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(1) to violate the provisions of the laws of this title or the terms of any order or rule issued under it; or

(2) to fail to remove or abate from private property under the person's control at his own expense within 48 hours, or such other reasonable time as the department determines, after being ordered to do so, any nuisance, source of filth, or other sanitation violation. 1991

19-1-303. Criminal and civil penalties — Liability for violations.

(1) (a) Any person who violates any provision of this title or lawful orders or rules adopted under this title by the department shall:

(i) in a civil proceeding be assessed a penalty not to exceed the sum of \$5,000; or
(ii) in a criminal proceeding:

(A) for the first violation, be guilty of a class B misdemeanor; and

(B) for a subsequent similar violation within two years, be guilty of a class A misdemeanor.

(b) In addition, a person is liable for any expense incurred by the department in removing or abating any violation.

(2) Assessment or conviction under this title does not relieve the person assessed or convicted from civil liability for any act which was also a violation of the public health laws.

(3) Each day of violation of this title or rules made by the department under it may be considered a separate violation.

(4) The enforcement procedures and penalties provided in Subsections (1) through (3) do not apply to chapters in this title which provide for other specific enforcement procedures and penalties. 1991

19-1-304. Principal and branch offices of department.

(1) The principal office of the department shall be in Salt Lake County.

(2) The department may establish branch offices at other places in the state to furnish comprehensive and effective environmental programs and to coordinate with and assist local health officers. 1991

19-1-305. Administrative enforcement proceedings — Tolling of limitation period.

The issuance of an administrative enforcement notice of a violation or an order under Section 19-1-202, 19-2-110, 19-4-107, 19-6-404, 19-5-111, or 19-6-112, or issuance of a notice of agency action under Section 19-3-109 or 19-6-407 tolls the running of the period of limitation for commencement of a civil action brought to assess or collect a penalty until the date the notice of violation, order, or agency action becomes final under Title 63, Chapter 46b, Administrative Procedures Act, or for a period of three years, whichever occurs first. 1991

19-1-306. Records of the department.

(1) Except as provided in this section, records of the department shall be subject to Title 63, Chapter 2, Government Records Access and Management Act.

(2) (a) The standards of the federal Freedom of Information Act, 5 U.S.C. Sec. 552, and not the standards of Subsections 63-2-304(1) and (2), shall govern access to records of the department for which business confidentiality has been claimed under Section 63-2-308, to the extent those records relate to a program:

(i) that is delegated, authorized, or for which primacy has been granted to the state;

(ii) for which the state is seeking delegation, authorization, or primacy; or

(iii) under the federal Comprehensive Environmental Response, Compensation and Liability Act.

(b) The regulation of the United States Environmental Protection Agency interpreting the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2, on January 1, 1992, shall also apply to the records described in Subsection (1).

(3) (a) The department may, upon request, make trade secret and confidential business records available to the United States Environmental Protection Agency insofar as they relate to a delegated program, to a program for which the state is seeking delegation, or to a program under the federal Comprehensive Environmental Response, Compensation and Liability Act.

(b) In the event a record is released to the United States Environmental Protection Agency under Subsection (3)(a), the department shall convey any claim of confidentiality to the United States Environmental Protection Agency and shall notify the person who submitted the information of its release.

(4) Trade secret and confidential business records under Subsection (2) shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except Subsections 63-2-304(1) and (2).

(5) Records obtained from the United States Environmental Protection Agency and requested by that agency to be kept confidential shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except to the extent they conflict with this subsection. 1992

