

**ENVIRONMENTAL QUALITY REVISIONS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ralph Okerlund**

House Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill addresses provisions related to environmental quality.

**Highlighted Provisions:**

This bill:

- ▶ addresses fees throughout the Environmental Quality Code;
- ▶ addresses a dedicated credit;
- ▶ requires that a person that operates a source of air pollution to have a permit under certain circumstances;
- ▶ provides for authority and duties of the Waste Management and Radiation Control Board;
- ▶ provides for the powers and duties of the director of the Division of Waste Management and Radiation Control;
- ▶ amends provisions related to powers of the Drinking Water Board;
- ▶ amends provisions related to the authority of the director of the Division of Drinking Water;
- ▶ addresses violations of the Safe Drinking Water Act or rules or orders issued under that act;
- ▶ addresses source and storage minimum sizing requirements for public water systems;
- ▶ modifies definitions under the Water Quality Act;



- clarifies powers and duties of the Water Quality Board;
- provides for legislative review of total maximum daily load, rules, and standards;
- modifies the procedure for the Water Quality Board to make rules;
- modifies rules related to a penalty imposed on an agriculture discharge;
- allows for discharge permits to be renewed;
- addresses limitations on effluent limitations standards;
- modifies definitions related to the Solid and Hazardous Waste Act;
- addresses the powers of the Waste Management and Radiation Control Board, including rulemaking;
- modifies provisions related to the director of the Division of Waste Management and Radiation Control;
- addresses proof of service;
- allows a designee of the executive director to issue enforceable written assurances;
- addresses violations related to used oil management; and
- makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

- 19-1-106**, as last amended by Laws of Utah 2015, Chapter 451
- 19-1-201**, as last amended by Laws of Utah 2019, Chapter 338
- 19-2-108**, as last amended by Laws of Utah 2015, Chapters 154 and 441
- 19-2-109.1**, as last amended by Laws of Utah 2015, Chapter 154
- 19-4-104**, as repealed and reenacted by Laws of Utah 2018, Second Special Session, Chapter 5
- 19-4-106**, as last amended by Laws of Utah 2012, Chapter 360
- 19-4-107**, as last amended by Laws of Utah 2012, Chapter 360
- 19-4-109**, as last amended by Laws of Utah 2012, Chapter 360
- 19-4-114**, as repealed and reenacted by Laws of Utah 2018, Second Special Session,

## Chapter 5

**19-5-102**, as last amended by Laws of Utah 2015, Chapter 451  
**19-5-104**, as last amended by Laws of Utah 2012, Chapter 360  
**19-5-104.5**, as last amended by Laws of Utah 2019, Chapter 454  
**19-5-105**, as last amended by Laws of Utah 2011, Chapter 155  
**19-5-105.5**, as last amended by Laws of Utah 2012, Chapter 360  
**19-5-108**, as last amended by Laws of Utah 2012, Chapter 360  
**19-5-116**, as last amended by Laws of Utah 2011, Chapter 297  
**19-6-102**, as last amended by Laws of Utah 2019, Chapter 152  
**19-6-102.1**, as last amended by Laws of Utah 2018, Chapter 281  
**19-6-104**, as last amended by Laws of Utah 2019, Chapter 152  
**19-6-105**, as last amended by Laws of Utah 2018, Chapter 281  
**19-6-107**, as last amended by Laws of Utah 2015, Chapter 451  
**19-6-108**, as last amended by Laws of Utah 2019, Chapter 152  
**19-6-114**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
**19-6-120**, as last amended by Laws of Utah 2012, Chapter 360  
**19-6-326**, as last amended by Laws of Utah 2008, Chapter 382  
**19-6-502**, as last amended by Laws of Utah 2019, Chapter 152

## ENACTS:

**19-3-103.1**, Utah Code Annotated 1953  
**19-3-108.1**, Utah Code Annotated 1953  
**19-6-721.1**, Utah Code Annotated 1953

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

Section 1. Section **19-1-106** is amended to read:

**19-1-106. Boards within department.**

- (1) The following policymaking boards are created within the department:
- (a) the Air Quality Board, appointed under Section **19-2-103**;
  - (b) the Drinking Water Board, appointed under Section **19-4-103**;
  - (c) the Water Quality Board, appointed under Section **19-5-103**; and
  - (d) the Waste Management and Radiation Control Board, appointed under Section

[~~19-6-104~~] [19-6-103](#).

(2) The authority of the boards created in Subsection (1) is limited to the specific authority granted them under this title.

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

**19-1-201. Powers and duties of department -- Rulemaking authority --  
Committee -- Monitoring environmental impacts of inland port.**

(1) The department shall:

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

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

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

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

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

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

(iv) is reviewed and updated annually;

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

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

(A) board meeting attendance; and

(B) conflicts of interest procedures; and

(ii) procedural rules that govern:

(A) an adjudicative proceeding, consistent with Section 19-1-301; and

(B) a special adjudicative proceeding, consistent with Section 19-1-301.5; ~~and~~

(e) ensure that ~~any~~ training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

(i) under this title;

(ii) by the department; or

(iii) by an agency or division within the department~~[-]; and~~

(f) subject to Subsection (2), establish annual fees that conform with Title V of the Clean Air Act for each regulated pollutant as defined in Section 19-2-109.1, applicable to a source subject to the Title V program.

(2) (a) A fee established under Subsection (1)(f) is in addition to a fee assessed under Subsection (6)(i) for issuance of an approval order.

(b) In establishing a fee under Subsection (1)(f), the department shall comply with Section 63J-1-504 that requires a public hearing and requires the established fee to be submitted to the Legislature for the Legislature's approval as part of the department's annual appropriations request.

(c) A fee established under this section shall cover the reasonable direct and indirect costs required to develop and administer the Title V program and the small business assistance program established under Section 19-2-109.2.

(d) A fee established under Subsection (1)(f) shall be established for all sources subject to the Title V program and for all regulated pollutants.

(e) An emission fee may not be assessed for a regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.

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

(g) An emission fee shall be based on actual emissions for a regulated pollutant unless a source elects, before the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.

(h) The fees collected by the department under Subsection (1)(f) and penalties

collected under Subsection [19-2-109.1](#)(4) shall be deposited into the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section [19-2-109.2](#).

~~[(2)]~~ (3) The department shall establish a committee that consists of:

- (a) the executive director or the executive director's designee;
- (b) two representatives of the department appointed by the executive director; and
- (c) three representatives of local health departments appointed by a group of all the

local health departments in the state.

~~[(3)]~~ (4) The committee established in Subsection ~~[(2)]~~ (3) shall:

- (a) review the allocation of environmental quality resources between the department and the local health departments;
- (b) evaluate department policies that affect local health departments;
- (c) consider policy changes proposed by the department or by local health departments;
- (d) coordinate the implementation of environmental quality programs to maximize environmental quality resources; and
- (e) review each department application for any grant from the federal government that affects a local health department before the department submits the application.

~~[(4)]~~ (5) The committee shall create bylaws to govern the committee's operations.

~~[(5)]~~ (6) The department may:

- (a) investigate matters affecting the environment;
- (b) investigate and control matters affecting the public health when caused by environmental hazards;
- (c) prepare, publish, and disseminate information to inform the public concerning issues involving environmental quality;
- (d) establish and operate programs, as authorized by this title, necessary for protection of the environment and public health from environmental hazards;
- (e) use local health departments in the delivery of environmental health programs to the extent provided by law;
- (f) enter into contracts with local health departments or others to meet responsibilities established under this title;

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

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

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

~~[(ii) in accordance with Section 63J-1-504, all fees shall be reasonable, fair, and reflect the cost of services provided;]~~

(i) in accordance with Section 63J-1-504, establish a schedule of fees that may be assessed for actions and services of the department that are reasonable, fair, and reflect the cost of services provided;

(j) for an owner or operator of a source subject to a fee established by Subsection (6)(i) who fails to timely pay that fee, assess a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually;

~~[(j)]~~ (k) prescribe by rule reasonable requirements not inconsistent with law relating to environmental quality for local health departments;

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

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

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

~~[(6)]~~ (7) In providing service under Subsection ~~[(5)(m)]~~ (6)(n), the department may not provide service in a manner that impairs ~~[any other]~~ another person's service from the department.

~~[(7)]~~ (8) (a) As used in this Subsection ~~[(7)]~~ (8):

(i) "Environmental impacts" means:

(A) impacts on air quality, including impacts associated with air emissions; and

(B) impacts on water quality, including impacts associated with storm water runoff.

(ii) "Inland port" means the same as that term is defined in Section 11-58-102.

(iii) "Inland port area" means the area in and around the inland port that bears the environmental impacts of destruction, construction, development, and operational activities within the inland port.

(iv) "Monitoring facilities" means:

(A) for monitoring air quality, a sensor system consisting of monitors to measure levels of research-grade particulate matter, ozone, and oxides of nitrogen, and data logging equipment with internal data storage ~~[which]~~ that are interconnected at all times to capture air quality readings and store data; and

(B) for monitoring water quality, facilities to collect groundwater samples, including in existing conveyances and outfalls, to evaluate sediment, metals, organics, and nutrients due to storm water.

(b) The department shall:

(i) develop and implement a sampling and analysis plan to:

(A) characterize the environmental baseline for air quality and water quality in the inland port area;

(B) characterize the environmental baseline for only air quality for the Salt Lake International Airport; and

(C) define the frequency, parameters, and locations for monitoring;

(ii) establish and maintain monitoring facilities to measure the environmental impacts in the inland port area arising from destruction, construction, development, and operational activities within the inland port;

(iii) publish the monitoring data on the department's website; and

(iv) provide at least annually before November 30 a written report summarizing the monitoring data to:

(A) the Utah Inland Port Authority board, established under Title 11, Chapter 58, Part 3, Port Authority Board; and

(B) the Legislative Management Committee.



Section 3. Section 19-2-108 is amended to read:

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

(1) Notice shall be given to the director by a person planning to:

(a) construct a new installation ~~[which]~~ that will or might reasonably be expected to be a source or indirect source of air pollution ~~[or to]~~;

(b) make modifications to an existing installation ~~[which]~~ that will or might reasonably be expected to increase the amount of or change the character or effect of air pollutants discharged, so that the installation may be expected to be a source or indirect source of air pollution~~;~~; or ~~[by a person planning to]~~

(c) install an air cleaning device or other equipment intended to control emission of air pollutants.

