

SB0040S03 compared with SB0040S02

~~text~~ shows text that was in SB0040S02 but was deleted in SB0040S03.

text shows text that was not in SB0040S02 but was inserted into SB0040S03.

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Senator David P. Hinkins proposes the following substitute bill:

STORAGE TANKS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Keven J. Stratton

LONG TITLE

General Description:

This bill addresses regulation of storage tanks.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses fees;
- ▶ 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;
- ▶ requires notifying the division in certain circumstances;
- ▶ addresses the Environmental Assurance Program and participation in the Petroleum

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Storage Tank Trust Fund;

- ▶ repeals outdated language;

~~{~~ ~~addresses liability;~~

- ‡ addresses state owned or leased tanks;
- ▶ imposes restrictions on delivery of petroleum;
- ▶ addresses civil penalties;‡

~~addresses private right of actions;‡} and~~

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ This bill provides revisor instructions. }~~ None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

19-6-408, as last amended by Laws of Utah 2014, Chapter 227

19-6-409, as last amended by Laws of Utah 2018, Chapter 31

19-6-410.5, as last amended by Laws of Utah 2014, Chapter 227

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

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

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

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

~~{ 19-6-424.5, as last amended by Laws of Utah 2012, Chapter 360~~

‡ 19-6-428, as last amended by Laws of Utah 2012, Chapter 360

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

~~{ Utah Code Sections Affected by Revisor Instructions:~~

~~19-6-424.5, as last amended by Laws of Utah 2012, Chapter 360~~

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

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

19-6-105. Rules of board.

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

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

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

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

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

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

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

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

(h) relating to the collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities in accordance with the requirements of Section

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19-6-106;

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

and

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

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

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

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; and

(c) cement kiln dust waste.

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

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

19-6-402. Definitions.

As used in this part:

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

(a) a release from [~~an underground storage tank or~~] a petroleum storage tank; or

(b) the damage caused by that release.

(2) "Aboveground petroleum storage tank" means a storage tank that is, by volume,

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less than 10% buried in the ground, including the pipes connected to the storage tank and:

(a) (i) has attached underground piping; or

(ii) rests directly on the ground;

(b) contains regulated substances;

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

(d) is not:

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

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

(iii) related to a petroleum facility under SIC Code 2911 or 5171 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

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

(v) used in the fueling of aircraft or ground service equipment at a commercial airport that serves passengers or cargo, with commercial airport defined in Section 72-10-102.

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

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

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

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

(b) listing ~~[all]~~ petroleum storage tanks at the facility, specifying:

(i) which tanks may receive petroleum; and

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

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

(a) registered the tanks; and

(b) paid the annual ~~[underground storage]~~ tank fee.

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

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

- (A) management;
- (B) abatement;
- (C) investigation;
- (D) corrective action; or
- (E) evaluation;

(ii) has submitted an application to the director;

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

(iv) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vii).

(b) "Certified [~~underground~~] petroleum storage tank consultant" does not include:

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

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

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

- (A) management;
- (B) abatement;
- (C) investigation;
- (D) corrective action; or
- (E) evaluation.

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

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

(b) (i) removed [~~from the ground~~] along with all underground components; or

(ii) filled with an inert solid material, and in the case of piping, secured and capped.

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

- (a) cleanup or removal of the release;
- (b) containment or isolation of the release;
- (c) treatment of the release;
- (d) correction of the cause of the release;
- (e) monitoring and maintenance of the site of the release;
- (f) provision of alternative water supplies to a person whose drinking water has

become contaminated by the release; or

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

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

- (a) investigation;
- (b) abatement action;
- (c) corrective action;
- (d) judgments, awards, and settlements for bodily injury or property damage to third

parties;

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

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

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

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

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

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

~~[(14)]~~ (15) "Enforcement proceedings" means a civil action or the procedures to

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enforce orders established by Section 19-6-425.

