

ENVIRONMENTAL QUALITY REVENUE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stewart E. Barlow

Senate Sponsor: Jani Iwamoto

LONG TITLE

General Description:

This bill addresses fees and funds related to environmental quality.

Highlighted Provisions:

This bill:

- ▶ changes where fees for registration, licensing, and inspection of radiation sources are to be deposited;
- ▶ clarifies the revenue sources of the Hazardous Substances Mitigation Fund;
- ▶ changes where fees for registration of waste tire transporters and recyclers are to be deposited; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 19-1-108**, as last amended by Laws of Utah 2018, Chapter 241
- 19-3-104**, as last amended by Laws of Utah 2017, Chapter 360
- 19-6-307**, as last amended by Laws of Utah 2018, Chapter 241
- 19-6-807**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20



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

Section 1. Section **19-1-108** is amended to read:

19-1-108. Environmental Quality Restricted Account.

(1) There is created the Environmental Quality Restricted Account.

(2) The sources of money for the ~~[restricted account]~~ Environmental Quality Restricted Account are:

(a) radioactive waste disposal fees collected under Sections [19-3-106](#) and [19-3-106.4](#) and other fees collected under Subsection [19-3-104\(5\)](#) or [19-3-104\(6\)](#);

(b) hazardous waste disposal fees collected under Section [19-6-118](#);

(c) PCB waste disposal fees collected under Section [19-6-118.5](#);

(d) nonhazardous solid waste disposal fees collected under Section [19-6-119](#); and

(e) the investment income derived from money in the Environmental Quality Restricted Account.

(3) In each fiscal year the balance of the money collected from the waste disposal fees listed in Subsection (2), collectively, shall be deposited ~~[in]~~ into the Environmental Quality Restricted Account.

(4) The Legislature may annually appropriate money from the Environmental Quality Restricted Account to the department for the costs of administering:

(a) radiation control programs; and

(b) solid and hazardous waste programs.

(5) Each fiscal year beginning on or after July 1, 2018, and ending on or before June 30, 2022, the Division of Finance shall transfer \$200,000 from the Environmental Quality Restricted Account to the Hazardous Substances Mitigation Fund, to provide money to:

(a) meet the state's cost share requirements for cleanup under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq. as amended; and

(b) respond to an emergency as provided in Section [19-6-309](#).

(6) After the requirements of Subsection (3) are met, sources of money for the ~~[restricted account]~~ Environmental Quality Restricted Account described in Subsection (2)(a) may only be used for the purpose described in Subsection (4)(a).

59 (7) [~~In order to~~] To stabilize funding for the radiation control [~~program~~] programs and
60 the solid and hazardous waste [~~program~~] programs, the Legislature shall in years of excess
61 revenues reserve in the Environmental Quality Restricted Account sufficient money to meet
62 departmental needs in years of projected shortages.

63 (8) The Legislature may not appropriate money from the General Fund to the
64 department as a supplemental appropriation to cover the costs of the radiation control
65 [~~program~~] programs and the solid and hazardous waste [~~program~~] programs in an amount
66 exceeding 25% of the amount of waste disposal fees collected during the most recent prior
67 fiscal year.

68 (9) Money appropriated under this part that is not expended at the end of the fiscal year
69 lapses into the Environmental Quality Restricted Account.

70 (10) (a) The balance in the Environmental Quality Restricted Account may not exceed
71 \$4,000,000 above the anticipated revenue need for the money in the [~~restricted account~~]
72 Environmental Quality Restricted Account for the fiscal year.

73 (b) Excess funds under Subsection (10)(a) shall be credited on a proportionate basis to
74 each person who paid money to the [~~fund~~] Environmental Quality Restricted Account in the
75 previous fiscal year.

76 Section 2. Section **19-3-104** is amended to read:

77 **19-3-104. Registration and licensing of radiation sources by department --**
78 **Assessment of fees -- Rulemaking authority and procedure -- Siting criteria -- Indirect**
79 **and direct costs.**

80 (1) As used in this section:

81 (a) "Decommissioning" includes financial assurance.

82 (b) "Source material" and "byproduct material" mean the same as those terms are
83 defined in the Atomic Energy Act of 1954, 42 U.S.C. Sec. 2014, as amended.

84 (2) The division may require the registration or licensing of radiation sources that
85 constitute a significant health hazard.

86 (3) [~~All sources~~] A source of ionizing radiation, including an ionizing radiation
87 producing [~~machines~~] machine, shall be registered or licensed by the department.