CHAPTER 2

AIR CONSERVATION ACT

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- 19-2-101. Short title — Policy of state and pur-
pose of chapter — Support of local and
regional programs — Provision of co-
ordinated statewide program.
- (1) This chapter is known as the "Air Conservation
Act."
- (2) It is the policy of this state and the purpose of
this chapter to achieve and maintain levels of air
quality which will protect human health and safety,
and to the greatest degree practicable, prevent injury
to plant and animal life and property, foster the com-
fort and convenience of the people, promote the eco-
nomic and social development of this state, and facili-
tate the enjoyment of the natural attractions of this
state.
- (3) Local and regional air pollution control pro-
grams shall be supported to the extent practicable as
essential instruments to secure and maintain appro-
priate levels of air quality.
- (4) The purpose of this chapter is to:
- (a) provide for a coordinated statewide pro-
gram of air pollution prevention, abatement, and
control;
- (b) provide for an appropriate distribution of
responsibilities among the state and local units
of government;
- (c) facilitate cooperation across jurisdictional
lines in dealing with problems of air pollution
not confined within single jurisdictions; and
- (d) provide a framework within which air
quality may be protected and consideration given
to the public interest at all levels of planning and
development within the state. 1991
- 19-2-102. Definitions.
As used in this chapter:
- (1) "Air contaminant" means any particulate
matter or any gas, vapor, suspended solid, or any
combination of them, excluding steam and water
vapors.
- (2) "Air contaminant source" means all
sources of emission of air contaminants whether
privately or publicly owned or operated.
- (3) "Air pollution" means the presence in the
ambient air of one or more air contaminants in
the quantities and duration and under conditions
and circumstances as is or tends to be injurious to
human health or welfare, animal or plant life, or
property, or would unreasonably interfere with
the enjoyment of life or use of property, as deter-
mined by the rules adopted by the board.
- (4) "Ambient air" means the surrounding or
outside air.
- (5) "Asbestos" means the asbestiform varieties
of serpentine (chrysotile), riebeckite (crocidolite),
cummingtonite-grunerite, anthophyllite, and ac-
inolite-tremolite.
- (6) (a) "Board" means the Air Quality Board.
(b) "Board" means, as used in Sections
19-2-123 through 19-2-126, the Air Quality
Board or the Water Quality Board.
- (7) "Executive secretary" means the executive
secretary of the board.
- (8) (a) "Facility" means machinery, equip-
ment, structures, or any part or accessories
of them, installed or acquired for the pri-
mary purpose of controlling or disposing of
air pollution.
(b) "Facility" does not include an air con-
ditioner, fan, or other similar facility for the
comfort of personnel.
- (9) "Friable asbestos material" means any ma-
terial containing more than 1% asbestos by
weight that hand pressure can crumble, pulver-
ize, or reduce to powder when dry.
- (10) "Indirect source" means a facility, build-
ing, structure, or installation which attracts or
may attract mobile source activity that results in
emissions of a pollutant for which there is a na-
tional standard.
- (11) (a) "Pollution control facility" or "facil-
ity" means, as used in Sections 19-2-123
through 19-2-126, any land, structure, build-
ing, installation, excavation, machinery,
equipment, or device, or any addition to, re-
construction, replacement or improvement
of, land or an existing structure, building,
installation, excavation, machinery, equip-
ment, or device reasonably used, erected,
constructed, acquired, or installed by any
person if a substantial purpose of the use,
erection, construction, acquisition, or instal-
lation is the prevention, control, or reduction
of air or water pollution by:
- (i) the disposal or elimination of or re-
design to eliminate waste and the use of
treatment works for industrial waste as
defined in Chapter 5 of this title; or

(iii) the disposal, elimination, or reduction of or redesign to eliminate or reduce air contaminants or air pollution or air contamination sources and the use of air cleaning devices.

(b) "Pollution control facility" or "facility" does not include air conditioners, septic tanks, or other facilities for human waste, nor any property installed, constructed, or used for the moving of sewage to the collection facilities of a public or quasi-public sewerage system. 1991

19-2-103. Members of board — Appointment — Terms — Organization.

(1) The board comprises 11 members, one of whom shall be the executive director and ten of whom shall be appointed by the governor with the advice and consent of the Senate.

(2) The members shall be knowledgeable of air pollution matters and shall be:

- (a) a practicing physician and surgeon licensed in the state not connected with industry;
 - (b) a registered professional engineer who is not from industry;
 - (c) a representative from municipal government;
 - (d) a representative from county government;
 - (e) a representative from agriculture;
 - (f) a representative from the mining industry;
 - (g) a representative from manufacturing;
 - (h) a representative from the fuel industry;
- and
- (i) two representatives of the public not representing or connected with industry, at least one of whom represents organized environmental interests.

