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Utah Code Annotated

CHAPTER 8

EMERGENCY MEDICAL SERVICES SYSTEM ACT

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26-8-1. Short title.

This chapter shall be known and may be cited as the "Utah Emergency Medical Services System Act."

History: C. 1953, 26-8-1, enacted by L. 1981, ch. 126, § 9.

Compiler's Notes. — Former Chapter 8 of Title 26, prescribing rules governing maternity hospitals and infant homes, was repealed by Laws 1953, ch. 42, § 10.

26-8-2. Definitions.

As used in this chapter:

(1) "Advanced life support" means an advanced level of pre-hospital and inter-hospital emergency care that includes basic life support functions including cardiopulmonary resuscitation, plus some or all of the following techniques or procedures: cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of specific medications, drugs, and solutions, use of adjunctive medical devices, trauma care, and other techniques and procedures authorized by the committee.

(2) "Advanced life support personnel" means emergency medical technicians and other persons certified by the committee who provide advanced life support.

(3) "Agency" means any department, division, board, council, committee, authority, or agency of the state, or any of its political subdivisions.

(4) "Ambulance" means any privately or publicly owned land, air, or water vehicle specifically designed, constructed or modified, and

equipped, which is intended to be used for and is maintained or operated for transportation, upon streets, highways, airways, or waterways in this state, of individuals who are sick, injured, wounded, or otherwise incapacitated or helpless.

(5) "Ambulance service" means transportation and care of patients by ambulance.

(6) "Basic life support" means pre-hospital and inter-hospital emergency care or medical instructions which include some or all of the techniques and procedures taught in a department-approved emergency medical technician-basic training course.

(7) "Basic life support personnel" means emergency medical technicians, emergency medical care first responders, emergency medical dispatchers, and other certified persons as specified by the committee who are engaged in the provision of basic life support.

(8) "Chapter" means the provisions of this chapter and all rules adopted pursuant to it.

(9) "Committee" means the state emergency medical services committee created by Section 26-1-7.

(10) "Critical care categorization guidelines" means a stratified profile of hospital critical care services related to emergency patient condition which aids a physician in selecting the most appropriate facility for critical patient referral. Guideline categories include trauma, spinal cord, burns, high risk infant, poisons, cardiac, respiratory, and psychiatric.

(11) "Emergency medical services" means services used to respond to perceived individual needs for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

(12) "Emergency medical care first responder" means an individual who has completed a department approved emergency care first responder training program and is certified by the department as qualified to render services enumerated in rules adopted under this chapter.

(13) "Emergency medical technician" means an individual who has completed a basic or advanced life support training program approved by the department who is certified by the department as qualified to render services enumerated in rules adopted under this chapter in accordance with his respective level of training.

(14) "Emergency response vehicle" means any privately or publicly owned land, air, or water vehicle which is intended to be used for and is maintained or operated for the transportation of basic or advanced life support personnel, equipment, and supplies to the scene of a medical emergency for the provision of emergency medical services.

(15) "License" means the authorization issued by the department to a person to provide emergency medical services.

(16) "Local government" means city, county, city-county, multi-county government, or other political subdivisions of the state.

(17) "Medical control" means direction and advice provided by medical personnel at a designated medical facility to pre-hospital basic or advanced life support personnel by radio, telephonic communications, written protocol, or direct verbal order.

(18) "Patient" means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condi-

tion is such that he is in imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(19) "Permit" means the authorization issued by the department in respect to an emergency medical services vehicle used or to be used to provide services.

(20) "Person" means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency or organization of any kind, public or private.

History: C. 1953, 26-8-2, enacted by L. 1981, ch. 126, § 9; 1985, ch. 181, § 1.

Amendment Notes. — The 1985 amendment inserted "or medical instructions" in Subsection (6); inserted "emergency medical dispatchers" in Subsection (7); deleted "or" before "telephonic" in Subsection (17); added "written protocol, or direct verbal order" at the end of Subsection (17); and made minor changes in phraseology and punctuation.

26-8-2.5. Receipt of funds obtained from traffic violation fine or bail — Use of funds — Report to Legislature.

(1) The department shall receive, as nonlapsing dedicated credits, $3 for each reportable traffic violation where a fine is imposed or bail is forfeited. That amount shall be transferred to the department by the Division of Finance, from funds generated by the surcharge imposed under Chapter 63, Title 63, the Crime Victims' Reparation Act. Those funds transferred to the department shall be used for improvement of statewide delivery of emergency medical services. Appropriations to the department for the purposes enumerated in this section shall be made from those dedicated credits.