88 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
89 board may make rules:

- 90 (a) necessary for controlling exposure to sources of radiation that constitute a
91 significant health hazard;
- 92 (b) to meet the requirements of federal law relating to radiation control to ensure the
93 radiation control ~~[program]~~ programs under this part ~~[is]~~ are qualified to maintain primacy
94 from the federal government;
- 95 (c) to establish certification procedure and qualifications for persons who survey
96 mammography equipment and oversee quality assurance practices at mammography facilities;
97 and
- 98 (d) as necessary regarding the possession, use, transfer, or delivery of source and
99 byproduct material and the disposal of byproduct material to establish requirements for:
- 100 (i) the licensing, operation, decontamination, and decommissioning, including financial
101 assurances; and
- 102 (ii) the reclamation of sites, structures, and equipment used in conjunction with the
103 activities described in this Subsection (4).
- 104 (5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and
105 byproduct material and the disposal of byproduct material at uranium mills or commercial
106 waste facilities, as provided in this Subsection (5).
- 107 ~~[(b) On and after January 1, 2003, through March 30, 2003:]~~
- 108 ~~[(i) \$6,667 per month for uranium mills or commercial sites disposing of or~~
109 ~~reprocessing byproduct material; and]~~
- 110 ~~[(ii) \$4,167 per month for those uranium mills the director has determined are on~~
111 ~~standby status:]~~
- 112 ~~[(c) On and after March 31, 2003, through June 30, 2003, the same fees as in~~
113 ~~Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah~~
114 ~~an amendment for agreement state status for uranium recovery regulation on or before March~~
115 ~~30, 2003:]~~
- 116 ~~[(d)]~~ (b) If the Nuclear Regulatory Commission does not grant the amendment for state
117 agreement status on or before March 30, 2003, fees under Subsection (5)~~[(e)]~~(c) do not apply
118 and are not required to be paid until on and after the later date of:
- 119 (i) October 1, 2003; or
- 120 (ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for

121 agreement state status for uranium recovery regulation.

122 ~~[(e)]~~ (c) For the payment periods beginning on and after July 1, 2003, the department
123 shall establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the
124 restrictions under Subsection (5)~~[(d)]~~(b).

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

127 (6) (a) The division shall assess fees for registration, licensing, and inspection of
128 radiation sources under this section.

129 (b) The division shall comply with the requirements of Section 63J-1-504 in assessing
130 fees for licensure and registration.

131 (c) The division shall deposit fees the division receives under this Subsection (6) into
132 the Environmental Quality Restricted Account created in Section 19-1-108.

133 (7) (a) Except as provided in Subsection (8), ~~[and in accordance with Title 63G,~~
134 ~~Chapter 3, Utah Administrative Rulemaking Act,]~~ the board may not adopt rules, for the
135 purpose of the state assuming responsibilities from the United States Nuclear Regulatory
136 Commission with respect to regulation of sources of ionizing radiation, that are more stringent
137 than the corresponding federal regulations ~~[which]~~ that address the same circumstances.

138 (b) In adopting ~~[those]~~ rules, in accordance with Title 63G, Chapter 3, Utah
139 Administrative Rulemaking Act, the board may incorporate corresponding federal regulations
140 by reference.

141 (8) (a) The board may adopt rules, in accordance with Title 63G, Chapter 3, Utah
142 Administrative Rulemaking Act, that are more stringent than corresponding federal regulations
143 for the purpose described in Subsection (7) only if [it] the board makes a written finding after
144 public comment and hearing and based on evidence in the record that corresponding federal
145 regulations are not adequate to protect public health and the environment of the state.

146 (b) ~~[Those]~~ The findings described in Subsection (8)(a) shall be accompanied by an
147 opinion referring to and evaluating the public health and environmental information and studies
148 contained in the record ~~[which]~~ that form the basis for the board's conclusion.

149 (9) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
150 the board shall by rule:

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

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

153 (ii) establish qualifications and certification procedures necessary for independent
154 experts to conduct ~~these~~ the inspections described in Subsection (9)(a)(i).

155 (b) Independent experts under this Subsection (9) are not considered employees or
156 representatives of the division or the state when conducting the inspections.

157 (10) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
158 Act, the board may by rule establish criteria for siting commercial low-level radioactive waste
159 treatment or disposal facilities, subject to the prohibition imposed by Section 19-3-103.7.

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

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

166 (11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
167 the board shall make rules that:

168 (a) establish financial assurance requirements for closure and postclosure care of
169 radioactive waste land disposal facilities; and

170 (b) establish financial assurance requirements for closure and postclosure care of an
171 unlicensed facility.

172 (12) The rules described in Subsection (11) shall include the following provisions:

173 (a) the financial assurance shall be based on an annual estimate and shall include
174 closure and postclosure costs in ~~all~~ areas subject to the licensed or permitted portions of the
175 facility;

176 (b) financial assurance for an unlicensed facility that supports the operation of a
177 licensed or permitted facility shall include the estimated cost of:

178 (i) the removal of structures;

179 (ii) the testing of structures, roads, and property to ensure no radiological
180 contamination has occurred outside of the licensed area; and

181 (iii) stabilization and water infiltration control;

182 (c) financial assurance cost estimates for a single approved waste disposal unit for

183 which the volume of waste already placed and proposed to be placed in the unit within the
184 surety period is less than the full waste capacity of the unit shall reflect the closure and
185 postclosure costs for a waste disposal unit smaller than the approved waste disposal unit, if the
186 unit could be reduced in size, meet closure requirements, and reduce closure costs;