(2) A person may not operate a source of air pollution required to have a permit by a rule adopted under Section 19-2-104 or 19-2-107 without having obtained a permit from the director under procedures the board establishes by rule.

~~[(2)]~~ (3) (a) The director may require, as a condition precedent to the construction, modification, installation, or establishment of the air pollutant source or indirect source, the submission of plans, specifications, and other information as ~~[he]~~ the director finds necessary to determine whether the proposed construction, modification, installation, or establishment will be in accord with applicable rules in force under this chapter, and the payment of a new source review fee established under Subsection 19-1-201(6)(i).

(b) If within 90 days after the receipt of plans, specifications, or other information required under this ~~[subsection]~~ Subsection (3), the director determines that the proposed construction, installation, or establishment or any part of it will not be in accord with the requirements of this chapter or applicable rules or that further time, not exceeding three extensions of 30 days each, is required by the director to adequately review the plans, specifications, or other information, ~~[he]~~ the director shall issue an order prohibiting the construction, installation, or establishment of the air pollutant source or sources in whole or in part.

~~[(3)]~~ (4) In addition to any other remedies but ~~[prior to]~~ before invoking any ~~[such]~~

other remedies, a person aggrieved by the issuance of an order either granting or denying a request for the construction of a new installation, ~~[shall]~~ upon request, in accordance with the rules of the department, ~~[be]~~ is entitled to a special adjudicative proceeding conducted by an administrative law judge as provided by Section 19-1-301.5.

~~[(4) Any features, machines, and devices constituting parts of]~~ (5) A feature, machine, or device constituting a part of or called for by plans, specifications, or other information submitted under Subsection (1) shall be maintained in good working order.

~~[(5)]~~ (6) This section does not authorize the director to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.

~~[(6)]~~ (7) (a) An authorized officer, employee, or representative of the director may enter and inspect ~~[any]~~ a property, premise, or place on or at which an air pollutant source is located or is being constructed, modified, installed, or established at ~~[any]~~ a reasonable time for the purpose of ascertaining the state of compliance with this chapter and the rules adopted under ~~[it]~~ this chapter.

(b) (i) A person may not refuse entry or access to an authorized representative of the director who requests entry for purposes of inspection and who presents appropriate credentials.

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

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

Section 4. Section 19-2-109.1 is amended to read:

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

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

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

(b) "EPA" means the federal Environmental Protection Agency.

(c) "Operating permit" means a permit issued by the director to sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.

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

(e) "Regulated pollutant" means the same as that term is defined in Title V of the 1990 Clean Air Act and implementing federal regulations.

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

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

(b) The director may issue, modify, or renew an operating permit only after providing public notice, an opportunity for public comment, and an opportunity for a public hearing.

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

(d) The director may terminate, modify, revoke, or reissue an operating permit for cause.

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

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

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

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

~~[(e) The fee may not be assessed for emissions of any regulated pollutant if the~~

emissions are already accounted for within the emissions of another regulated pollutant.]

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

~~[(5) Emissions fees shall be based on actual emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.]~~

~~[(6)]~~ (4) If the owner or operator of a source subject to this section fails to timely pay ~~[an annual emissions]~~ a fee established under Subsection [19-1-201\(1\)\(f\)](#), the director may:

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

(b) revoke the operating permit.

~~[(7)]~~ (5) The owner or operator of a source subject to this section may contest ~~[an emissions]~~ a fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4, Administrative Procedures Act, and Section [19-1-301](#), as provided in this Subsection ~~[(7)]~~ (5).

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

(b) A request for a hearing under this Subsection ~~[(7)]~~ (5) shall be made after payment of the ~~[emissions]~~ fee and within six months after the ~~[emissions]~~ fee was due.

~~[(8)]~~ (6) To reinstate an operating permit revoked under Subsection ~~[(6)]~~ (4) the owner or operator shall pay ~~[aH]~~ the outstanding ~~[emissions]~~ fees, a penalty of not more than 50% of ~~[aH]~~ outstanding fees, and interest on the outstanding ~~[emissions]~~ fees computed at 12% annually.

~~[(9) All emissions fees and penalties collected by the department under this section shall be deposited in the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section [19-2-109.2](#).]~~

~~[(10)]~~ (7) Failure of the director to act on an operating permit application or renewal is a final administrative action only for the purpose of obtaining judicial review by any of the

following persons to require the director to take action on the permit or ~~[its]~~ the permit's  
renewal without additional delay:

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

Section 5. Section **19-3-103.1** is enacted to read:

**19-3-103.1. Board authority and duties under this part.**

(1) The board may:

(a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
Rulemaking Act, that are necessary to implement this part;

(b) (i) hold a hearing that is not an adjudicative proceeding; or

(ii) appoint a hearing officer to conduct a hearing that is not an adjudicative  
proceeding;

(c) accept, receive, and administer grants or other money or gifts from public and  
private agencies, including the federal government, for the purpose of carrying out any function  
of this chapter;

(d) order the director to impound radioactive material in accordance with Section  
[19-3-111](#); or

(e) advise, consult, cooperate with, or provide technical assistance to another agency of  
the state or federal government, another state, an interstate agency, an affected group, an  
affected political subdivision, an affected industry, or other person in carrying out the purposes  
of this part.

(2) The board shall:

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

(b) to ensure compliance with applicable statutes and rules:

(i) review a settlement negotiated by the director in accordance with Subsection  
[19-3-108.1](#)(2)(c) that requires a civil penalty equal to or greater than \$25,000; and

(ii) approve or disapprove the settlement described in Subsection (2)(b)(i);

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

(i) survey mammography equipment; or

(ii) oversee quality assurance practices at mammography facilities.

(3) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section [19-3-108.1](#):

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

Section 6. Section **19-3-108.1** is enacted to read:

**19-3-108.1. Powers and duties of director.**

(1) The director shall, in connection with this chapter and rules of the board adopted under this part:

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

(b) advise, consult, cooperate with, and provide technical assistance to another agency, a state, the federal government, a political subdivision, an industry, or another person in carrying out this part;

(c) receive specifications or other information relating to a licensing application for radioactive material or registration of a radiation source for review, approval, disapproval, or termination;

(d) issue a permit, license, registration, certification, or other administrative authorization;

(e) review and approve a plan;

(f) assess a penalty in accordance with Section [19-3-109](#);

(g) impound radioactive material under Section [19-3-111](#);

(h) issue an order necessary to enforce this part;

(i) enforce an order by an appropriate administrative and judicial proceeding; and

(j) institute a judicial proceeding to secure compliance with this part.

(2) The director may:

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

(b) employ employees as may be reasonably necessary to carry out this part;

(c) subject to Subsection 19-3-103.1(2)(b), settle or compromise any administrative or civil action initiated to compel compliance with this part and rules adopted under this part; and

(d) authorize employees or representatives of the department to enter, at reasonable times and upon reasonable notice, in and upon public or private property for the purpose of inspecting and investigating conditions and records concerning radiation sources and as otherwise authorized by this part.

Section 7. Section **19-4-104** is amended to read:

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

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

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

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

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

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

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

(vi) for a community water system failing to comply with the reporting requirements under Subsections (1)(c)(iv) and (v):

(A) establishing fines and penalties, including posting on the division's web page those community water systems that fail to comply with the reporting requirements; and

(B) allowing a community water system, in lieu of penalties established under Subsection (1)(a)(vi)(A), to enter into a corrective action agreement with the [division] director that requires compliance and establishes a compliance schedule approved by the director.

(b) The board may:

~~[(i) order the director to:]~~

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

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

463 ~~[(C) institute judicial proceedings to secure compliance with this chapter;]~~

464 ~~[(ii) (A)]~~ (i) hold a hearing that is not an adjudicative proceeding relating to an aspect

465 of, or matter in, the administration of this chapter; ~~[or]~~

466 ~~[(B)]~~ (ii) appoint a hearing ~~[officers]~~ officer to conduct a hearing that is not an  
467 adjudicative proceeding; ~~[or]~~

468 (iii) recommend that the director:

469 (A) issue an order necessary to enforce this chapter;

470 (B) enforce an order by appropriate administrative and judicial proceedings;

471 (C) institute a judicial proceeding to secure compliance with this chapter; or

472 (D) advise, consult, contract, and cooperate with another agency of the state, a local  
473 government, an industry, another state, an interstate or interlocal agency, the federal  
474 government, or an interested person; or

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

477 (c) The board shall:

478 (i) require the submission to the director of plans and specifications for construction of,  
479 substantial addition to, or alteration of public water systems for review and approval by the  
480 ~~[board]~~ director before that action begins and require any modifications or impose any  
481 conditions that may be necessary to carry out the purposes of this chapter;

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

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

490 (iv) require a community water system serving a population of 500 or more to annually  
491 collect accurate water use data, described in Subsection ~~[(6)]~~(7), and annually report that data  
492 to the Division of Water Rights;



(v) require a certified operator, or a professional engineer performing the duties of a certified water operator, to verify by certification or license number the accuracy of water use data reported by a public water system, including the data required from a community water system under Subsection (1)(c)(iv); ~~[and]~~

(vi) meet the requirements of federal law related or pertaining to drinking water~~[-]~~; and  
(vii) to ensure compliance with applicable statutes and rules:

(A) review a settlement negotiated by the director in accordance with Subsection 19-4-109(3) that requires a civil penalty equal to or greater than \$25,000; and

(B) approve or disapprove the settlement described in Subsection (1)(c)(vii)(A).

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

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

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

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

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

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

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

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

(5) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under this chapter:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certificate; or

(e) another administrative authorization made by the director.

524           ~~[(5)]~~ (6) A board member may not speak or act for the board unless the board member  
525 is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

526           ~~[(6)]~~ (7) (a) The water use data required to be collected in Subsection (1)(c)(iv) shall  
527 include peak day source demand, average annual demand, the number of equivalent residential  
528 connections for retail service, and the quantity of non-revenue water.