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

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

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

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

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

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

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

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

(a) 60 degrees Fahrenheit; and

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

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

(a) ~~[(i)]~~ is an underground storage tank;

~~[(ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq.; and]~~

~~[(iii) contains petroleum; or]~~

~~[(b) the owner or operator voluntarily submits]~~

(b) is an aboveground petroleum storage tank; or

(c) is a tank containing regulated substances that is voluntarily submitted for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.

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

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

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

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

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

~~[(25)]~~ (26) (a) "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing a regulated substance from ~~[an underground storage tank or]~~ a petroleum storage tank into ground water, surface water, or subsurface soils.

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

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

(i) is the owner or operator of a facility;

(ii) owns or has legal or equitable title in a facility or ~~[an underground]~~ a petroleum storage tank;

(iii) owned or had legal or equitable title in a facility at the time petroleum was received or contained at the facility;

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

(v) is an underground storage tank installation company.

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

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

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

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

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

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

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

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

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

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

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

(31) "Underground piping" means piping that is buried in the ground that is in direct contact with soil and connected to an aboveground petroleum storage tank.

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

[~~(a)~~] ~~a petroleum storage tank;~~

[~~(b)~~] (a) underground pipes and lines connected to a storage tank;

[~~(c)~~] (b) underground ancillary equipment;

[~~(d)~~] (c) a containment system; and

[~~(e)~~] (d) each compartment of a multi-compartment storage tank.

[~~(30)~~] (33) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization that installs underground storage tanks.

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

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~~[(32)]~~ (35) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified ~~[underground]~~ petroleum storage tank consultant to assist in carrying out the functions described in Subsection ~~[(6)]~~ (7)(a).

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

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

The board shall regulate ~~[an underground storage tank or]~~ a petroleum storage tank by:

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

(a) provide for the:

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

(ii) registration of an underground storage tank operator;

(iii) registration of an underground storage tank;

(iv) administration of the petroleum storage tank program;

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

(vi) voluntary participation in the fund for~~[:]~~ a tank containing regulated substances, but excluded from the definition of a petroleum storage tank as provided in Section 19-6-415;

~~[(A) an above ground petroleum storage tank; and]~~

~~[(B) a tank;]~~

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

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

(vii) certification of ~~[an underground]~~ a petroleum storage tank consultant including:

(A) a minimum education or experience requirement; and

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

(viii) compliance with this chapter by an aboveground petroleum storage tank;

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

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

(ii) an applicable federal requirement authorized by the federal law referenced in

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Subsection (1)(b)(i); and

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

(2) applying the provisions of this part.

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

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

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

(i) is in use; or

(ii) was closed after January 1, 1974.

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

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

(2) (a) The owner or operator of an aboveground petroleum storage tank shall notify the director of the location of the aboveground petroleum storage tank by no later than:

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

(ii) if the aboveground petroleum storage tank is installed on or after July 1, 2022, 30 days after the day on which the aboveground petroleum storage tank is installed;

(iii) 30 days before the aboveground petroleum storage tank is closed; or

(iv) within 24 hours of the discovery of a reportable release or suspected release, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, from an aboveground petroleum storage tank.

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

(c) Before operating an aboveground petroleum storage tank on or after June 30, 2023,

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the owner or operator of the aboveground petroleum storage tank shall provide financial responsibility by participating in the Environmental Assurance Program or demonstrating coverage through another method approved by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

~~[(2)]~~ (3) The director may issue a notice of agency action assessing a civil penalty in the amount of \$1,000 if an owner, operator, or installer of a petroleum ~~[or underground]~~ storage tank fails to register the tank or provide notice as required in Subsection (1) ~~or~~ (2).

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

Section 5. Section **19-6-408** is amended to read:

19-6-408. Petroleum storage tank registration fee -- Processing fee.