187 (d) financial assurance cost estimates for two approved adjacent waste disposal units
188 that have been approved to be combined into a single unit and for which the combined volume
189 of waste already placed and proposed to be placed in the units within the surety period is less
190 than the combined waste capacity for the two separate units shall reflect either two separate
191 waste disposal units or a single combined unit, whichever has the lowest closure and
192 postclosure costs;

193 (e) the licensee or permittee shall annually propose closure and postclosure costs upon
194 which financial assurance amounts are based, including costs of potential remediation at the
195 licensed or permitted facility and, notwithstanding the obligations described in Subsection
196 (12)(b), any unlicensed facility;

197 (f) to provide the information in Subsection (12)(e), the licensee or permittee shall
198 provide:

199 (i) a proposed annual cost estimate using the current edition of RS Means Facilities
200 Construction Cost Data or using a process, including an indirect cost multiplier, previously
201 agreed to between the licensee or permittee and the director; or

202 (ii) (A) for an initial financial assurance determination and for each financial assurance
203 determination every five years thereafter, a proposed competitive site-specific estimate for
204 closure and postclosure care of the facility at least once every five years; and

205 (B) for each year between a financial assurance determination described in Subsection
206 (12)(f)(ii)(A), a proposed financial assurance estimate that accounts for current site conditions
207 and that includes an annual inflation adjustment to the financial assurance determination using
208 the Gross Domestic Product Implicit Price Deflator of the Bureau of Economic Analysis,
209 United States Department of Commerce, calculated by dividing the latest annual deflator by the
210 deflator for the previous year; and

211 (g) the director shall:

212 (i) annually review the licensee's or permittee's proposed closure and postclosure
213 estimate; and

214 (ii) approve the estimate if the director determines that the estimate would be sufficient
215 to provide for closure and postclosure costs.

216 (13) Subject to the financial assurance requirements described in Subsections (11) and
217 (12), if the director and the licensee or permittee do not agree on a final financial assurance
218 determination made by the director, the licensee or permittee may appeal the determination in:

219 (a) an arbitration proceeding governed by Title 78B, Chapter 11, Utah Uniform
220 Arbitration Act, with the costs of the arbitration to be split equally between the licensee or
221 permittee and the division, if both the licensee or permittee and the director agree in writing to
222 arbitration; or

223 (b) a special adjudicative proceeding under Section 19-1-301.5.

224 Section 3. Section 19-6-307 is amended to read:

225 **19-6-307. Hazardous Substances Mitigation Fund.**

226 (1) There is created an expendable special revenue fund entitled the "Hazardous
227 Substances Mitigation Fund."

228 (2) The fund consists of money generated from the following revenue sources:

229 (a) any voluntary contributions received for the cleanup of hazardous substances
230 facilities;

231 (b) appropriations made to the fund by the Legislature;

232 (c) money received by the state under Section 19-6-310 and [Section] 19-6-316; and

233 (d) money from [~~waste disposal fees, as described in Section~~] the Environmental
234 Quality Restricted Account in accordance with Subsection 19-1-108(5).

235 (3) (a) The fund shall earn interest.

236 (b) [~~All interest~~] Interest earned on fund money shall be deposited into the fund.

237 (4) The executive director may use fund money to:

238 (a) take emergency action as provided in Sections 19-6-309 and 19-6-310;

239 (b) conduct remedial investigations as provided in Sections 19-6-314 through
240 19-6-316;

241 (c) pay the amount required by the federal government as the state's portion of the cost
242 of cleanups under authority of CERCLA, as appropriated by the Legislature for that purpose;
243 and

244 (d) pay the amount required by the federal government as the state's portion of the cost

245 of cleanups under 42 U.S.C. Sec. 6991 et seq., the Leaking Underground Storage Tank Trust
 246 Fund, as appropriated by the Legislature for that purpose.

247 Section 4. Section **19-6-807** is amended to read:

248 **19-6-807. Waste Tire Recycling Fund.**

249 (1) There is created an expendable special revenue fund entitled the "Waste Tire
 250 Recycling Fund."

251 (2) The fund shall consist of:

252 (a) the proceeds of [the] ~~H~~→ :

252a **(i)** ←~~H~~ a fee imposed under Section 19-6-805 ~~H~~→ **[or] ; and**

252b **(ii) a fee imposed under Section** ←~~H~~ 19-6-806; and

253 (b) penalties collected under this part.

254 (3) Money in the fund shall be used for:

255 (a) partial reimbursement of the costs of transporting, processing, recycling, or
 256 disposing of waste tires as provided in this part; and

257 (b) payment of administrative costs of local health departments as provided in Section
 258 19-6-817.

259 (4) The Legislature may appropriate money from the fund to pay for:

260 (a) the costs of the Department of Environmental Quality in administering and
 261 enforcing this part; and

262 (b) other operational costs of the Department of Environmental Quality, if the
 263 Legislature estimates there is a deficit in the Department of Environmental Quality's budget for
 264 the current or next fiscal year.

265 Section 5. **Effective date.**

266 This bill takes effect on July 1, 2022.