529           (b) The division may, by rule, establish:

530           (i) other types of water use data required to be collected in addition to that listed in  
531 Subsection ~~[(6)]~~ (7)(a); and

532           (ii) alternative methods for calculating the water use data listed in Subsection ~~[(6)]~~  
533 (7)(a).

534           Section 8. Section **19-4-106** is amended to read:

535           **19-4-106. Director -- Appointment -- Authority.**

536           (1) The executive director shall appoint the director. The director shall serve under the  
537 administrative direction of the executive director.

538           (2) The director shall:

539           (a) develop programs to promote and protect the quality of the public drinking water  
540 supplies of the state;

541           (b) advise, consult, and cooperate with other agencies of this and other states, the  
542 federal government, and with other groups, political subdivisions, and industries in furtherance  
543 of the purpose of this chapter;

544           (c) review plans, specifications, and other data pertinent to proposed or expanded water  
545 supply systems to ensure proper design and construction; and

546           (d) subject to the provisions of this chapter, enforce rules made by the board through  
547 the issuance of orders ~~[which]~~ that may be subsequently revoked, which ~~[rules]~~ orders may  
548 require:

549           (i) discontinuance of use of unsatisfactory sources of drinking water;

550           (ii) suppliers to notify the public concerning the need to boil water; or

551           (iii) suppliers in accordance with existing rules, to take remedial actions necessary to  
552 protect or improve an existing water system; and

553           (e) as authorized by the board and subject to the provisions of this chapter, act as  
554 executive secretary of the board under the direction of the ~~[chairman]~~ chair of the board.

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

(4) As provided in this chapter and in accordance with rules made by the board:

(a) the director may issue and enforce a notice of violation and an administrative order;  
and

(b) the director may assess and make a demand for payment of an administrative penalty arising from a violation of this chapter, a rule or order issued under the authority of this chapter, or the terms of a permit or other administrative authorization issued under the authority of this chapter.

Section 9. Section **19-4-107** is amended to read:

**19-4-107. Notice of violation -- Action by attorney general.**

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

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

Section 10. Section **19-4-109** is amended to read:

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

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

(1) As used in this section, "criminal negligence" means the same as that term is defined in Section [76-2-103](#).

(2) (a) A person who violates this chapter, a rule or order issued under the authority of this chapter, or the terms of a permit or other administrative authorization issued under the

authority of this chapter is subject to an administrative penalty:

(i) not to exceed \$1,000 per day per violation, with respect to a public water system serving a population of less than 10,000 individuals; or

(ii) exactly \$1,000 per day per violation, with respect to a public water system serving a population of more than 10,000 individuals.

(b) In all cases, each day of violation is considered a separate violation.

(3) The director may assess and make a demand for payment of an administrative penalty under this section and may compromise or settle that penalty.

(4) To make a demand for payment of an administrative penalty assessed under this section, the director shall issue a notice of agency action, specifying, in addition to the requirements for notices of agency action contained in Title 63G, Chapter 4, Administrative Procedures Act:

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

(b) the provision of the statute, rule, order, permit, or administrative authorization that is alleged to have been violated;

(c) each penalty that the director proposes to assess, together with the amount and date of effect of that penalty; and

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

(5) A person notified according to Subsection (4) may request an adjudicative proceeding.

(6) Upon request by the director, the attorney general may institute a civil action to collect a penalty assessed under this section.

~~[(2)]~~ (7) (a) ~~[Any]~~ A person ~~[that willfully]~~ who, with criminal negligence, violates any rule or order made or issued pursuant to this chapter, or ~~[that willfully]~~ with criminal negligence fails to take ~~[any]~~ corrective action required by ~~[such]~~ an order, is guilty of a class B misdemeanor and subject to a fine of not more than \$5,000 per day for each day of violation.

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

(8) (a) The director may bring a civil action for appropriate relief, including a permanent or temporary injunction, for a violation for which the director is authorized to issue a compliance order under Section [19-4-107](#).

(b) The director shall bring an action under this Subsection (8) in the district court where the violation occurs.

(9) (a) The attorney general is the legal advisor for the board and the director and shall defend them in an action or proceeding brought against the board or director.

(b) The county attorney or district attorney, as appropriate under Section 17-18a-202 or 17-18a-203, in the county in which a cause of action arises, shall bring an action, civil or criminal, requested by the director, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce the laws or the standards, orders, and rules of the board or the director issued under this chapter.

(c) The director may initiate action under this section and be represented by the attorney general.

(10) If a person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the director may initiate an action for and be entitled to injunctive relief to prevent further or continued violation of the order.

(11) A bond may not be required for injunctive relief under this chapter.

~~[(3)]~~ (12) (a) Except as provided in Subsection ~~[(3)]~~ (12)(b), ~~[all penalties]~~ a penalty assessed and collected under the authority of this section shall be deposited ~~[in]~~ into the General Fund.

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

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

(i) ~~[define]~~ qualifying environmental enforcement activities; and

(ii) ~~[define]~~ qualifying extraordinary expenses.

Section 11. Section **19-4-114** is amended to read:

**19-4-114. Source and storage minimum sizing requirements for public water systems.**

(1) (a) Except as provided in Subsection (1)(b) ~~[and]~~, upon submission of plans for a substantial addition to or alteration of a community water system, the director shall establish system-specific source and storage minimum sizing requirements for a community water system serving a population of more than 3,300 based on at least the most recent three years of

a community water system's actual water use data submitted in accordance with Subsections 19-4-104(1)(c)(iv) and (v).

(b) If the water use data required under Subsection 19-4-104(1)(c)(iv) is not available to the division, or if the community water system determines that the data submitted does not represent future system use, the director may establish source and storage minimum sizing requirements for the community water system based on:

(i) an engineering study submitted by the community water system and accepted by the director; or

(ii) at least three years of historical water use data that is:

(A) submitted by the community water system; and

(B) accepted by the director.

(c) A community water system serving a population of more than 3,300 shall provide the information necessary to establish the system-specific standards described in this Subsection (1) by no later than March 1, 2019.

(2) (a) By no later than October 1, 2023, and except as provided in Subsection (2)(b), the director shall establish system-specific source and storage minimum sizing requirements for a community water system serving a population of between 500 and no more than 3,300 based on at least the most recent three years of a community water system's actual water use data submitted in accordance with Subsections 19-4-104(1)(c)(iv) and (v).

(b) If the water use data required under Subsection 19-4-104(1)(c)(iv) is not available to the division, or if the community water system determines that the data submitted does not represent future system use, the director may establish source and storage minimum sizing requirements for the community water system based on:

(i) an engineering study submitted by the community water system and accepted by the director; or

(ii) at least three years of historical water use data that is:

(A) submitted by the community water system; and

(B) accepted by the director.

(c) A community water system serving a population of between 500 and no more than 3,300 shall provide the information necessary to establish system-specific standards described in this Subsection (2) by no later than March 1, 2023.

(3) The director shall establish system-specific source and storage minimum sizing requirements for a community water system serving a population of fewer than 500 based on:

(a) at least the most recent three years of a community water system's actual water use data submitted to the division and accepted by the director;

(b) an engineering study submitted by the community water system and accepted by the director;

(c) standards, comparable to those of established community water systems, as determined by the director; or

(d) relevant information, as determined by the director.

(4) The director shall:

(a) for community water systems described in Subsection (3), establish a schedule to transition from statewide sizing standards to system-specific standards;

(b) establish minimum sizing standards for public water systems that are not community water systems;

(c) provide for the routine evaluation of changes to the system-specific standards; and

(d) include, as part of system-specific standards, necessary fire storage capacity in accordance with the state fire code adopted under Section 15A-1-403 and as determined by the local fire code official.

(5) The director may adjust system-specific sizing standards, established under this section for a public water system, based on information submitted by the public water system addressing the effect of any wholesale water deliveries or other system-specific conditions affecting infrastructure needs.

(6) A wholesale water supplier is exempt from this section if the wholesale water supplier serves:

(a) a total population of more than 10,000; and

(b) a wholesale population that is 75% or more of the total population served.

Section 12. Section 19-5-102 is amended to read:

**19-5-102. Definitions.**

As used in this chapter:

(1) "Agriculture discharge":

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

710 that:

711 (i) pollutes a [~~surface body of water, including a stream, lake, pond, marshland,~~  
712 ~~watercourse, waterway, river, ditch, and other water conveyance system of the state;~~ (ii)  
713 ~~pollutes the ground water of the state]~~ water of the state; or

714 [(iii)] (ii) constitutes a significant nuisance on urban land; and

715 (b) does not include:

716 (i) runoff from a farm, ranch, or feed lot or return flows from irrigated fields onto land  
717 that is not part of a [~~body of~~] water of the state; or

718 (ii) a release into a normally dry water conveyance [~~to an active body of water~~], unless  
719 the release reaches [~~the water of a lake, pond, stream, marshland, river, or other active body of~~]  
720 a water of the state.

721 (2) "Agriculture water" means:

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

723 (b) return flows from irrigated agriculture; and

724 (c) agricultural storm water runoff.

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

726 (4) "Commission" means the Conservation Commission, created in Section 4-18-104.

727 (5) "Contaminant" means [~~any~~] a physical, chemical, biological, or radiological  
728 substance or matter in water.

729 (6) "Director" means the director of the Division of Water Quality or, for purposes of  
730 groundwater quality at a facility licensed by and under the jurisdiction of the Division of  
731 Waste Management and Radiation Control, the director of the Division of Waste Management  
732 and Radiation Control.

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

734 (8) "Discharge permit" means a permit issued to a person who:

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

737 (b) generates or manages sewage sludge.

738 (9) "Disposal system" means a system for disposing of wastes and includes sewerage  
739 systems and treatment works.

740 (10) "Division" means the Division of Water Quality, created in Subsection



19-1-105(1)(e).

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

(12) "Point source":

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

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

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

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

(15) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.

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

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

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

(19) "Treatment works" means ~~[any]~~ a plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

(20) "Underground injection" means the subsurface emplacement of fluids by well injection.

(21) "Underground wastewater disposal system" means a system for ~~[disposing]~~ underground disposal of domestic wastewater discharges as defined by the board and the

executive director.