(1) The department may assess an annual ~~[underground]~~ petroleum storage tank registration fee against an owner or operator of ~~[an underground]~~ a petroleum storage tank that has not been closed. These fees shall be:

- (a) billed per facility;
- (b) due on July 1 annually;
- (c) deposited with the department as dedicated credits;
- (d) used by the department for the administration of the ~~[underground]~~ petroleum storage tank program outlined in this part; and
- (e) established under Section 63J-1-504.

(2) (a) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.

(b) In addition to the fee under Subsection (1), an owner or operator of a petroleum storage tank who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee established under Section

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63J-1-504.

(c) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee under Subsection (2)(b) shall be paid for each document submitted.

(3) [~~Any funds~~] Money provided for administration of the [~~underground~~] petroleum storage tank program under this section that [~~are~~] is not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

(4) The director shall provide all owners or operators who pay the annual [~~underground~~] petroleum storage tank registration fee a certificate of registration.

(5) (a) The director may issue a notice of agency action assessing a civil penalty of \$1,000 per facility if an owner or operator of [~~an underground~~] a petroleum storage tank facility fails to pay the required fee within 60 days after the July 1 due date.

(b) The registration fee and late payment penalty accrue interest at 12% per annum.

(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The director may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.

(d) The director may waive any penalty assessed under this Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

Section 6. Section **19-6-409** is amended to read:

19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.

(1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Trust Fund."

(b) The sole sources of revenues for the fund are:

(i) petroleum storage tank fees paid under Section 19-6-411;

(ii) underground storage tank installation company permit fees paid under Section 19-6-411;

(iii) the environmental assurance fee and penalties paid under Section 19-6-410.5;

(iv) appropriations to the fund;

(v) principal and interest received from the repayment of loans made by the director under Subsection (5); and

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- (vi) interest accrued on revenues listed in this Subsection (1)(b).
- (c) Interest earned on fund money is deposited into the fund.
- (2) The director may expend money from the fund to pay costs:
 - (a) covered by the fund under Section 19-6-419;
 - (b) of administering the:
 - (i) fund; and
 - (ii) environmental assurance program and fee under Section 19-6-410.5;
 - (c) incurred by the state for a legal service or claim adjusting service provided in connection with a claim, judgment, award, or settlement for bodily injury or property damage to a third party;
 - (d) incurred by the ~~[executive]~~ director in determining the actuarial soundness of the fund;
 - (e) incurred by a third party claiming injury or damages from a release reported on or after May 11, 2010, for hiring a certified ~~[underground]~~ petroleum storage tank consultant:
 - (i) to review an investigation or corrective action by a responsible party; and
 - (ii) in accordance with Subsection (4); and
 - ~~[(f) incurred by the department to implement the study described in Subsection 19-6-410.5(8), including a one-time cost of up to \$200,000 for the actuarial study described in Subsection 19-6-410.5(8)(a)(ii); and]~~
 - ~~[(g)]~~ (f) allowed under this part that are not listed under this Subsection (2).
 - (3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.
 - (4) The director shall:
 - (a) in paying costs under Subsection (2)(e):
 - (i) determine a reasonable limit on costs paid based on the:
 - (A) extent of the release;
 - (B) impact of the release; and
 - (C) services provided by the certified ~~[underground]~~ petroleum storage tank consultant;
 - (ii) pay, per release, costs for one certified ~~[underground]~~ petroleum storage tank consultant agreed to by all third parties claiming damages or injury;
 - (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and

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(iv) not pay legal costs of third parties;

(b) review and give careful consideration to reports and recommendations provided by a certified [~~underground~~] petroleum storage tank consultant hired by a third party; and

(c) make reports and recommendations provided under Subsection (4)(b) available on the Division of Environmental Response and Remediation's website.

(5) The director may loan, in accordance with this section, money available in the fund to a person to be used for:

(a) upgrading an underground storage tank;

(b) replacing an underground storage tank; or

(c) permanently closing an underground storage tank.