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

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

(5) Members serving on the Air Conservation Committee created by Chapter 126, Laws of Utah 1981, as amended, shall serve as members of the board throughout the terms for which they were appointed.

(6) Members shall be appointed for a term of four years.

(7) Members may serve more than one term.

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

(9) The board shall elect annually a chairman and a vice-chairman from its members.

(10) (a) The board shall meet at least quarterly, and special meetings may be called by the chairman upon his own initiative, upon the request of the executive secretary or upon the written request of three members of the board.

(b) Three days' notice shall be given to each member of the board prior to any meeting.

(11) Six members constitute a quorum at any meeting, and the action of a majority of members present is the action of the board.

(12) (a) The appointed members of the board shall serve without compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties and

may receive a per diem allowance at the rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members on the public payroll on a full-time basis may not receive further compensation for services on the board. 1993

19-2-104. Powers of board.

(1) The board may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rule-making Act:

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

(b) establishing air quality standards;

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

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

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

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

(d) implementing the federal Asbestos Hazard Emergency Response Act of 1986, and reviewing and approving asbestos management plans submitted by local education agencies under that act;

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

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

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

(2) The board may:

(a) hold hearings relating to any aspect of or matter in the administration of this chapter and compel the attendance of witnesses and the production of documents and other evidence, administer oaths and take testimony, and receive evidence as necessary;

(b) issue orders necessary to enforce the provisions of this chapter, enforce the orders by appropriate administrative and judicial proceedings, and institute judicial proceedings to secure compliance with this chapter;

(c) settle or compromise any civil action initiated to compel compliance with this chapter and the rules made under this chapter;

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

(e) prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state;

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

(g) encourage local units of government to handle air pollution within their respective juris-

dictions on a cooperative basis and provide technical and consultative assistance to them:

(h) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

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

(j) monitor the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere in all parts of this state and take appropriate action with respect to them;

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

(l) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, and with interested persons or groups;

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

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

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

(i) reviewing and acting upon the notice required under Section 19-2-103; and

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

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

(q) meet the requirements of federal air pollution laws;

(r) establish requirements for work practice and certification of persons who:

(i) contract for hire to conduct identification, demolition, renovation, salvage, or encapsulation work involving friable asbestos materials; or

(ii) conduct work described in Subsection (i) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986; and

(s) establish certification requirements for persons required under the federal Asbestos Hazard Emergency Response Act of 1986 to be accredited

as inspectors, management planners, abatement project designers, asbestos abatement contractors and supervisors, or asbestos abatement workers.

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

(4) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.

1992

19-2-105. Duties of board.

The board, in conjunction with the governing body of each county identified in Section 41-6-163.7 and other interested parties, shall perform an evaluation of the inspection and maintenance program developed under Section 41-6-163.7 including issues relating to:

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

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

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

(4) use of the farm truck exemption;

(5) mechanic training programs;

(6) emissions standards; and

(7) emissions waivers.

1991

19-2-105.3. Clean fuel requirements for fleets.

(1) As used in this section:

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

(b) "Clean fuel" means:

(i) propane, compressed natural gas, or electricity;

(ii) other fuel the Air Quality Board created in Title 19, Chapter 2, determines annually on or before July 1 is at least as effective as fuels under Subsection (1)(b)(i) in reducing air pollution; and

(iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.

(c) "Fleet" means ten or more vehicles:

(i) owned or operated by a single entity as defined by board rule; and

(ii) capable of being fueled or that are fueled at a central location.

(d) "Fleet" does not include motor vehicles that are:

(i) held for lease or rental to the general public;

(ii) held for sale or used as demonstration vehicles by motor vehicle dealers;

(iii) used by motor vehicle manufacturers for product evaluations or tests;

(iv) authorized emergency vehicles as defined in Section 41-6-1;

(v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;

(vi) special mobile equipment as defined in Section 41-1-1;

(vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000 pounds;

(viii) regularly used by employees to drive to and from work, parked at the employees' personal residences when they are not at

their employment, and not practicably fueled at a central location:

(ix) owned, operated, or leased by public transit districts; or

(x) exempted by board rule.