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

(23) "Waters of the state":

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

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

Section 13. Section **19-5-104** is amended to read:

**19-5-104. Powers and duties of board.**

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

(a) taking into account Subsection (6):

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

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

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

(C) requirements for determination of the costs upon which [~~loans are~~] a loan is based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of a sewage treatment [~~plants~~] plant, including a major [~~interceptors, collection systems, and other facilities~~] interceptor, collection system, or other facility appurtenant to the plant;

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

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

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

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

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

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

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

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

(ii) the presence of the contaminant may:

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

(B) otherwise adversely affect the health of persons;

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

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

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

(ii) are constructed after May 4, 1998.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall adopt and enforce rules and establish fees to cover the costs of:

(i) managing the certification and testing program; and

(ii) testing for certification of operators of treatment works and sewerage systems operated by political subdivisions.

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

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

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

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

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

845 (v) issue a certification upon application and without testing that is valid only at the  
846 treatment works or sewerage system where that operator is currently employed if the operator:

847 (A) is in charge of and responsible for the treatment works or sewerage system on  
848 March 16, 1991;

849 (B) has been employed at least 10 years in the operation of that treatment works or  
850 sewerage system before March 16, 1991; and

851 (C) demonstrates to the board the operator's capability to operate the treatment works  
852 or sewerage system at which the operator is currently employed by providing employment  
853 history and references as required by the board.

854 (3) The board shall:

855 (a) develop programs for the prevention, control, and abatement of new or existing  
856 pollution of the waters of the state;

857 (b) adopt, modify, or repeal standards of quality of the waters of the state and classify  
858 those waters according to their reasonable uses in the interest of the public under conditions the  
859 board may prescribe for the prevention, control, and abatement of pollution;

860 (c) give reasonable consideration in the exercise of its powers and duties to the  
861 economic impact of water pollution control on industry and agriculture;

862 (d) meet the requirements of federal law related to water pollution;

863 (e) establish and conduct a continuing planning process for control of water pollution,  
864 including the specification and implementation of maximum daily loads of pollutants;

(f) (i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; and

(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;

(g) (i) review ~~all~~ total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;

(ii) disapprove, approve, or approve with conditions ~~all~~ the staff total daily maximum load recommendations; and

(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected; and

(h) to ensure compliance with applicable statutes and regulations:

(i) review a settlement negotiated by the director in accordance with Subsection 19-5-106(2)(k) that requires a civil penalty of \$25,000 or more; and

(ii) approve or disapprove the settlement described in Subsection (3)(h)(i).

(4) The board may:

(a) order the director to issue, modify, or revoke ~~orders~~ an order:

(i) prohibiting or abating discharges;

(ii) (A) requiring the construction of new treatment works or any parts of ~~them, or~~ the new treatment works;

(B) requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of ~~them;~~ existing treatment works; or

(C) the adoption of other remedial measures to prevent, control, or abate pollution;

(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; or

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

(b) advise, consult, and cooperate with ~~other agencies~~ another agency of the state, the federal government, ~~other states, or interstate agencies, or with affected groups, political subdivisions, or industries~~ another state, an interstate agency, an affected group, an affected political subdivision, or affected industry to further the purposes of this chapter; or

(c) delegate the authority to issue an operating permit to a local health department.

(5) In performing the duties listed in Subsections (1) through (4), the board shall give priority to pollution that results in a hazard to the public health.

(6) The board shall take into consideration the availability of federal grants:

(a) in determining eligible project costs; and

(b) in establishing priorities pursuant to Subsection (1)(a)(i).

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

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

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

Section 14. Section 19-5-104.5 is amended to read:

**19-5-104.5. Legislative review and approval.**

(1) Before sending a [~~board-approved report, strategy, or recommendation that will recommend a~~] total maximum daily load [~~end point~~] and implementation strategy to the EPA for review and approval, the Water Quality Board shall submit the [~~report, strategy, or recommendation~~] total maximum daily load:

(a) for review to the Natural Resources, Agriculture, and Environment Interim Committee if the [~~report, strategy, or recommendation~~] total maximum daily load will require a public or private expenditure in excess of \$10,000,000 but less than \$100,000,000 for compliance; or

(b) for approval to the Legislature if the [~~strategy~~] total maximum daily load will require a public or private expenditure of \$100,000,000 or more.

(2) (a) As used in this Subsection (2):

(i) "Expenditure" means the act of expending funds:

(A) by an individual public facility with a Utah Pollutant Discharge Elimination System permit, or by a group of private agricultural facilities; and

(B) through an initial capital investment, or through operational costs over a three-year

927 period.

928 (ii) "Utah Pollutant Discharge Elimination System" means the state permit system  
929 created in accordance with 33 U.S.C. Sec. 1342.

930 (b) Before the board adopts a nitrogen or phosphorus rule or standard, the board shall  
931 submit the rule or standard as directed in Subsections (2)(c) and (d).

932 (c) (i) If compliance with the rule or standard requires an expenditure in excess of  
933 \$250,000, but less than \$10,000,000, the board shall submit the rule or standard for review to  
934 the Natural Resources, Agriculture, and Environment Interim Committee.

935 (ii) (A) Except as provided in Subsection (2)(c)(ii)(B), the Natural Resources,  
936 Agriculture, and Environment Interim Committee shall review a rule or standard the board  
937 submits under Subsection (2)(c)(i) during the Natural Resources, Agriculture, and Environment  
938 Interim Committee's committee meeting immediately following the day on which the board  
939 submits the rule or standard.

940 (B) If the committee meeting described in Subsection (2)(c)(ii)(A) is within five days  
941 after the day on which the board submits the rule or standard for review, the Natural Resources,  
942 Agriculture, and Environment Interim Committee shall review the rule or standard during the  
943 committee meeting described in Subsection (2)(c)(ii)(A) or during the committee meeting  
944 immediately following the committee meeting described in Subsection (2)(c)(ii)(A).

945 (d) If compliance with the rule or standard requires an expenditure of \$10,000,000 or  
946 more, the board shall submit the rule or standard for approval to the Legislature.

947 (e) (i) A facility shall estimate the cost of compliance with a board-proposed rule or  
948 standard described in Subsection (2)(b) using:

949 (A) an independent, licensed engineer; and

950 (B) industry-accepted project cost estimate methods.

951 (ii) The board may evaluate and report on a compliance estimate described in  
952 Subsection (2)(e)(i).

953 (f) If there is a discrepancy in the estimated cost to comply with a rule or standard, the  
954 Office of the Legislative Fiscal Analyst shall determine the estimated cost to comply with the  
955 rule or standard.

956 (3) In reviewing a [~~report, strategy, rule, standard, or recommendation~~] rule or  
957 standard, the Natural Resources, Agriculture, and Environment Interim Committee may:

(a) consider the impact of the ~~[report, strategy, rule, standard, or recommendation]~~ rule or standard on:

(i) economic costs and benefit;

(ii) public health; and

(iii) the environment;

(b) suggest additional areas of consideration; or

(c) recommend the ~~[report, strategy, rule, standard, or recommendation]~~ rule or standard to the board for:

(i) adoption; or

(ii) re-evaluation followed by further review by the ~~[committee]~~ Natural Resources, Agriculture, and Environment Interim Committee.

(4) When the Natural Resources, Agriculture, and Environment Interim Committee sets the review of a rule or standard submitted under Subsection (2)(c)(i) as an agenda item, the committee shall:

(a) before the review, directly inform the chairs of the Administrative Rules Review Committee of the coming review, including the date, time, and place of the review; and

(b) after the review, directly inform the chairs of the Administrative Rules Review Committee of the outcome of the review, including any recommendation.

Section 15. Section **19-5-105** is amended to read:

**19-5-105. Rulemaking authority and procedure.**

(1) Except as provided in Subsections (2) and (3), ~~[no]~~ a rule that the board makes for the purpose of the state administering a program under the federal Clean Water Act or the federal Safe Drinking Water Act may not be more stringent than the corresponding federal regulations ~~[which]~~ that address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if ~~[it]~~ the board makes a written finding after public comment and hearing and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the



board's conclusion.

(3) The board may make rules related to agriculture water more stringent than the corresponding federal regulations [~~if the commission approves~~] after consulting with the commission.

Section 16. Section **19-5-105.5** is amended to read:

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

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

(b) The commission shall advise the board before the board may adopt [~~rules~~] a rule relating to agriculture water.

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

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

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

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

(b) (i) A person responsible for an agriculture discharge shall mitigate the resulting damage in a reasonable manner, as approved by the director after consulting with the commission chair.

(ii) A penalty imposed on an agriculture discharge shall be [~~proportionate to the seriousness of the resulting harm~~] consistent with the penalty policy described in Section 19-5-115 and associated rules, as determined by the director in consultation with the commission chair.

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

Section 17. Section **19-5-108** is amended to read:

**19-5-108. Discharge permits -- Requirements and procedure for issuance.**

(1) The board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for and require the submission of plans, specifications, and

other information to the director in connection with the issuance of discharge permits.

(2) ~~[Each]~~ A discharge permit shall have a fixed term not exceeding five years. Upon expiration of a discharge permit, the permit may be renewed or a new permit may be issued by the director as authorized by the board after notice and an opportunity for public hearing and upon condition that the applicant meets or will meet ~~[at]~~ the applicable requirements of this chapter, including the conditions of ~~[any]~~ a permit granted by the board.

(3) The board may require notice to the director of the introduction of pollutants into publicly-owned treatment works and identification to the director of the character and volume of any pollutant of any significant source subject to pretreatment standards under Subsection 307(b) of the federal Clean Water Act. The director shall provide in the permit for compliance with pretreatment standards.

(4) The director may impose as conditions in permits for the discharge of pollutants from publicly-owned treatment works appropriate measures to establish and ~~[insure]~~ ensure compliance by industrial users with any system of user charges required under this chapter or the rules adopted under ~~[it]~~ this chapter.

(5) The director may apply and enforce against industrial users of publicly-owned treatment works, toxic effluent standards and pretreatment standards for the introduction into the treatment works of pollutants ~~[which]~~ that interfere with, pass through, or otherwise are incompatible with the treatment works.

