a) provide for the:

289 (i) certification of an underground storage tank installer, inspector, tester, or remover;

290 (ii) registration of an underground storage tank operator;

291 (iii) registration of an underground storage tank;

292 (iv) administration of the petroleum storage tank program;

293 (v) format of, and required information in, a record kept by an underground storage or
294 petroleum storage tank owner or operator who is participating in the fund;

295 (vi) voluntary participation in the fund for:

296 (A) an ~~[above ground]~~ aboveground petroleum storage tank~~;~~ and as provided in

297 Section 19-6-415; or

298 (B) a tank:

299 (I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

300 (II) specified in Section 19-6-415; ~~[and]~~

301 (vii) certification of an underground storage tank consultant including:

302 (A) a minimum education or experience requirement; and

303 (B) a recognition of the educational requirement of a professional engineer licensed
304 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
305 Act, as meeting the education requirement for certification; and

306 (viii) compliance with this chapter by an aboveground petroleum storage tank that has

307 underground piping or rests directly on the ground;

308 (b) adopt the requirements for an underground storage tank contained in:

309 (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may
310 be amended in the future; and

311 (ii) an applicable federal requirement authorized by the federal law referenced in
312 Subsection (1)(b)(i); and

313 (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42
314 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of
315 primacy in the regulation of an underground storage tank; and

316 (2) applying the provisions of this part.

317 Section 4. Section **19-6-407** is amended to read:

318 **19-6-407. Underground storage tank registration -- Change of ownership or**
319 **operation -- Aboveground petroleum storage tank -- Civil penalty.**

320 (1) (a) ~~[Each]~~ An owner or operator of an underground storage tank shall register the
321 tank with the director if the tank:

322 (i) is in use; or

323 (ii) was closed after January 1, 1974.

324 (b) If a new person assumes ownership or operational responsibilities for an
325 underground storage tank, that person shall inform the ~~[executive secretary]~~ director of the
326 change within 30 days after the change occurs.

327 (c) Each installer of an underground storage tank shall notify the director of the
328 completed installation within 60 days following the installation of an underground storage tank.

329 (2) (a) The owner or operator of an aboveground petroleum storage tank shall notify
330 the director of the location of the aboveground petroleum storage tank:

331 (i) if the aboveground petroleum storage tank:

332 (A) has underground piping; or

333 (B) rests directly on the ground; and

334 (ii) by no later than:

335 (A) June 30, 2022, if the aboveground petroleum storage tank is installed on or before
336 June 30, 2022;

337 (B) if the aboveground petroleum storage tank is installed on or after July 1, 2022, 30

338 days after the day on which the aboveground petroleum storage tank is installed; or

339 (C) 30 days before the aboveground petroleum storage tank is closed.

340 (b) When notifying the director under this Subsection (2), an owner of an aboveground
341 petroleum storage tank described in this Subsection (2) shall pay a processing fee established
342 under Section [63J-1-504](#).

343 (c) Before operating an aboveground petroleum storage tank on or after June 30, 2023,
344 that has underground piping or rests directly on the ground, the owner or operator of the
345 aboveground petroleum storage tank shall provide financial responsibility by participating in
346 the Environmental Assurance Program or demonstrating coverage through another method
347 approved by the board by rule made in accordance with Title 63G, Chapter 3, Utah
348 Administrative Rulemaking Act.

349 (d) (i) The director shall certify when an owner or operator of an aboveground
350 petroleum storage tank is in compliance with this Subsection (2).

351 (ii) The board shall make rules providing for the identification, through a tag or other
352 readily identifiable method, of an aboveground petroleum storage tank under Subsection (2)(a)
353 that is not certified by the director as in compliance with this Subsection (2).

354 ~~[(2)]~~ (3) The director may issue a notice of agency action assessing a civil penalty in
355 the amount of \$1,000 if an owner, operator, or installer:

356 (a) of a petroleum or underground storage tank fails to register the tank or provide
357 notice as required in Subsection (1)~~[-]~~; or

358 (b) of an aboveground petroleum storage tank described in Subsection (2) fails to
359 provide notice and financial responsibility as required in Subsection (2).

360 ~~[(3)]~~ (4) The penalties collected under authority of this section shall be deposited in the
361 Petroleum Storage Tank Restricted Account created in Section [19-6-405.5](#).