(2) (a) After evaluation of reasonably available pollution control strategies, and as part of the state implementation plan demonstrating attainment of the national ambient air quality standards, the board may by rule, subject to Subsection (2)(c), require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:

(i) necessary to demonstrate attainment of the national ambient air quality standards in any area where they are required; and

(ii) reasonably cost effective when compared to other similarly beneficial control strategies for demonstrating attainment of the national ambient air quality standards.

(b) State implementation plans developed prior to July 1, 1995, may require fleets to use clean fuels no earlier than July 1, 1995, unless the board determines fleet use of clean fuels is necessary prior to July 1, 1995, to demonstrate attainment of the national ambient air quality standards in any area by an attainment date established by federal law.

(c) The board may not require more than 50% of those trucks in a fleet that are heavy duty trucks having a gross vehicle weight rating of more than 8,500 pounds and not more than 26,000 pounds to convert to clean fuels under Subsection (b).

(3) (a) After evaluation of reasonably available pollution control strategies, and as part of a state implementation plan demonstrating only maintenance of the national ambient air quality standards, the board may by rule, subject to Subsection (3)(b), require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:

(i) necessary to demonstrate maintenance of the national ambient air quality standards in any area where they are required; and

(ii) reasonably cost effective as compared with other similarly beneficial control strategies for demonstrating maintenance of the national ambient air quality standards.

(b) Under Subsection (a) the board may require no more than:

(i) 30% of a fleet to use clean fuels before January 1, 1998;

(ii) 50% of a fleet to use clean fuels before January 1, 1999; and

(iii) 70% of a fleet to use clean fuels before January 1, 2000.

(c) The board may not require more than 50% of those trucks in a fleet that are heavy duty trucks having a gross vehicle weight rating of more than 8,500 pounds and not more than 26,000 pounds to convert to clean fuels under Subsection (b).

(4) Rules the board makes under this section may include:

(a) dates by which fleets are required to convert to clean fuels under the provisions of this section;

(b) definitions of fleet owners or operators;

(c) definitions of vehicles exempted from this section by rule;

(d) certification requirements for persons who install clean fuel conversion equipment, including testing and certification standards regarding installers; and

(e) certification fees for installers, established under Section 63-38-3.

(5) Implementation of this section and rules made under this section are subject to the reasonable availability of clean fuel in the local market as determined by the board. 1992

19-2-106. Rulemaking authority and procedure.

(1) Except as provided in Subsection (2), no rule which the board makes for the purpose of administering a program under the federal Clean Air Act may be more stringent than the corresponding federal regulations which 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 makes a written finding after public comment and hearing and based on evidence in the record, that 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. 1991

19-2-107. Executive secretary — Appointment — Powers.

(1) The executive secretary shall be appointed by the executive director, with the approval of the board, and shall serve under the administrative direction of the executive director.

(2) The executive secretary may:

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

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

(c) employ full-time employees necessary to carry out this chapter;

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

(e) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air pollution and causes of it as advisable and necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;

(f) collect and disseminate information relating to air pollution and the prevention, control, and abatement of it;

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

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

(ii) requiring the construction of new control facilities or any parts of new control facilities or the modification, extension, or alteration of existing control facilities or any parts of new control facilities; or

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

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

(i) as authorized by the board, subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to any state or federal authorities for tax purposes the fact of construction, installation, or acquisition of any facility, land, building, machinery, or equipment or any part of them, in conformity with this chapter;

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

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

1991

19-2-108. Notice of construction or modification of installations required — Authority of executive secretary to prohibit construction — Hearings — Limitations on authority of board — Inspections authorized.

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

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

(ii) Plan approval for an indirect source may be delegated by the executive secretary to a local authority when requested and upon assurance that the local authority has and will maintain sufficient expertise to insure that the planned installation will meet the requirements established by law.