Section 18. Section **19-5-116** is amended to read:

**19-5-116. Limitation on effluent limitation standards for BOD, Total Suspended Solids, Bacteria, and pH for domestic or municipal sewage.**

Unless required to meet instream water quality standards or federal requirements established under the federal ~~[Water Pollution Control Act]~~ Clean Water Act, the board may not establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen Demand (BOD), Total Suspended Solids (SS), ~~[Coliforms]~~ Bacteria, and pH for domestic or municipal sewage ~~[which]~~ that are more stringent than the following:

(1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on

effluent samples collected during any 30-day period may not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(3) ~~[Coliform]~~ Bacteria:

(a) The geometric mean of total coliforms and fecal coliform bacteria in effluent samples collected during any 30-day period may not exceed either 2000/100 ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any seven-day period may not exceed 2500/100 ml for total coliforms or 250/100 for fecal coliforms.

(b) The geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 mL nor shall the geometric mean exceed 158 per 100 mL respectively during any 7-day period.

(4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.

Section 19. Section **19-6-102** is amended to read:

**19-6-102. Definitions.**

As used in this part:

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

(2) "Closure plan" means a plan under Section [19-6-108](#) to close a facility or site at which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.

(3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or disposal.

(b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" does not include a facility that:

(i) receives waste for recycling;

(ii) receives waste to be used as fuel, in compliance with federal and state requirements; or

(iii) is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(4) "Construction waste or demolition waste":

(a) means waste from building materials, packaging, and rubble resulting from construction, demolition, remodeling, and repair of pavements, houses, commercial buildings, and other structures, and from road building and land clearing; and

(b) does not include:

(i) asbestos;

(ii) contaminated soils or tanks resulting from remediation or cleanup at a release or spill;

(iii) waste paints;

(iv) solvents;

(v) sealers;

(vi) adhesives; or

(vii) hazardous or potentially hazardous materials similar to that described in Subsections (4)(b)(i) through (vi).

(5) "Director" means the director of the Division of Waste Management and Radiation Control.

(6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

(7) "Division" means the Division of Waste Management and Radiation Control, created in Subsection [19-1-105\(1\)\(d\)](#).

(8) "Generation" or "generated" means the act or process of producing nonhazardous solid or hazardous waste.

(9) (a) "Hazardous waste" means a solid waste or combination of solid wastes other than household waste that, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(b) "Hazardous waste" does not include those wastes listed in 40 C.F.R. Sec. 261.4(b).

(10) "Health facility" means a:

- 1113 (a) hospital;  
1114 (b) psychiatric hospital;  
1115 (c) home health agency;  
1116 (d) hospice;  
1117 (e) skilled nursing facility;  
1118 (f) intermediate care facility;  
1119 (g) intermediate care facility for people with an intellectual disability;  
1120 (h) residential health care facility;  
1121 (i) maternity home or birthing center;  
1122 (j) free standing ambulatory surgical center;  
1123 (k) facility owned or operated by a health maintenance organization;  
1124 (l) state renal disease treatment center, including a free standing hemodialysis unit;  
1125 (m) the office of a private physician or dentist whether for individual or private  
1126 practice;  
1127 (n) veterinary clinic; or  
1128 (o) mortuary.
- 1129 (11) "Household waste" means any waste material, including garbage, trash, and  
1130 sanitary wastes in septic tanks, derived from households, including single-family and  
1131 multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters,  
1132 campgrounds, picnic grounds, and day-use recreation areas.
- 1133 (12) "Infectious waste" means a solid waste that contains or may reasonably be  
1134 expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by  
1135 a susceptible host could result in an infectious disease.
- 1136 (13) "Manifest" means the form used for identifying the quantity, composition, origin,  
1137 routing, and destination of hazardous waste during its transportation from the point of  
1138 generation to the point of disposal, treatment, or storage.
- 1139 (14) "Mixed waste" means material that is a hazardous waste as defined in this chapter  
1140 and is also radioactive as defined in Section 19-3-102.
- 1141 (15) "Modification [~~plan~~] request" means a [~~plan~~] request under Section 19-6-108 to  
1142 modify a permitted facility or site for the purpose of disposing of nonhazardous solid waste or  
1143 treating, storing, or disposing of hazardous waste.

1144 (16) "Operation plan" or "nonhazardous solid or hazardous waste operation plan"  
1145 means a plan or approval under Section 19-6-108, including:

1146 (a) a plan to own, construct, or operate a facility or site for the purpose of transferring,  
1147 treating, or disposing of nonhazardous solid waste or treating, storing, or disposing of  
1148 hazardous waste;

1149 (b) a closure plan;

1150 (c) a modification ~~[plan]~~ request; or

1151 (d) an approval that the director is authorized to issue.

1152 (17) "Permit" includes an operation plan.

1153 ~~[(17)]~~ (18) "Permittee" means a person who is obligated under an operation plan.

1154 ~~[(18)]~~ (19) (a) "Solid waste" means ~~[any]~~ garbage, refuse, sludge, including sludge  
1155 from a waste treatment plant, water supply treatment plant, or air pollution control facility, or  
1156 other discarded material, including solid, liquid, semi-solid, or contained gaseous material  
1157 resulting from industrial, commercial, mining, or agricultural operations and from community  
1158 activities ~~[but]~~.

1159 (b) "Solid waste" does not include solid or dissolved materials in domestic sewage or  
1160 in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5,  
1161 Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

1162 ~~[(b)]~~ (c) "Solid waste" does not include metal that is:

1163 (i) purchased as a valuable commercial commodity; and

1164 (ii) not otherwise hazardous waste or subject to conditions of the federal hazardous  
1165 waste regulations, including the requirements for recyclable materials found at 40 C.F.R. 261.6.

1166 ~~[(19)]~~ (20) "Solid waste management facility" means the same as that term is defined  
1167 in Section 19-6-502.

1168 ~~[(20)]~~ (21) "Storage" means the actual or intended containment of solid or hazardous  
1169 waste either on a temporary basis or for a period of years in such a manner as not to constitute  
1170 disposal of the waste.

1171 ~~[(21)]~~ (22) (a) "Transfer" means the collection of nonhazardous solid waste from a  
1172 permanent, fixed, supplemental collection facility for movement to a vehicle for movement to  
1173 an offsite nonhazardous solid waste storage or disposal facility.

1174 (b) "Transfer" does not mean:

(i) the act of moving nonhazardous solid waste from one location to another location on the site where the nonhazardous solid waste is generated; or

(ii) placement of nonhazardous solid waste on the site where the nonhazardous solid waste is generated in preparation for movement off that site.

~~[(22)]~~ (23) "Transportation" means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.

~~[(23)]~~ (24) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume.

~~[(24)]~~ (25) "Underground storage tank" means a tank that is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991 et seq.

Section 20. Section **19-6-102.1** is amended to read:

**19-6-102.1. Treatment or disposal -- Exclusions.**

As used in Subsections ~~[19-6-104(3)(c)(ii)(B);]~~ 19-6-108(3)(b), 19-6-108(3)(c)(ii)(B), and 19-6-119(1)(a), the term "treatment ~~[and]~~ or disposal" specifically excludes the recycling, use, reuse, or reprocessing of:

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

(2) waste from the extraction, beneficiation, and processing of ores and minerals; or

(3) cement kiln dust, including recycle, reuse, use, or reprocessing for road sanding, sand blasting, road construction, railway ballast, construction fill, aggregate, and other construction-related purposes.

Section 21. Section **19-6-104** is amended to read:

**19-6-104. Powers of board -- Creation of statewide solid waste management plan.**

~~[(1) The board may:]~~

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

~~[(b) recommend that the director:]~~

~~[(i) issue orders necessary to enforce the provisions of the Radiation Control Act;]~~

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

1206 ~~[(iii) institute judicial proceedings to secure compliance with this part;]~~  
1207 ~~[(e) (i) hold a hearing that is not an adjudicative proceeding; or]~~  
1208 ~~[(ii) appoint hearing officers to conduct a hearing that is not an adjudicative~~  
1209 ~~proceeding;]~~  
1210 ~~[(d) accept, receive, and administer grants or other funds or gifts from public and~~  
1211 ~~private agencies, including the federal government, for the purpose of carrying out any of the~~  
1212 ~~functions of the Radiation Control Act; or]~~  
1213 ~~[(e) order the director to impound radioactive material in accordance with Section~~  
1214 ~~19-3-111.]~~  
1215 ~~[(2) (a) The board shall promote the planning and application of pollution prevention~~  
1216 ~~and radioactive waste minimization measures to prevent the unnecessary waste and depletion~~  
1217 ~~of natural resources; and]~~  
1218 ~~[(b) review the qualifications of, and issue certificates of approval to, individuals who:]~~  
1219 ~~[(i) survey mammography equipment; or]~~  
1220 ~~[(ii) oversee quality assurance practices at mammography facilities.]~~  
1221 ~~[(3)]~~ (1) The board shall:  
1222 (a) survey solid and hazardous waste generation and management practices within this  
1223 state and, after public hearing and after providing opportunities for comment by local  
1224 governmental entities, industry, and other interested persons, prepare and revise, as necessary, a  
1225 waste management plan for the state;  
1226 ~~[(b) order the director to:]~~  
1227 ~~[(i) issue orders necessary to effectuate the provisions of this part and rules made under~~  
1228 ~~this part;]~~  
1229 ~~[(ii) enforce the orders by administrative and judicial proceedings; or]~~  
1230 ~~[(iii) initiate judicial proceedings to secure compliance with this part;]~~  
1231 ~~[(e)]~~ (b) promote the planning and application of resource recovery systems to prevent  
1232 the unnecessary waste and depletion of natural resources;  
1233 ~~[(d)]~~ (c) meet the requirements of federal law related to solid and hazardous wastes to  
1234 ~~[insure]~~ ensure that the solid and hazardous wastes program provided for in this part is  
1235 qualified to assume primacy from the federal government in control over solid and hazardous  
1236 waste;



1237 ~~[(e)]~~ (d) (i) require ~~[any]~~ a facility, including ~~[those]~~ a facility listed in Subsection  
 1238 ~~[(3)(e)(ii)]~~ (1)(d)(ii), to submit plans, specifications, and other information required by the  
 1239 board to the director ~~[prior to]~~ before construction, modification, installation, or establishment  
 1240 of a facility to allow the director to determine whether the proposed construction, modification,  
 1241 installation, or establishment of the facility will be in accordance with rules made under this  
 1242 part;