362 Section 5. Section **19-6-415** is amended to read:

363 **19-6-415. Participation of aboveground petroleum storage tanks and exempt and**
364 **aboveground tanks.**

365 (1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280,
366 Subpart A, may become eligible for payments from the Petroleum Storage Tank Trust Fund if
367 ~~[it]~~ the underground storage tank:

368 (a) (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used

369 for storing motor fuel for noncommercial purposes;

370 (ii) is used for storing heating oil for consumptive use on the premises where stored; or

371 (iii) is used for any oxygenate blending component for motor fuels;

372 (b) complies with the requirements of Section 19-6-412;

373 (c) meets other requirements established by rules made under Section 19-6-403; and

374 (d) pays registration and tank fees and environmental assurance fees, equivalent to

375 those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.

376 (2) An ~~[above-ground]~~ aboveground petroleum storage tank, including an aboveground

377 petroleum storage tank excluded from the definition of aboveground petroleum storage tank

378 under Subsection 19-6-402(2)(d), may become eligible for payments from the Petroleum

379 Storage Tank Trust Fund if the owner or operator:

380 (a) pays those fees that are equivalent to the registration and tank fees and

381 environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;

382 (b) complies with the requirements of Section 19-6-412; and

383 (c) meets other requirements established by rules made under Section 19-6-403.

384 Section 6. Section 19-6-415.5 is amended to read:

385 **19-6-415.5. State owned or leased tanks to participate in program.**

386 Any underground storage tank or aboveground petroleum storage tank that has

387 underground piping or rests directly on the ground owned or leased by the state ~~[of Utah]~~ and

388 subject to the financial assurance requirements established by division rule shall participate in

389 the program.

390 Section 7. Section 19-6-416 is amended to read:

391 **19-6-416. Restrictions on delivery of petroleum -- Civil penalty.**

392 (1) (a) ~~[After July 1, 1991, a]~~ A person may not deliver petroleum to, place petroleum

393 in, or accept petroleum for placement in a petroleum storage tank that is not identified in

394 compliance with Subsection 19-6-411(7).

395 (b) Beginning July 1, 2023, a person may not deliver petroleum to, place petroleum in,

396 or accept petroleum for placement in an aboveground petroleum storage tank that has

397 underground piping or rests directly on the ground and that is not in compliance with

398 Subsection 19-6-407(2).

399 (2) ~~[Any]~~ A person who delivers or accepts delivery of petroleum to a petroleum

400 storage tank or places petroleum, including waste petroleum substances, in an underground
401 storage tank or aboveground petroleum storage tank in violation of Subsection (1) is subject to
402 a civil penalty of not more than \$500 for each occurrence.

403 (3) The director shall issue a notice of agency action assessing a civil penalty of not
404 more than \$500 against any person who delivers or accepts delivery of petroleum to a
405 petroleum storage tank or places petroleum, including waste petroleum substances, in violation
406 of Subsection (1) in a petroleum storage tank ~~[or]~~, underground storage tank, or aboveground
407 petroleum storage tank.

408 (4) A civil penalty may not be assessed under this section against any person who in
409 good faith delivers or places petroleum in a petroleum storage tank ~~[or]~~, underground storage
410 tank, or aboveground petroleum storage tank that is identified in compliance with Subsection
411 19-6-411(7) or 19-6-407(2) and rules made under ~~[that]~~ the relevant subsection, whether or not
412 the tank is in actual compliance with the other requirements of Section 19-6-411 or 19-6-407.

413 Section 8. Section **19-6-420** is amended to read:

414 **19-6-420. Releases -- Abatement actions -- Corrective actions.**

415 (1) If the director determines that a release from a petroleum storage tank has occurred,
416 the director shall:

- 417 (a) identify and name as many of the responsible parties as reasonably possible; and
418 (b) determine which responsible parties, if any, are covered by the fund regarding the
419 release in question.

420 (2) Regardless of whether the petroleum storage tank generating the release is covered
421 by the fund:

422 (a) the director may order the owner or operator to take abatement, or investigative or
423 corrective action, including the submission of a corrective action plan; and

424 (b) if the owner or operator fails to comply with the action ordered by the director
425 under Subsection (2)(a), the director may take one or more of the following actions:

426 (i) subject to the conditions in this part, use money from the fund, if the tank involved
427 is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup
428 Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective
429 action;

430 (ii) commence an enforcement proceeding;