(b) If within 90 days after the receipt of plans, specifications, or other information required under this subsection, the executive secretary 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 ex-

ceeding three extensions of 30 days each, is required by the board to adequately review the plans, specifications, or other information, he shall issue an order prohibiting the construction, installation, or establishment of the air contaminant source or sources in whole or in part.

(3) In addition to any other remedies, any person aggrieved by the issuance of an order either granting or denying a request for the construction of a new installation, and prior to invoking any such other remedies shall, upon request, in accordance with the rules of the board, be entitled to a hearing. Following the hearing, the permit may be affirmed, modified, or withdrawn.

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

(5) This section does not authorize the board 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) (a) Any authorized officer, employee, or representative of the board may enter and inspect any property, premise, or place on or at which an air contaminant source is located or is being constructed, modified, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and the rules adopted under it.

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

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

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

1991

19-2-109. Air quality standards — Hearings on adoption — Orders of executive secretary — Adoption of emission control requirements.

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

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

(c) The notice shall be published at least twice in any newspaper of general circulation in the area affected and shall be mailed at least 20 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the executive secretary has reason to believe will be affected by the standards.

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

(e) The order shall be published in a newspaper of general circulation in the area affected.

(2) (a) The board may establish emission control requirements by rule that in its judgment may be necessary to prevent, abate, or control air pollution that may be statewide or may vary from

area to area, taking into account varying local conditions.

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

1991

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) "EPA" means the federal Environmental Protection Agency.

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

(c) "Operating permit" means a permit issued by the executive secretary 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" has the same meaning as defined in Title V of the 1990 Clean Air Act and implementing federal regulations.

(2) (a) A person may not operate any 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 executive secretary under procedures the board establishes by rule.

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

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

(3) (a) Operating permits issued under this section shall be for a period of five years unless the board 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 executive secretary 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 executive secretary 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 executive secretary 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 63-38-3 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 board shall prepare an annual report of the emissions fees collected and the costs covered by those fees under this subsection.

(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 for the period:

(a) of July 1, 1992, through June 30, 1993, shall be based on the most recent emissions inventory prepared by the executive secretary;

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

(6) After an operating permit is issued the emissions fee 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.

(7) If the owner or operator of a source subject to this section fails to timely pay an annual emissions fee, the executive secretary 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.

(8) The owner or operator of a source subject to this section may contest an emissions fee assessment or associated penalty in an adjudicative hearing under the Title 63, Chapter 46b, Administrative Procedures Act as provided in this subsection.

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

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

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

(10) 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 adminis-

tering the program and the small business assistance program under Section 19-2-109.2.

(11) Failure of the executive secretary to act on any 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 executive secretary to take action on the permit or its renewal without additional delay:

- (a) the applicant;
- (b) any person who participated in the public comment process; or
- (c) any other person who could obtain judicial review of that action under applicable law. 1992

19-2-109.2. Small business assistance program.

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

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

(a) two members who are not owners or representatives of owners of small business stationary air pollution sources, selected by the governor to represent the general public;

(b) four members who are owners or who represent owners of small business stationary sources selected by leadership of the Utah Legislature as follows:

(i) one member selected by the majority leader of the Senate;

(ii) one member selected by the minority leader of the Senate;

(iii) one member selected by the majority leader of the House of Representatives;

(iv) one member selected by the minority leader of the House of Representatives;

(c) one member selected by the executive director to represent the Division of Air Quality, Department of Environmental Quality.

(3) (a) The department shall, prior to appointment of the members, stagger the terms of membership by designating the original terms of panel positions so that:

(i) four positions are for terms of four years; and

(ii) three positions are for terms of two years.

(b) All subsequent terms are for four years.

(4) Members may serve more than one term.

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

(6) Every two years, the panel shall elect a chairman from its members.

(7) (a) The panel shall meet as necessary to carry out its duties. Meetings may be called by the chairman, the executive secretary, or upon written request of three of the members of the panel.

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

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

(9) (a) The appointed members of the panel serve without compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties and may re-

ceive a per diem allowance at the same rate provided in Sections 63-1-14.5 and 63-1-15.