1243 (ii) ~~[facilities]~~ consider a facility referred to in Subsection ~~[(3)(e)(i)]~~ (1)(d)(i) ~~[include~~  
 1244 ~~any]~~ to include an incinerator that is intended for disposing of nonhazardous solid waste; ~~[and]~~

1245 (iii) consider a facility referred to in Subsection ~~[(3)(e)(i)]~~ (1)(d)(i) ~~[does]~~ to not  
 1246 include a commercial facility that is solely for the purpose of recycling, reuse, or reprocessing  
 1247 the following waste:

1248 (A) fly ash waste;

1249 (B) bottom ash waste;

1250 (C) slag waste; or

1251 (D) flue gas emission control waste generated primarily from the combustion of coal or  
 1252 other fossil fuels; and

1253 (iv) consider a facility referred to in Subsection ~~[(3)(e)(i)]~~ (1)(d)(i) ~~[does]~~ to not  
 1254 include a facility when the following waste is generated and the disposal occurs at an on-site  
 1255 location owned and operated by the generator of the waste:

1256 (A) waste from the extraction, beneficiation, and processing of ores and minerals listed  
 1257 in 40 C.F.R. 261.4(b)(7)(ii); or

1258 (B) cement kiln dust; and

1259 ~~[(f)]~~ (e) to ensure compliance with applicable statutes and ~~[regulations]~~ rules:

1260 (i) review a settlement negotiated by the director in accordance with Subsection

1261 19-6-107(3)(a) that requires a civil penalty of \$25,000 or more; and

1262 (ii) approve or disapprove the settlement described in Subsection (1)(e)(i).

1263 ~~[(4)]~~ (2) The board may:

1264 (a) (i) hold a hearing that is not an adjudicative proceeding; or

1265 (ii) appoint a hearing ~~[officers]~~ officer to conduct a hearing that is not an adjudicative  
 1266 proceeding; or

1267 (b) advise, consult, cooperate with, or provide technical assistance to ~~[other agencies]~~

1268 another agency of the state or federal government, [~~other states, interstate agencies, or affected~~  
1269 ~~groups, political subdivisions, industries, or other persons~~] another state, an interstate agency,  
1270 an affected group, an affected political subdivision, an affected industry, or other person in  
1271 carrying out the purposes of this part.

1272 ~~[(5)]~~ (3) (a) The board shall establish a comprehensive statewide waste management  
1273 plan.

1274 (b) The plan shall:

1275 (i) incorporate the solid waste management plans submitted by the counties;

1276 (ii) provide an estimate of solid waste capacity needed in the state for the next 20  
1277 years;

1278 (iii) assess the state's ability to minimize waste and recycle;

1279 (iv) evaluate solid waste treatment, disposal, and storage options, as well as solid waste  
1280 needs and existing capacity;

1281 (v) evaluate facility siting, design, and operation;

1282 (vi) review funding alternatives for solid waste management; and

1283 (vii) address other solid waste management concerns that the board finds appropriate  
1284 for the preservation of the public health and the environment.

1285 (c) The board shall consider the economic viability of solid waste management  
1286 strategies [~~prior to~~] before incorporating [~~them~~] the solid waste management strategies into the  
1287 plan and shall consider the needs of population centers.

1288 (d) The board shall review and modify the comprehensive statewide solid waste  
1289 management plan no less frequently than every five years.

1290 ~~[(6)]~~ (4) (a) The board shall determine the type of solid waste generated in the state and  
1291 tonnage of solid waste disposed of in the state in developing the comprehensive statewide solid  
1292 waste management plan.

1293 (b) The board shall review and modify the inventory no less frequently than once every  
1294 five years.

1295 ~~[(7)]~~ (5) Subject to the limitations contained in Subsection 19-6-102~~[(18)(b)]~~(19)(c),  
1296 the board shall establish siting criteria for nonhazardous solid waste disposal facilities,  
1297 including incinerators.

1298 ~~[(8)]~~ (6) The board may not issue, amend, renew, modify, revoke, or terminate any of

the following that are subject to the authority granted to the director under Section 19-6-107:

- (a) a permit;
- (b) a license;
- (c) a registration;
- (d) a certification; or
- (e) another administrative authorization made by the director.

~~[(9)]~~ (7) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Section 22. 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 ~~[which]~~ 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 ~~[which]~~ 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, 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 19-6-106;

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

~~[(j) defining modification plans as major or minor;]~~ and

~~[(k)]~~ (i) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind to be thrown, or remain upon or in ~~[any]~~ 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 23. Section 19-6-107 is amended to read:

**19-6-107. Director -- Appointment -- Powers.**

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

(2) The director shall:

~~[(a) develop programs to promote and protect the public from radiation sources in the state;]~~

~~[(b) advise, consult, cooperate with, and provide technical assistance to other agencies, states, the federal government, political subdivisions, industries, and other persons in carrying out the provisions of the Radiation Control Act;]~~

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

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

~~[(e) review and approve plans;]~~

~~[(f) assess penalties in accordance with Section 19-3-109;]~~

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

~~[(h)]~~ (a) issue ~~[orders]~~ an order necessary to enforce ~~[the provisions of]~~ this part~~[, to]~~;

(b) enforce ~~[the orders]~~ an order by appropriate administrative and judicial proceedings~~[, or to]~~;

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

~~[(i)]~~ (d) carry out inspections pursuant to Section 19-6-109;

~~[(j)]~~ (e) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review the plans;

~~[(k)]~~ (f) develop programs for solid waste and hazardous waste management and control within the state;

~~[(l)]~~ (g) advise, consult, and cooperate with ~~[other agencies]~~ another agency of the state, the federal government, ~~[other states and interstate agencies, and with]~~ another state, an interstate agency, an affected [groups] group, an affected political [subdivisions, and industries] subdivision, an affected industry, or other affected person in furtherance of the purposes of this part;

1392 ~~[(m)]~~ (h) subject to the provisions of this part, enforce rules made or revised by the  
1393 board through the issuance of orders;

1394 ~~[(n)]~~ (i) review plans, specifications or other data relative to solid waste and hazardous  
1395 waste control systems or any part of the systems as provided in this part;

1396 ~~[(o)]~~ (j) under the direction of the executive director, represent the state in ~~[aH]~~ matters  
1397 pertaining to interstate solid waste and hazardous waste management and control including,  
1398 under the direction of the board, entering into interstate compacts and other similar agreements;  
1399 and

1400 ~~[(p)]~~ (k) as authorized by the board and subject to the provisions of this part, act as  
1401 executive secretary of the board under the direction of the ~~[chairman]~~ chair of the board.

1402 (3) The director may:

1403 (a) subject to Subsection 19-6-104~~[(3)(f)]~~(1)(e), settle or compromise any  
1404 administrative or civil action initiated to compel compliance with this part and any rules  
1405 adopted under this part;

1406 (b) employ full-time employees necessary to carry out this part;

1407 (c) ~~[as authorized by the board pursuant to the provisions of this part,]~~ authorize any  
1408 employee or representative of the department to conduct inspections as permitted in this part;

1409 (d) encourage, participate in, or conduct studies, investigations, research, and  
1410 demonstrations relating to solid waste and hazardous waste management and control necessary  
1411 for the discharge of duties assigned under this part;

1412 (e) collect and disseminate information relating to solid waste and hazardous waste  
1413 management control; and

1414 (f) cooperate with any person in studies and research regarding solid waste and  
1415 hazardous waste management and control~~;~~.

1416 ~~[(g) cooperate with any person in studies, research, or demonstration projects regarding  
1417 radioactive waste management or control of radiation sources;]~~

1418 ~~[(h) settle or compromise any civil action initiated by the division to compel  
1419 compliance with this chapter or the rules made under this chapter; and]~~

1420 ~~[(i) authorize employees or representatives of the department to enter, at reasonable  
1421 times and upon reasonable notice, in and upon public or private property for the purpose of  
1422 inspecting and investigating conditions and records concerning radiation sources.]~~

Section 24. Section **19-6-108** is amended to read:

**19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Automatic revocation of approval -- Periodic review.**

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990;

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or

(e) a submission of an operation plan to construct a facility, if previous approvals of the operation plan to construct the facility have been revoked pursuant to Subsection

(3)(c)~~[(iii)]~~(iv).

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of

1454 7,000 hours.

1455 (3) (a) (i) Except as specified in Subsection (3)(a)(ii)(C), a person may not own,  
1456 construct, modify, or operate ~~[any]~~ a facility or site for the purpose of transferring, treating, or  
1457 disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste  
1458 without first submitting and receiving the approval of the director for an operation plan for that  
1459 facility or site.

1460 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an  
1461 operation plan may submit to the director information, a report, a plan, or other request for  
1462 approval for a proposed activity under an operation plan:

1463 (I) after obtaining the consent of any other permittee who is a current owner of the  
1464 facility or site; and

1465 (II) without obtaining the consent of any other permittee who is not a current owner of  
1466 the facility or site.

1467 (B) The director may not:

1468 (I) withhold an approval of an operation plan requested by a permittee who is a current  
1469 owner of the facility or site on the grounds that another permittee who is not a current owner of  
1470 the facility or site has not consented to the request; or

1471 (II) give an approval of an operation plan requested by a permittee who is not a current  
1472 owner before receiving consent of the current owner of the facility or site.

1473 (C) A facility referred to in Subsection (3)(a)(i) does not include a facility when the  
1474 waste from the extraction, beneficiation, and processing of ores and minerals listed in 40  
1475 C.F.R. Sec. 261.4(b)(7)(ii), or cement kiln dust, is generated and the disposal occurs at an  
1476 on-site location owned and operated by the generator of the waste.

1477 (b) (i) Except for ~~[facilities that receive]~~ a facility that receives the following wastes  
1478 solely for the purpose of recycling, reuse, or reprocessing, a person may not own, construct,  
1479 modify, or operate any commercial facility that accepts for treatment or disposal, with the  
1480 intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting  
1481 a request to and receiving the approval of the director for an operation plan for that facility site.