(2) The department may use up to 3% of the funds transferred to it under Subsection (1) to provide staff support and for other expenses incurred in administration of those funds.

After funding staff support and administrative expenses, emergency medical services grants shall be made by the department to agencies, political subdivisions of local or state government, or nonprofit entities from the funds received as dedicated credits under Subsection (1) as follows:

(a) Fifty percent shall be available to prehospital emergency medical services provider agencies in the form of block grants to fund EMS training, testing, and certification programs and for the purchase of EMS equipment used for patient care, transportation, or communications purposes. The department shall determine the amounts of those grants by prorating available funds on a per capita basis by county. Population figures used as a basis for allocating grants shall be derived from the most recent population estimates issued by the state planning coordinator. Allocation of funds to prehospital emergency medical services provider agencies within each county shall be in proportion to the weighted number of state certified prehospital personnel in each prehospital emergency medical services provider agency that is actively involved in the provision of emergency care within the county. Weighting factors are: basic life support personnel 1; advanced life support personnel (excluding EMT-paramedics) 2; and EMT-paramedics 3. The number of certified personnel is based upon the personnel rosters of each prehospital emergency

medical services provider agency on July 1 of the grant year. The department may only disburse grant funds under this section after receipt of a claim for reimbursement from the agency, accompanied by a written description of the expenditures made.

(b) Fifty percent shall be distributed to grant applicants through contracts, based upon rules established by the state Emergency Medical Services Committee.

(3) Funds received under Subsection (1) may not be used to fund new local government emergency medical services if the new services compete with existing licensed private emergency medical services.

(4) The department shall make an annual report to the Legislature which includes the amount received during the previous fiscal year and the estimated amounts for the current fiscal year, which are the basis for legislative appropriations from the dedicated credits described in Subsection (1). The Legislature finds that these funds are for a general, statewide public purpose.

History: C. 1953, 26-8-2.5, enacted by L. 1985, ch. 200, § 1; 1986, ch. 150, § 3; 1987, ch. 136, § 1; 1988, ch. 184, § 1.

Amendment Notes. — The 1986 amendment, effective July 1, 1986, rewrote Subsection (4).

The 1987 amendment, in Subsection (4), substituted "reportable traffic violation, as defined under Section 41-2-1," for "moving traffic violations."

The 1988 amendment, effective March 15, 1988, so rewrote this section as to make a detailed comparison impracticable.

Effective Dates. — Section 2 of Laws 1985, ch. 200 provided: "This act takes effect on July 1, 1985."

26-8-3. State Emergency Medical Services Committee.

(1) The State Emergency Medical Services Committee created by Section 26-1-7 shall be composed of 13 members appointed by the governor, with the advice and consent of the Senate. The members shall include:

(a) four practicing physicians who are graduates of regularly chartered medical schools licensed to practice medicine in all its branches who have frequent involvement in the provision of emergency care;

(b) one ambulance services representative;

(c) two fire chiefs, one who is a paramedic services provider and one who is an advanced life support provider;

(d) one local public safety agency director of an agency that provides emergency medical services;

(e) one hospital administrator;

(f) one emergency care nurse;

(g) one emergency medical technician-paramedic;

(h) one emergency medical technician with basic or advanced life support certification; and

(i) one consumer.

(2) Of the initial members of the committee, three shall be appointed to terms of four years, three to terms of three years, three to terms of two years, and two to terms of one year. Thereafter, members, except those appointed to complete the term of a former member, shall be appointed for a term of four years with terms beginning July 1. Vacancies shall be filled through appointment by the governor, with the advice and consent of the Senate, for the unexpired term of the person whose office was vacated.

(3) The committee shall organize annually and select one of its members as chairman and one member as vice-chairman. The chairman or vice-chairman

shall be a physician. The committee may organize standing or ad hoc subcommittees, but members may not serve on standing committees. The chairman shall convene a minimum of four meetings per year. Special meetings may be called by the chairman and shall be called by the chairman upon receipt of a written request signed by five or more members of the committee. Seven members of the committee constitute a quorum for the transaction of business and the action of a majority of the members present shall be the action of the committee.

(4) Members shall serve without compensation but shall receive a per diem allowance approved by the governor, and shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

(5) Administrative services for the committee shall be provided by the department.

History: C. 1953, 26-8-3, enacted by L. 1981, ch. 126, § 9; 1985, ch. 181, § 2.

Amendment Notes. — The 1985 amendment increased the number of committee members from 11 to 13 in Subsection (1); rewrote Subsection (1)(c); added Subsection (1)(d); redesignated former Subsections (1)(d) through (1)(h) as Subsections (1)(e) through (1)(i); deleted "giving consideration to recommendations of the committee" after "governor" in Subsection (2); added "but members may not serve on standing committees" at the end of the third sentence of Subsection (3); substituted "five" for "three" in the fifth sentence and "Seven" for "Six" in the sixth sentence of Subsection (3); and made minor changes in phraseology.