(b) Members on the public payroll on a full-time basis may not receive further compensation for services on the panel. 1992

19-2-109.3. Public access to information.

A copy of each permit application, compliance plan, emissions or compliance monitoring report, certification, and each operating permit issued under this chapter shall be made available to the public in accordance with Title 63, Chapter 2, Government Records Access and Management Act. 1992

19-2-110. Violations — Notice to violator — Corrective action orders — Conference, conciliation, and persuasion by executive secretary.

(1) (a) Whenever the executive secretary has reason to believe that a violation of any provision of this chapter or any rule issued under it has occurred, he may serve written notice of the violation upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute the violation, and may include an order that necessary corrective action be taken within a reasonable time.

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

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

(3) Hearings may be held before:

(a) the board;

(b) a hearing examiner of the board; or

(c) a board member especially appointed by the board to hold the hearing. 1991

19-2-111. Review of orders of hearing examiner — Procedure.

Any person aggrieved by an order of a hearing examiner may file a motion for review of the order with the board. 1991

19-2-112. Generalized condition of air pollution creating emergency — Sources causing imminent danger to health — Powers of executive director — Declaration of emergency.

(1) (a) Title 63, Chapter 46b, Administrative Procedures Act, and any other provision of law to the contrary notwithstanding, if the executive director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the executive director, with the concurrence of the governor, shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants.

(b) The order shall fix a place and time, not later than 24 hours after its issuance, for a hearing to be held before the governor.

(c) Not more than 24 hours after the commencement of this hearing, and without adjournment of it, the governor shall affirm, modify, or set aside the order of the executive director.

(2) In the absence of a generalized condition of air pollution referred to in Subsection (1), but if the executive director finds that emissions from the operation

of one or more air contaminant sources is causing imminent danger to human health or safety, he may commence adjudicative proceedings under Section 63-46b-20.

(3) Nothing in this section limits any power that the governor or any other officer has to declare an emergency and act on the basis of that declaration.

1991

19-2-113. Variances — Judicial review.

(1) (a) Any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.

(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:

(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the board may prescribe:

(b) (i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and

(ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or

(c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of a kind other than that provided for in Subsection (a) or (b), it shall not be granted for more than one year.

(4) (a) Any variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.

(b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.

(c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.

(d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.

(5) (a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.

(b) A person aggrieved by the board's decision may obtain judicial review.

(c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air contaminant source is situated.

(6) (a) The board may review any variance during the term for which it was granted.

(b) The review procedure is the same as that for an original application.

(c) The variance may be revoked upon a finding that:

(i) the nature or amount of emission has changed or increased; or

(ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to any person or property.

1991

19-2-114. Activities not in violation of chapter or rules.

The following are not a violation of this chapter or of any rules made under it:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

1991

19-2-115. Violations — Penalties — Reimbursement for expenses.

(1) (a) Any person who violates this chapter, or any rule, order, or permit issued or adopted under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for each violation.

(b) Subsection (a) also applies to rules adopted under the authority of Section 19-2-104, for implementation of the federal Asbestos Hazard Emergency Response Act of 1986.

(c) Penalties assessed for violations described in Section 207 of the federal Asbestos Hazard Emergency Response Act of 1986 may not exceed the amounts specified in that section and shall be used in accordance with the provisions of that section.

(2) A person who knowingly violates any of the following established under this chapter is guilty of an

infraction and is subject to a fine not more than \$10,000 per day for each violation:

- (a) any applicable standard or limitation;
- (b) any permit condition; or
- (c) any fee or filing requirement.

(3) A person is guilty of an infraction and is subject to a fine not more than \$10,000 for each instance of violation who knowingly:

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

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

(4) Any fine or penalty assessed under Subsections (1) or (2) is in lieu of any penalty under Subsection 19-2-109.1.

(5) Any person who willfully violates Subsection (2) or (3), or Section 19-2-120 is guilty of a class A misdemeanor.

(6) (a) Any person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the executive secretary that he is violating the requirement, is guilty of a criminal offense and subject to a fine not more than \$25,000 per day for each violation in the case of the first offense, and not more than \$50,000 per day for each violation in the case of subsequent offenses.