1482 (ii) Wastes referred to in Subsection (3)(b)(i) are:

1483 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste  
1484 generated primarily from the combustion of coal or other fossil fuels;



1485 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or  
1486 (C) cement kiln dust wastes.

1487 (c) (i) A person may not construct a facility listed under Subsection (3)(c)(ii) until the  
1488 person receives:

1489 (A) local government approval and the approval described in Subsection (3)(a);

1490 (B) approval from the Legislature; and

1491 (C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B),  
1492 approval from the governor.

1493 (ii) A facility referred to in Subsection (3)(c)(i) is:

1494 (A) a commercial nonhazardous solid waste disposal facility;

1495 (B) except for ~~[facilities that receive the following wastes]~~ a facility that receives a  
1496 waste listed in Subsection (3)(c)(iii), solely for the purpose of recycling, reuse, or reprocessing,  
1497 any commercial facility that accepts for treatment or disposal, with the intent to make a profit[:  
1498 fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated  
1499 primarily from the combustion of coal or other fossil fuels; wastes from the extraction,  
1500 beneficiation, and processing of ores and minerals; or cement kiln dust wastes]; or

1501 (C) a commercial hazardous waste treatment, storage, or disposal facility.

1502 (iii) Subsection (3)(c)(ii)(B) applies to the following wastes:

1503 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste  
1504 generated primarily from the combustion of coal or other fossil fuels;

1505 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

1506 (C) cement kiln dust wastes.

1507 ~~[(iii)]~~ (iv) The required approvals described in Subsection (3)(c)(i) for a facility  
1508 described in Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

1509 (A) the governor's approval is received on or after May 10, 2011, and the facility is not  
1510 operational within five years after the day on which the governor's approval is received; or

1511 (B) the governor's approval is received before May 10, 2011, and the facility is not  
1512 operational on or before May 10, 2016.

1513 ~~[(iv)]~~ (v) The required approvals described in Subsection (3)(c)(i) for a facility  
1514 described in Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not  
1515 transferrable to another person for five years after the day on which the governor's approval is

received.

(d) A person need not obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary of the board under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary of the board to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) A person need not obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary of the board under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary of the board determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) ~~[Any]~~ A person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. ~~[Section]~~ Sec. 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The director shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that the director cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The director shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The director shall review ~~[each]~~ a proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with ~~[the provisions of]~~ this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the director shall approve or disapprove that plan within 270 days from the date ~~[it]~~ the plan is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information

required by this section for a class I or II facility, the director shall determine whether the plan is complete and contains ~~all~~ the information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the director shall issue a notice of completeness.

(ii) If the plan is determined by the director to be incomplete, the director shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The director shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the director shall approve or disapprove that plan within 365 days from the date ~~it~~ the plan is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification ~~plan~~ request or closure plan for any facility, the director determines that the proposed plan or request, or any part of ~~it~~ the proposed plan or request, will not comply with applicable rules, the director shall issue an order prohibiting any action under the proposed plan or request for modification or closure in whole or in part.

(8) ~~Any~~ A person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit

application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the director determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. ~~[Section]~~ Sec. 6925 (e).

(9) The director may not approve a proposed nonhazardous solid or hazardous waste operation plan unless the plan contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of ~~[it]~~ the hazardous waste;

(b) evidence that the transfer, treatment, or disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the transfer, treatment, or disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the director determines is necessary to ~~[insure]~~ ensure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, ~~[at]~~ the reasonable measures consistent with the available knowledge will be taken to ~~[insure]~~ ensure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the director considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board;

(f) compliance schedules, ~~[where]~~ when applicable, including schedules for corrective action or other response measures for releases from ~~[any]~~ a solid waste management unit at the

1609 facility, regardless of the time the waste was placed in the unit;

1610 (g) for a proposed operation plan submitted on or after July 1, 2013, for a new solid or  
1611 hazardous waste facility other than a water treatment facility that treats, stores, or disposes  
1612 site-generated solid or hazardous waste onsite, a traffic impact study that:

1613 (i) takes into consideration the safety, operation, and condition of roadways serving the  
1614 proposed facility; and

1615 (ii) is reviewed and approved by the Department of Transportation or a local highway  
1616 authority, whichever has jurisdiction over each road serving the proposed facility, with the cost  
1617 of the review paid by the person who submits the proposed operation plan; and

1618 (h) for a proposed operation plan submitted on or after July 1, 2013, for a new  
1619 nonhazardous solid waste facility owned or operated by a local government, financial  
1620 information that discloses ~~att~~ the costs of establishing and operating the facility, including:

1621 (i) land acquisition and leasing;

1622 (ii) construction;

1623 (iii) estimated annual operation;

1624 (iv) equipment;

1625 (v) ancillary structures;

1626 (vi) roads;

1627 (vii) transfer stations; and

1628 (viii) using other operations that are not contiguous to the proposed facility but are  
1629 necessary to support the facility's construction and operation.

1630 (10) The director may not approve a commercial nonhazardous solid or hazardous  
1631 waste operation plan that meets the requirements of Subsection (9) unless ~~it~~ the operation  
1632 plan contains the information required by the board, including:

1633 (a) evidence that the proposed commercial facility has a proven market of  
1634 nonhazardous solid or hazardous waste, including:

1635 (i) information on the source, quantity, and price charged for treating, storing, and  
1636 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

1637 (ii) a market analysis of the need for a commercial facility given existing and potential  
1638 generation of nonhazardous solid or hazardous waste in the state and regionally; and

1639 (iii) a review of other existing and proposed commercial nonhazardous solid or

hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;

(b) a description of the public benefits of the proposed facility, including:

(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;

(ii) the energy and resources recoverable by the proposed facility;

(iii) the reduction of nonhazardous solid or hazardous waste management methods, ~~[which]~~ that are less suitable for the environment, that would be made possible by the proposed facility; and

(iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and

(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, ~~[which]~~ that may be applied by the director in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The director may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the director determines that:

(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The director shall review ~~[all]~~ approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) ~~[The provisions of]~~ Subsections (10) and (11) do not apply to a hazardous waste ~~[facilities]~~ facility in existence or to ~~[applications]~~ an application filed or pending in the department ~~[prior to]~~ before April 24, 1989, that are determined by the executive secretary of the board on or before December 31, 1990, to be complete, in accordance with state and federal

requirements applicable to operation plans for hazardous waste facilities.

(15) ~~[The provisions of]~~ Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department ~~[prior to]~~ before January 1, 1990, that is determined by the director, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in the state where ~~[it]~~ the nonhazardous solid waste is generated and ~~[which]~~ that is received for disposal in this state may not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the director.

(17) This section may not be construed to exempt ~~[any]~~ a facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. ~~[Sections]~~ Sec. 2014 and 2021 through 2114.

Section 25. Section **19-6-114** is amended to read:

**19-6-114. Service of notice, order, or other document.**

~~[Proof of]~~ In accordance with procedural rules adopted by the department, service of any notice, order, or other document issued by, or under the authority of, the ~~[board]~~ director may be made ~~[in the same manner as in the service of a summons in a civil action. Proof of service shall be filed with the board or may be made]~~ by forwarding a copy of that notice, order, or other document by registered mail, directed to the ~~[person at his last known]~~ person's designated address~~[-, with an affidavit to that effect being filed with the board].~~

Section 26. Section **19-6-120** is amended to read:

**19-6-120. New hazardous waste operation plans -- Designation of hazardous waste facilities -- Fees for filing and plan review.**

(1) For purposes of this section, the following items shall be treated as submission of a new hazardous waste operation plan:

(a) the submission of a revised hazardous waste operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the

construction or the modification would increase the commercial hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990; or

(c) an application for modification of a commercial hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if initial approval is subsequent to January 1, 1990.

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) ~~[Hazardous waste facilities that are]~~ A hazardous waste facility that is subject to payment of fees under this section or Section 19-1-201 for plan reviews under Section 19-6-108 shall be designated by the department as either class I, class II, class III, or class IV ~~[facilities]~~ facility.

(b) The department shall designate a commercial hazardous waste ~~[facilities]~~ facility containing either landfills, surface impoundments, land treatment units, thermal treatment units, incinerators, or underground injection wells, which primarily receive wastes generated by off-site sources not owned, controlled, or operated by the facility owner or operator, as a class I ~~[facilities]~~ facility.

(4) The maximum fee for filing and review of ~~[each]~~ a class I facility operation plan is \$200,000, and is due and payable as follows:

(a) ~~[The]~~ the owner or operator of a class I facility shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$50,000~~[-];~~;

(b) ~~[Upon]~~ upon issuance by the director of a notice of completeness under Section 19-6-108, the owner or operator of the facility shall pay to the department an additional nonrefundable sum of \$50,000~~[-]; and~~

(c) ~~[The]~~ the department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional \$100,000.



(5) (a) The department shall designate a hazardous waste [incinerators] incinerator that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator as a class II [facilities] facility.

(b) The maximum fee for filing and review of [each] a class II facility operation plan is \$150,000, and shall be due and payable as follows:

(i) [The] the owner or operator of a class II facility shall, at the time of filing for plan review under Section 19-6-108, pay to the department the nonrefundable sum of \$50,000~~[-];~~ and

(ii) [The] the department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional \$100,000.

(6) (a) The department shall designate a hazardous waste [facilities] facility containing either landfills, surface impoundments, land treatment units, thermal treatment units, or underground injection wells, that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator, as a class III [facilities] facility.

(b) The maximum fee for filing and review of [each] a class III facility operation plan is \$100,000 and is due and payable as follows:

(i) [The] the owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$1,000~~[-];~~ and

(ii) [The] the department shall bill the owner or operator of [each] a class III facility for actual costs of operation plan review, up to an additional \$99,000.

(7) (a) ~~[All other hazardous waste facilities are]~~ A hazardous waste facility not described in Subsections (3) through (6) is designated as a class IV [facilities] facility.

(b) The maximum fee for filing and review of [each] a class IV facility operation plan is \$50,000 and is due and payable as follows:

(i) [The] the owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of \$1,000~~[-];~~ and

(ii) [The] the department shall bill the owner or operator of [each] a class IV facility for actual costs of operation plan review, up to an additional \$49,000.