(6) (a) A person may apply to the director for a loan under Subsection (5)(c) if all tanks owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the fund.

(b) A person may apply to the director for a loan under Subsection (5)(a) or (b) if:

(i) the requirements of Subsection (6)(a) are met; and

(ii) the person participates in the Environmental Assurance Program under Section 19-6-410.5.

(7) The director shall consider loan applications under Subsection (6) to meet the following objectives:

(a) support availability of gasoline in rural parts of the state;

(b) support small businesses; and

(c) reduce the threat of a petroleum release endangering the environment.

(8) (a) A loan made under this section may not be for more than:

(i) \$300,000 for all tanks at any one facility;

(ii) \$100,000 per tank; and

(iii) 80% of the total cost of:

(A) upgrading an underground storage tank;

(B) replacing an underground storage tank; or

(C) permanently closing an underground storage tank.

(b) A loan made under this section shall:

(i) have a fixed annual interest rate of 0%;

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(ii) have a term no longer than 10 years;

(iii) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (9); and

(iv) comply with rules made by the board under Subsection (9).

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:

(a) form, content, and procedure for a loan application;

(b) criteria and procedures for prioritizing a loan application;

(c) requirements and procedures for securing a loan;

(d) procedures for making a loan;

(e) procedures for administering and ensuring repayment of a loan, including late payment penalties;

(f) procedures for recovering on a defaulted loan; and

(g) the maximum amount of the fund that may be used for loans.

(10) A decision by the director to loan money from the fund and otherwise administer the fund is not subject to Title 63G, Chapter 4, Administrative Procedures Act.

(11) The Legislature shall appropriate money from the fund to the department for the administration costs associated with making loans under this section.

(12) The director may enter into an agreement with a public entity or private organization to perform a task associated with administration of loans made under this section.

Section 7. Section **19-6-410.5** is amended to read:

19-6-410.5. Environmental Assurance Program -- Participant fee -- State Tax Commission administration, collection, and enforcement of tax.

(1) As used in this section:

(a) "Cash balance" means cash plus investments and current accounts receivable minus current accounts payable, excluding the liabilities estimated by the executive director.

(b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.

(2) (a) There is created an Environmental Assurance Program.

(b) The program shall provide to a participating owner or operator, upon payment of the fee imposed under Subsection (4), assistance with satisfying the financial responsibility requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum

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Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions of [~~Chapter 6, Part 4, Underground Storage Tank Act~~] this part, and rules implemented under [~~that~~] this part.

(3) (a) Subject to Subsection (3)(b), participation in the program is voluntary.

(b) An owner or operator seeking to satisfy financial responsibility requirements through the program shall use the program for all petroleum [~~underground~~] storage tanks that the owner or operator owns or operates.

(4) (a) There is assessed an environmental assurance fee of 13/20 cent per gallon on the first sale or use of petroleum products in the state.

(b) The environmental assurance fee and any other revenue collected under this section shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and used solely for the purposes listed in Section 19-6-409.

(5) (a) The commission shall administer, collect, and enforce the fee imposed under this section according to the same procedures used in the administration, collection, and enforcement of the state sales and use tax under:

(i) Title 59, Chapter 1, General Taxation Policies; and

(ii) Title 59, Chapter 12, Part 1, Tax Collection.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to establish:

(i) the method of payment of the environmental assurance fee;

(ii) the procedure for reimbursement or exemption of an owner or operator that does not participate in the program, including an owner or operator of an above ground storage tank; and

(iii) the procedure for confirming with the department that an owner or operator qualifies for reimbursement or exemption under Subsection (5)(b)(ii).

(c) The commission may retain an amount not to exceed 2.5% of fees collected under this section for the cost to the commission of rendering its services.