- 431 (iii) enter into agreements or issue orders as allowed by Section 19-6-424.5;
- 432 (iv) recover costs from responsible parties equal to their proportionate share of liability
433 as determined by Section 19-6-424.5; or
- 434 (v) where the owner or operator is the responsible party, revoke the responsible party's
435 certificate of compliance, as described in Section 19-6-414.
- 436 (3) (a) Subject to the limitations established in Section 19-6-419, the director shall
437 provide money from the fund for abatement action for a release generated by a tank covered by
438 the fund if:
- 439 (i) the owner or operator takes the abatement action ordered by the director; and
440 (ii) the director approves the abatement action.
- 441 (b) If a release presents the possibility of imminent and substantial danger to the public
442 health or the environment, the owner or operator may take immediate abatement action and
443 petition the director for reimbursement from the fund for the costs of the abatement action. If
444 the owner or operator can demonstrate to the satisfaction of the director that the abatement
445 action was reasonable and timely in light of circumstances, the director shall reimburse the
446 petitioner for costs associated with immediate abatement action, subject to the limitations
447 established in Section 19-6-419.
- 448 (c) The owner or operator shall notify the director within 24 hours of the abatement
449 action taken.
- 450 (4) (a) If the director determines corrective action is necessary, the director shall order
451 the owner or operator to submit a corrective action plan to address the release.
- 452 (b) If the owner or operator submits a corrective action plan, the director shall review
453 the corrective action plan and approve or disapprove the plan.
- 454 (c) In reviewing the corrective action plan, the director shall consider the following:
- 455 (i) the threat to public health;
456 (ii) the threat to the environment; and
457 (iii) the cost-effectiveness of alternative corrective actions.
- 458 (5) If the director approves the corrective action plan or develops the director's own
459 corrective action plan, the director shall:
- 460 (a) approve the estimated cost of implementing the corrective action plan;
461 (b) order the owner or operator to implement the corrective action plan;

462 (c) (i) if the release is covered by the fund, determine the amount of fund money to be
463 allocated to an owner or operator to implement a corrective action plan; and

464 (ii) subject to the limitations established in Section 19-6-419, provide money from the
465 fund to the owner or operator to implement the corrective action plan.

466 (6) (a) The director may not distribute any money from the fund for corrective action
467 until the owner or operator obtains the director's approval of the corrective action plan.

468 (b) An owner or operator who begins corrective action without first obtaining approval
469 from the director and who is covered by the fund may be reimbursed for the costs of the
470 corrective action, subject to the limitations established in Section 19-6-419, if:

471 (i) the owner or operator submits the corrective action plan to the director within seven
472 days after beginning corrective action; and

473 (ii) the director approves the corrective action plan.

474 (7) If the director disapproves the plan, the director shall solicit a new corrective action
475 plan from the owner or operator.

476 (8) If the director disapproves the second corrective action plan, or if the owner or
477 operator fails to submit a second plan within a reasonable time, the director may:

478 (a) develop an alternative corrective action plan; and

479 (b) act as authorized under Subsections (2) and (5).

480 (9) (a) When notified that the corrective action plan has been implemented, the director
481 shall inspect the location of the release to determine whether or not the corrective action has
482 been properly performed and completed.

483 (b) If the director determines the corrective action has not been properly performed or
484 completed, the director may issue an order requiring the owner or operator to complete the
485 corrective action within the time specified in the order.

486 (10) (a) For releases not covered by the fund, the director may recover from the
487 responsible party expenses incurred by the division for managing and overseeing the
488 abatement, and investigation or corrective action of the release. These expenses shall be:

489 (i) billed quarterly per release;

490 (ii) due within 30 days of billing;

491 (iii) deposited with the division as dedicated credits;

492 (iv) used by the division for the administration of the underground storage tank

493 program outlined in this part; and

494 (v) billed per hourly rates as established under Section 63J-1-504.

495 (b) If the responsible party fails to pay expenses under Subsection 10(a), the director
496 may:

497 (i) revoke the responsible party's certificate of compliance, as described in Section
498 19-6-414, if the responsible party is also the owner or operator; and

499 (ii) pursue an action to collect expenses in Subsection 10(a), including the costs of
500 collection.

501 (11) For purposes of this section, "petroleum storage tank" includes an aboveground
502 petroleum storage tank if the aboveground petroleum storage tank:

503 (a) has underground piping; or

504 (b) rests directly on the ground.

505 Section 9. Section 19-8-119 is amended to read:

506 **19-8-119. Apportionment or contribution.**

507 (1) Any party who incurs costs under a voluntary agreement entered into under this part
508 in excess of ~~his~~ the party's liability may seek contribution in an action in district court from
509 any other party who is or may be liable under Subsection 19-6-302(21) or 19-6-402~~[(26)]~~(27)
510 for the excess costs after providing written notice to any other party that the party bringing the
511 action has entered into a voluntary agreement and will incur costs.

512 (2) In resolving claims made under Subsection (1), the court shall allocate costs using
513 the standards in Subsection 19-6-310(2).