(8) (a) The maximum fee for filing and review of ~~[each major modification plan and major closure plan]~~ a temporary authorization request, class II or class III modification request, or for a class I, class II, or class III facility is \$50,000 and is due and payable as follows:

(i) ~~[The]~~ the owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of \$1,000~~[-]; and~~

(ii) ~~[The]~~ the department shall bill the owner or operator of the hazardous waste facility for actual costs of the review, up to an additional \$49,000.

(b) The maximum fee for filing and review of ~~[each minor modification and minor closure plan]~~ a class I modification request, for a class I, class II, or class III facility, and of ~~[any]~~ a modification ~~[or closure plan]~~ request for a class IV facility, is \$20,000, and is due and payable as follows:

(i) ~~[The]~~ the owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of \$1,000~~[-]; and~~

(ii) ~~[The]~~ the department shall bill the owner or operator of the hazardous waste facility for actual costs of review up to an additional \$19,000.

(c) The owner or operator of a thermal treatment unit shall submit a trial or test burn schedule 90 days ~~[prior]~~ before to any planned trial or test burn. At the time the schedule is submitted, the owner or operator shall pay to the department the nonrefundable fee of \$25,000. The department shall apply the fee to the costs of the review and processing of each trial or test burn plan, trial or test burn, and trial or test burn data report. The department shall bill the owner or operator of the facility for any additional actual costs of review and preparation.

(9) (a) The owner or operator of a class III facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(b) The owner or operator of a class IV facility may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(c) An owner or operator of a class I, class II, or class III facility who submits a ~~[major modification plan or a major closure plan]~~ class II or class III modification request may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class II facility operation plan.

(d) An owner or operator of a class I, class II, or class III facility who submits a ~~[minor modification plan or a minor closure plan]~~ class I modification request, and an owner or operator of a class IV facility who submits a modification ~~[plan]~~ request or a closure plan, may

1795 obtain a plan review within the time periods for a class II facility operation plan by paying, at  
1796 the time of filing for plan review, the maximum fee for a class III facility operation plan.

1797 (10) ~~[All fees]~~ Fees received by the department under this section shall be deposited  
1798 ~~[in]~~ into the General Fund as dedicated credits for hazardous waste plan reviews in accordance  
1799 with Subsection (12) and Section 19-6-108.

1800 (11) (a) (i) The director shall establish an accounting procedure that separately  
1801 accounts for fees paid by each owner or operator who submits a hazardous waste operation  
1802 plan for approval under Section 19-6-108 and pays fees for hazardous waste plan reviews under  
1803 this section or Section 19-1-201.

1804 (ii) The director shall credit ~~[all]~~ fees paid by the owner or operator to that owner or  
1805 operator.

1806 (iii) The director shall account for costs actually incurred in reviewing each operation  
1807 plan and may only use the fees of each owner or operator for review of that owner or operator's  
1808 plan.

1809 (b) If the costs actually incurred by the department in reviewing a hazardous waste  
1810 operation plan of any facility are less than the nonrefundable fee paid by the owner or operator  
1811 under this section, the department may, upon approval or disapproval of the plan by the board  
1812 or upon withdrawal of the plan by the owner or operator, use any remaining funds that have  
1813 been credited to that owner or operator for the purposes of administering provisions of the  
1814 hazardous waste programs and activities authorized by this part.

1815 (12) (a) With regard to any review of a hazardous waste operation plan, modification  
1816 ~~[plan]~~ request, or closure plan that is pending on April 25, 1988, the director may assess fees  
1817 for that plan review.

1818 (b) The total amount of fees paid by an owner or operator of a hazardous waste facility  
1819 whose plan review is affected by this ~~[subsection]~~ Subsection (12) may not exceed the  
1820 maximum fees allowable under this section for the appropriate class of facility.

1821 (13) (a) The department shall maintain accurate records of ~~[its]~~ the department's actual  
1822 costs for each plan review under this section.

1823 (b) ~~[Those records]~~ A record described in Subsection (13)(a) shall be available for  
1824 public inspection.

1825 Section 27. Section 19-6-326 is amended to read:

**19-6-326. Written assurances.**

(1) Based upon risk to human health or the environment from potential exposure to hazardous substances or materials, the executive director, or the executive director's designee, may issue enforceable written assurances to a bona fide prospective purchaser, contiguous property owner, or innocent landowner of real property that no enforcement action under this part may be initiated regarding that real property against the person to whom the assurances are issued.

(2) An assurance granted under Subsection (1) grants the person to whom the assurance is issued protection from imposition of any state law cost recovery and contribution actions under this part.

(3) The executive director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the administration of this section.

Section 28. Section **19-6-502** is amended to read:

**19-6-502. Definitions.**

As used in this part:

(1) "Governing body" means the governing board, commission, or council of a public entity.

(2) "Jurisdiction" means the area within the incorporated limits of:

(a) a municipality;

(b) a special service district;

(c) a municipal-type service district;

(d) a service area; or

(e) the territorial area of a county not lying within a municipality.

(3) "Long-term agreement" means an agreement or contract having a term of more than five years but less than 50 years.

(4) "Municipal residential waste" means solid waste that is:

(a) discarded or rejected at a residence within the public entity's jurisdiction; and

(b) collected at or near the residence by:

(i) a public entity; or

(ii) a person with whom the public entity has as an agreement to provide solid waste management.

- 1857 (5) "Public entity" means:  
1858 (a) a county;  
1859 (b) a municipality;  
1860 (c) a special service district under Title 17D, Chapter 1, Special Service District Act;  
1861 (d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act; or  
1862 (e) a municipal-type service district created under Title 17, Chapter 34,  
1863 Municipal-Type Services to Unincorporated Areas.
- 1864 (6) "Requirement" means an ordinance, policy, rule, mandate, or other directive that  
1865 imposes a legal duty on a person.
- 1866 (7) "Residence" means an improvement to real property used or occupied as a primary  
1867 or secondary detached single-family dwelling.
- 1868 (8) "Resource recovery" means the separation, extraction, recycling, or recovery of  
1869 usable material, energy, fuel, or heat from solid waste and the disposition of it.
- 1870 (9) "Short-term agreement" means a contract or agreement having a term of five years  
1871 or less.
- 1872 (10) (a) "Solid waste" means a putrescible or nonputrescible material or substance  
1873 discarded or rejected as being spent, useless, worthless, or in excess of the owner's needs at the  
1874 time of discard or rejection, including:
- 1875 (i) garbage;  
1876 (ii) refuse;  
1877 (iii) industrial and commercial waste;  
1878 (iv) sludge from an air or water control facility;  
1879 (v) rubbish;  
1880 (vi) ash;  
1881 (vii) contained gaseous material;  
1882 (viii) incinerator residue;  
1883 (ix) demolition and construction debris;  
1884 (x) a discarded automobile; and  
1885 (xi) offal.
- 1886 (b) "Solid waste" does not include sewage or another highly diluted water carried  
1887 material or substance and those in gaseous form.

1888 (11) "Solid waste management" means the purposeful and systematic collection,  
1889 transportation, storage, processing, recovery, or disposal of solid waste.

1890 (12) (a) "Solid waste management facility" means a facility employed for solid waste  
1891 management, including:

1892 (i) a transfer station;  
1893 (ii) a transport system;  
1894 (iii) a baling facility;  
1895 (iv) a landfill; and  
1896 (v) a processing system, including:  
1897 (A) a resource recovery facility;  
1898 (B) a facility for reducing solid waste volume;  
1899 (C) a plant or facility for compacting, or composting, of solid waste;  
1900 (D) an incinerator;  
1901 (E) a solid waste disposal, reduction, pyrolization, or conversion facility;  
1902 (F) a facility for resource recovery of energy consisting of:  
1903 (I) a facility for the production, transmission, distribution, and sale of heat and steam;  
1904 (II) a facility for the generation and sale of electric energy to a public utility,  
1905 municipality, or other public entity that owns and operates an electric power system on March  
1906 15, 1982; and  
1907 (III) a facility for the generation, sale, and transmission of electric energy on an  
1908 emergency basis only to a military installation of the United States; and  
1909 (G) an auxiliary energy facility that is connected to a facility for resource recovery of  
1910 energy as described in Subsection (12)(a)(v)(F), that:  
1911 (I) is fueled by natural gas, landfill gas, or both;  
1912 (II) consists of a facility for the production, transmission, distribution, and sale of  
1913 supplemental heat and steam to meet all or a portion of the heat and steam requirements of a  
1914 military installation of the United States; and  
1915 (III) consists of a facility for the generation, transmission, distribution, and sale of  
1916 electric energy to a public utility, a municipality described in Subsection (12)(a)(v)(F)(II), or a  
1917 political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

1918 (b) "Solid waste management facility" does not mean a facility that:

(i) accepts and processes metal, as described in Subsection ~~19-6-102[(18)]~~(19)(b), by separating, shearing, sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product of prepared scrap metal for sale or use for remelting purposes provided that any byproduct or residual that would qualify as solid waste is managed at a solid waste management facility; or

(ii) accepts and processes paper, plastic, rubber, glass, or textiles that:

(A) have been source-separated or otherwise diverted from the solid waste stream before acceptance at the facility and that are not otherwise hazardous waste or subject to conditions of federal hazardous waste regulations; and

(B) are reused or recycled as a valuable commercial commodity by separating, shearing, sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product, provided that any byproduct or residual that would qualify as solid waste is managed at a solid waste management facility.

Section 29. Section ~~19-6-721.1~~ is enacted to read:

**19-6-721.1. Notice of violations -- Order for correction -- Civil action to enforce.**

(1) Whenever the director determines that a person is in violation of an applicable approved used oil operation permit, the requirements of this part, or any of the board's rules, the director may cause written notice of that violation to be served upon the alleged violator. The notice shall specify the provisions of the permit, this part, or rule alleged to have been violated, and the facts alleged to constitute the violation.

(2) The director may:

(a) issue an order requiring that necessary corrective action be taken within a reasonable time; or

(b) request the attorney general or the county attorney in the county in which the violation is taking place to bring a civil action for injunctive relief and enforcement of this part.