(d) By January 1, 2015, for underground storage tanks, and by July 1, 2026, for aboveground petroleum storage tanks, the division shall, by rule, create:

(i) a model for assessing the risk profile of each facility participating in the program, for purposes of qualifying for a rebate of a portion of the environmental assurance fee

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described in Subsection (4) collected from an owner or operator that participates in the program; and

(ii) a rebate schedule listing the amount of the environmental assurance fee that an owner or operator participating in the program may qualify for based on risk profiles determined by the model developed under Subsection (5)(d)(i).

(e) The rebate described in Subsection (5)(d):

(i) may not exceed 40% of the actual fee collected from an owner or operator of a low-risk underground storage tank as defined in the risk-based model developed under Subsection (5)(d);

(ii) is administered on a per facility basis;

(iii) is based on the facility's risk profile at the end of the prior calendar year;

(iv) is only applicable to an environmental assurance fee collected after December 30, 2014, for underground storage tanks, and June 30, 2026, for aboveground petroleum storage tanks; and

(v) shall be claimed in the form of a refund from the commission.

(f) The refund described in Subsection (5)(e)(v) may be claimed on a monthly basis.

(6) (a) The person responsible for payment of the fee under this section shall, by the last day of the month following the month in which the sale occurs:

(i) complete and submit the form prescribed by the commission; and

(ii) pay the fee to the commission.

(b) (i) The penalties and interest for failure to file the form or to pay the environmental assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.

(ii) The commission shall deposit penalties and interest collected under this section in the Petroleum Storage Tank Trust Fund.

(c) The commission shall report to the department a person who is delinquent in payment of the fee under this section.

(7) (a) (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of any year exceeds [~~\$30,000,000~~] \$50,000,000, the assessment of the environmental assurance fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.

(ii) The reduction under this Subsection (7)(a) remains in effect until modified by the Legislature in a general or special session.

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(b) The commission shall determine the cash balance of the fund each year as of June 30.

(c) Before September 1 of each year, the department shall provide the commission with the accounts payable of the fund as of June 30.

~~[(8) The department shall:]~~

~~[(a) (i) study the adverse selection of participants in the program and the actuarial deficit of the fund;]~~

~~[(ii) obtain an actuarial study and related consultation that provides the necessary calculations to minimize adverse selection in the program and the actuarial deficit of the fund;]~~

~~[(iii) develop a risk characterization profile for participants in the program and recommend a fee schedule based on fair market rates;]~~

~~[(iv) develop a strategy to reduce the negative equity balance of the fund and, based on the fee schedule described in Subsection (8)(a)(iii), a corresponding time schedule showing an actuarial reduction in the negative equity balance of the fund; and]~~

~~[(v) identify and study other adverse impacts to the program and the fund; and]~~

~~[(b) based on the information obtained and developed under Subsection (8)(a), prepare a recommendation to implement a strategy to minimize adverse selection of participants in the program and eliminate or reduce the actuarial deficit of the fund.]~~

~~[(9) The department shall report to the Natural Resources, Agriculture, and Environment Interim Committee before December 31, 2013, regarding:]~~

~~[(a) the information obtained and developed under Subsection (8)(a), and]~~

~~[(b) the recommendation prepared under Subsection (8)(b).]~~

Section 8. Section **19-6-415** is amended to read:

19-6-415. Participation of excluded or exempt tanks.

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

(a) (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;

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

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

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- (b) complies with the requirements of Section 19-6-412;
- (c) meets other requirements established by rules made under Section 19-6-403; and
- (d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.

(2) An [~~above ground petroleum storage tank~~] aboveground petroleum storage tank excluded from the definition of aboveground petroleum storage tank under Section 19-6-402, may become eligible for payments from the Petroleum Storage Tank Trust Fund if the owner or operator:

- (a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;
- (b) complies with the requirements of Section 19-6-412; and
- (c) meets other requirements established by rules made under Section 19-6-403.

Section 9. Section **19-6-415.5** is amended to read:

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

Any underground storage tank or aboveground petroleum storage tank owned or leased by the state [~~of Utah~~] and subject to the financial assurance requirements established by division rule shall participate in the program.