(b) Any person who violates a written order requiring the person to comply with the requirements of an implementation plan is guilty of a criminal offense and subject to a fine not more than \$25,000 per day for each violation in the case of a first offense, and not more than \$50,000 per day for each violation in the case of subsequent offenses.

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

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

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

- (i) define qualifying environmental enforcement activities; and
- (ii) define qualifying extraordinary expenses. 1992

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

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

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

(3) (a) In addition to any other remedy created in this chapter, upon failure of any person to comply with any provision of this chapter or any rule

adopted under it or any final order made by the board, the executive secretary, or the executive director and when it appears necessary for the protection of health and welfare, the board may initiate through its executive secretary an action for appropriate injunctive relief.

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

(c) A bond is not required. 1991

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

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

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

(3) The board or its executive secretary may bring any action and be represented by the attorney general.

(4) In the event any person fails to comply with a cease and desist order of the board or its executive secretary that is not subject to a stay pending administrative or judicial review, the board may, through its executive secretary, initiate an action for, and is entitled to, injunctive relief to prevent any further or continued violation of the order. 1991

19-2-118. Violation of injunction evidence of contempt.

Failure to comply with the terms of any injunction issued under this chapter is prima facie evidence of contempt which is punishable as for other civil contempts. 1991

19-2-119. Civil or criminal remedies not excluded — Actionable rights under chapter — No liability for acts of God or other catastrophes.

(1) Existing civil or criminal remedies for any wrongful action which is a violation of any part of the law are not excluded by this chapter.

(2) Persons other than the state or the board do not acquire actionable rights by virtue of this chapter.

(3) The liabilities imposed for violation of this chapter are not imposed for any violation caused by an act of God, war, strike, riot, or other catastrophe. 1991

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

The owner or operator of any stationary air contaminant source in the state shall furnish to the board the reports required under Section 19-2-104 and any other information the board finds necessary to determine whether the source is in compliance with state and federal regulations and standards. The information shall be correlated with applicable emission standards or limitations and shall be available to the public during normal business hours at the office of the department. 1991

19-2-121. Ordinances of political subdivisions authorized.

Any political subdivision of the state may enact and enforce ordinances to control air pollution that are consistent with this chapter.

1991

19-2-122. Cooperative agreements between political subdivisions and department.

(1) Any political subdivision of the state may enter into and perform with other political subdivisions of the state or with the department contracts and agreements as they find proper for establishing, planning, operating, and financing air pollution programs.

(2) The agreements may provide for an agency to:

(a) supervise and operate an air pollution program;

(b) prescribe, subject to the approval of the board, the agency's powers and duties; and

(c) fix the compensation of the agency's members and employees.

1991

19-2-123. Tax relief to encourage investment in facilities — Sales and use tax exemption.

(1) It is in the public interest of the state to encourage, through tax relief, investment in pollution control and pollution elimination facilities while at the same time making and keeping the state an attractive location for continued industrial development, including the expansion of existing plants, thereby increasing employment and payrolls and upgrading the natural resources of the state.

(2) All materials and equipment purchased, leased, or otherwise procured and services utilized for the construction or installation in a pollution control facility are exempt from sales and use taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act, upon obtaining a certification of pollution control facility from the board.

1991

19-2-124. Application for certification of pollution control facility.

(1) A person who qualifies under Subsection (2) may apply to the board for certification of a pollution control facility or facilities erected, constructed, or installed, or to be erected, constructed, or installed in the state after December 31, 1972, or on or before January 31, 1985, and after June 30, 1986, and before July 1, 1996. An application may be filed at any time after a firm construction contract has been entered or construction has commenced.

(2) (a) A person who applies under Subsection (1) shall be the owner of a trade or business that uses property in the state requiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or uses the property.

(b) The facility shall be owned, operated, or leased during a part of the tax year in which the exemption is claimed.

(c) An exemption may be claimed only in those tax years that begin on or after January 1, 1973, and on or before January 31, 1985, and after June 30, 1986, and before July 1, 1996.