Section 10. Section **19-6-416** is amended to read:

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

(1) (a) [~~After July 1, 1991, a~~] A person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(7).

(b) Beginning July 1, 2023, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in an aboveground petroleum storage tank that is not in compliance with Subsection 19-6-407(2).

(2) [~~Any~~] A person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank or aboveground petroleum storage tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each occurrence.

(3) The director shall issue a notice of agency action assessing a civil penalty of not more than \$500 against any person who delivers or accepts delivery of petroleum to a

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petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank [~~or underground storage tank~~].

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

Section 11. Section **19-6-420** is amended to read:

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

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

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

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

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

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

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

(ii) commence an enforcement proceeding;

(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5;

(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5; or

(v) where the owner or operator is the responsible party, revoke the responsible party's certificate of compliance, as described in Section 19-6-414.

(3) (a) Subject to the limitations established in Section 19-6-419, the director shall

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provide money from the fund for abatement action for a release generated by a tank covered by the fund if:

- (i) the owner or operator takes the abatement action ordered by the director; and
- (ii) the director approves the abatement action.

(b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the director for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the director that the abatement action was reasonable and timely in light of circumstances, the director shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.

(c) The owner or operator shall notify the director within 24 hours of the abatement action taken.

(4) (a) If the director determines corrective action is necessary, the director shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the director shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the director shall consider the following:

- (i) the threat to public health;
- (ii) the threat to the environment; and
- (iii) the cost-effectiveness of alternative corrective actions.

(5) If the director approves the corrective action plan or develops the director's own corrective action plan, the director shall:

- (a) approve the estimated cost of implementing the corrective action plan;
- (b) order the owner or operator to implement the corrective action plan;

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

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

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

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

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

(ii) the director approves the corrective action plan.

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

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

(a) develop an alternative corrective action plan; and

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

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

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

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

(i) billed quarterly per release;

(ii) due within 30 days of billing;

(iii) deposited with the division as dedicated credits;

(iv) used by the division for the administration of the underground storage tank program outlined in this part; and

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

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

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

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

(11) This section does not apply to a release of a substance defined as a regulated substance in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Section 12. Section ~~{19-6-424.5}~~ 19-6-428 is amended to read:

~~{~~ ~~19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies --~~
~~Amounts recovered:~~

~~———— (1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the director may:~~

~~———— (a) issue written orders determining responsible parties;~~

~~———— (b) issue written orders apportioning liability among responsible parties; and~~

~~———— (c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.~~

~~———— (2) (a) In any apportionment of liability, whether made by the director or made in any administrative proceeding or judicial action, the following standards apply:~~

~~———— (i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and~~

~~———— (ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.~~

~~———— (b) (i) The burden of proving proportionate contribution shall be borne by each responsible party.~~

~~———— (ii) If a responsible party does not prove the responsible party's proportionate contribution, the court or the director shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).~~

~~———— (c) The court, the board, or the director may not impose joint and several liability.~~

~~———— (d) Each responsible party is strictly liable for his share of costs.~~

~~———— (3) The failure of the director to name all responsible parties is not a defense to an~~

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~~action under this section:~~

~~—— (4) The director may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party.~~

~~—— (5) The director and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):~~

~~—— (a) have been notified in writing by either the director or the responsible party of the proposed agreement; and~~

~~—— (b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.~~

~~—— (6) (a) Any party who incurs costs under this part in excess of [his] the party's liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court. The recovery of costs in this Subsection (6) is not conditioned on the initiation or issuance by the director of any action or order allocating liability in accordance with the director's discretionary authority to do so under Subsection (1).~~

~~—— (b) It is the intent of the Legislature that the amendment to this Subsection (6) by this bill apply retroactively because the amendment only clarifies the Legislature's original intent to grant a private cause of action to any party to allow that party to seek contribution that is not dependent upon any action taken by the director.~~