(d) As used in this Subsection, "owner" includes a contract purchaser.

(3) (a) Each application shall be in writing on a form prescribed by the board, contain a description of the facilities and materials incorporated in them, the machinery and equipment, the existing or proposed operational procedure, and a statement of the purpose of pollution prevention,

control, or reduction served or to be served by the facility.

(b) The board may require any further information it finds necessary before issuance of a certificate.

1991

19-2-125. Action on application for certification.

(1) (a) If the board finds that a pollution control facility or a part of a pollution control facility, for which application is made under Section 19-2-124 was or is to be erected, constructed, acquired, or installed after December 31, 1972, on or before January 31, 1985, and after June 30, 1986, and before July 1, 1996, and is designed and is being operated or will operate to a substantial extent for the purpose of preventing, controlling, or reducing air or water pollution, and that the applicant qualifies under Section 19-2-124, it shall certify the facility.

(b) If one or more facilities constitute an operational unit, the board may certify those facilities under one certificate.

(2) (a) The board shall act on an application under Section 19-2-124 before the 120th day after filing.

(b) Failure of the board to timely act constitutes automatic acceptance of the application and the board shall furnish a certificate to the applicant on demand.

1991

19-2-126. Revocation of certification — Grounds — Procedure.

(1) (a) The board may revoke the certification issued under Section 19-2-125 of any pollution control facility if it finds that the:

(i) certification was obtained by fraud or gross misrepresentation; or

(ii) holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary to prevent, control, or reduce air or water pollution as specified in the certificate.

(b) A shutdown of the facility due to force majeure, including obsolescence, is not cause to revoke certification of any facility.

(2) (a) The board shall provide notice of the revocation by issuing a notice of agency action.

(b) The holder of the certificate may obtain judicial review of the revocation.

(c) The revocation is final and conclusive unless an appeal is taken.

(d) If the revocation is affirmed on appeal, revocation is final on the date notice of revocation was received by the holder.

(3) As soon as a revocation under this section is final, the board shall notify the State Tax Commission of the revocation.

(4) (a) If the certification of a pollution control facility is revoked, all prior tax relief provided to the holder because of the certificate is forfeited.

(b) The State Tax Commission shall collect taxes not paid by the holder because of the tax relief provided the holder to the extent permitted by the applicable statute of limitations.

1991

19-2-127. Rules for administering certification for tax relief.

In addition to the powers granted it, the board may formulate, amend, or cancel rules establishing procedures for processing and evaluating applications for certification, establishing procedures for the issuance and revocation of certificates, and all other matters

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 pertaining to the board in administering certification
 for tax relief on pollution control facilities. 1991

CHAPTER 3
 RADIATION CONTROL ACT

Part 1

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Part 3

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- Section
 19-3-301. Restrictions on high level nuclear waste placement in state.

PART 1

GENERAL PROVISIONS

- 19-3-101. Short title.
 This chapter is known as the "Radiation Control Act." 1991
- 19-3-102. Definitions.
 As used in this chapter:
 (1) "Board" means the Radiation Control Board created under Section 19-1-106.
 (2) "Executive secretary" means the executive secretary of the board.
 (3) "Facility" in Sections 19-3-201 through 19-3-205 means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities.
 (4) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.
 (5) (a) "High-level nuclear waste" means spent reactor fuel assemblies, dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and defense-related wastes.
 (b) "High-level nuclear waste" does not include medical or institutional wastes, naturally-occurring radioactive materials, or uranium mill tailings.
 (6) "Host state" means a state in which a facility is located.
 (7) (a) "Low-level waste" in Sections 19-3-201 through 19-3-205 means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release.
 (b) "Low-level waste" does not include waste containing more than ten nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.
 (8) "Mixed waste" means any material that is a radioactive waste as defined in this chapter and is also a hazardous waste as defined in Section 19-6-102.
 (9) "Radiation" means ionizing and nonionizing radiation, including gamma rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.
 (10) "Radioactive" means any solid, liquid, or gas which emits radiation spontaneously from decay of unstable nuclei. 1992