~~—— [(b)] (c) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).~~

~~—— (7) (a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.~~

~~—— (b) (i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.~~

~~—— (ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.~~

~~} { —— (8) (a) If the director obtains less than complete relief from a party who has resolved his liability under this section, the director may bring an action against any party who has not resolved his liability as determined in an order.~~

~~—— (b) In apportioning liability, the standards of Subsection (2) apply.~~

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~~—— (c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order.~~

~~—— (9) (a) An agreement or order determining liability under this part may provide that the director will pay for costs of actions that the parties have agreed to perform, but which the director has agreed to finance, under the terms of the agreement or order.~~

~~—— (b) If the director makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.~~

~~—— (c) Any amounts recovered under this section shall be deposited [in] into the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.~~

~~—— Section 13. Section **19-6-428** is amended to read:~~

~~‡~~ **19-6-428. Eligibility for participation in the fund.**

(1) Subject to the requirements of Section 19-6-410.5, ~~[all owners and operators of]~~ an owner or operator of an existing petroleum storage ~~[tanks that were]~~ tank that is covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and 19-6-411.

(2) ~~[Any new petroleum storage tanks that were]~~ A new petroleum storage tank that is installed after May 5, 1997, or ~~[tanks]~~ a tank eligible under Section 19-6-415, may elect to participate in the program by complying with the requirements of this part.

(3) (a) ~~[All owners and operators of petroleum storage tanks who elect]~~ An owner or operator of a petroleum storage tank who elects to not participate in the program, including by the use of an alternative financial assurance mechanism, shall, in order to subsequently participate in the program:

(i) perform a tank tightness test;

(ii) except as provided in Subsection (3)(b), ~~(c), or (d)~~, perform a site check, including soil and, when applicable, groundwater samples, to demonstrate that no release of petroleum exists or that there has been adequate remediation of releases as required by board rules;

(iii) provide the required tests and samples to the director; and

(iv) comply with the requirements of this part.

(b) A site check under Subsection (3)(a)(ii) is not required if the director determines,

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with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released.

(c) For an aboveground petroleum storage tank, a site check under Subsection (3)(a)(ii) is not required to participate in the program except that if the aboveground petroleum storage tank does not conduct a site check:

(i) historic contamination, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(A) subject to the other provisions of this Subsection (3)(c), is covered only if the historic contamination is discovered more than five years after the day the owner or operator elects to participate in the program;

(B) is 20% covered beginning on the five-year date; and

(C) is covered at increasing amounts of 20% each year after the five-year date until at the 10-year date historic contamination is covered at 100%; and

(ii) new releases, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are covered at 100% beginning on the day the aboveground petroleum storage tank participates in the program.

(d) For an underground storage tank that previously elected not to participate in the program, a site check under Subsection (3)(a)(ii) is not required to begin participating in the program, except that if the underground storage tank does not conduct a site check:

(i) historic contamination, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(A) subject to the other provisions of this Subsection (3)(d), is covered only if the historic contamination is discovered more than five years after the day the owner or operator elects to participate in the program;

(B) is 20% covered beginning on the five-year date; and

(C) is covered at increasing amounts of 20% each year after the five-year date until at the 10-year date historic contamination is covered at 100%; and

(ii) new releases, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are covered at 100% beginning on the day the underground storage tank participates in the program.

(4) The director shall review the tests and samples provided under Subsection

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(3)(a)(iii) to determine:

- (a) whether or not any release of the petroleum has occurred; or
- (b) if the remediation is adequate.

Section ~~{14}~~13. Section **19-8-119** is amended to read:

19-8-119. Apportionment or contribution.

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

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

~~{~~ ~~Section 15. Revisor instructions.~~

~~_____~~ ~~The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the reference in Subsection 19-6-424.5(6)(b) from "this bill" to the bill's designated chapter number in the Laws of Utah.~~

~~}~~