26-8-4. Powers and responsibilities of committee.

The committee shall:

(1) evaluate the availability and quality of emergency medical services in the state;

(2) serve as a focal point for discussion of emergency medical services issues;

(3) hear complaints or grievances concerning emergency medical services that are brought to its attention;

(4) hear and make final determinations regarding appeals;

(5) approve or disapprove the state emergency medical services plan prepared by the department pursuant to Subsection 26-8-5(8) and make recommendations concerning the emergency medical services plan prepared pursuant to P.L. 93-641, as amended;

(6) recommend emergency medical services legislation to the governor and the legislature;

(7) approve critical care categorization guidelines and treatment protocols developed by the department pursuant to Subsections 26-8-5(9) and (10);

(8) categorize all hospital critical care facilities and designate trauma, burn, spinal cord, and poison care facilities in the state consistent with guidelines approved under Subsection (7);

(9) authorize and designate facilities to provide advanced life support medical control;

(10) review and comment on all state agency proposals and applications that apply for emergency medical services funding;

(11) specify the information that must be collected for the emergency medical services data system established pursuant to Subsection 26-8-5(5);

(12) establish rules for the licensure of persons who provide emergency medical services in the state;

(13) establish rules for issuing permits to operate ambulances or emergency response vehicles in the state;

(14) establish rules for facilities authorized under Subsection (9) to provide advanced life support medical control;

(15) establish rules for the training, certification, and recertification of basic and advanced life support personnel;

(16) establish operational standards for basic and advanced life support personnel;

(17) establish by rule a schedule of fees for licenses and permits issued under this chapter that shall be paid into the state treasury in accordance with Section 63-38-9;

(18) establish by rule maximum rates that may be charged by licensed persons for providing emergency medical services in the state;

(19) establish standards governing inspections conducted pursuant to this chapter by the department;

(20) establish by rule a schedule of fees for use of department-owned training equipment that shall be used for the maintenance and replacement of that equipment;

(21) establish by rule procedures for patient management in medical emergencies that do not limit the authority of public safety agencies to manage the scene of a medical emergency; and

(22) establish by rule standards for the amounts and types of insurance coverage required for licensed providers of emergency medical services.

History: C. 1953, 26-8-4, enacted by L. 1981, ch. 126, § 9; 1987, ch. 161, § 49.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, in Subsection (4), deleted from the end "in accordance with Sections 26-8-10 through 26-8-12"; in Subsection (6), inserted at the end "and the Legislature"; and made minor changes in phraseology and punctuation throughout the section.

Federal law. — P.L. 93-641, referred to in Subsection (5), is the National Health Planning and Resources Development Act of 1974, which appears as 42 U.S.C. § 300k et seq. but the relevant provisions of which have been repealed.

26-8-5. Powers and responsibilities of department.

The department shall have the following powers and responsibilities:

(1) coordinate emergency medical services within the state;

(2) administer and enforce rules established by the committee;

(3) license providers of emergency medical services pursuant to rules of the committee;

(4) issue ambulance and emergency response vehicle permits pursuant to rules of the committee;

(5) establish an emergency medical services data system which shall provide for the collection of data, as defined by the committee, relating to the treatment and care of patients who use or have used the emergency medical services system;

(6) develop, conduct, or authorize training programs for emergency medical services personnel;

(7) test and certify basic and advanced life support personnel pursuant to rules of the committee;

(8) prepare a state plan for the coordinated delivery of emergency medical services which shall be updated at least every three years which plan shall reflect recommendations of local government emergency medical services councils;

(9) develop hospital critical care categorization guidelines in consultation with the state medical association and state hospital association which guidelines shall not require transfer of any patient contrary to the wishes of the patient, his next of kin, or his attending physician;

(10) develop treatment protocols for the critical patient categories described in Section 26-8-2;

(11) consistent with the rules of the Federal Communications Commission, plan and coordinate statewide development and operation of communications systems which join emergency medical personnel, facilities and equipment to provide interagency coordination and medical control;

(12) develop programs to inform the public of the availability and use of the emergency medical services system;

(13) develop and disseminate emergency medical training programs for the public, which emphasize the treatment of injuries or illnesses threatening to life or limb, including cardiopulmonary resuscitation;

(14) develop and implement, in cooperation with state and local agencies empowered to oversee disaster response activities, plans to ensure that emergency medical services will be provided at the time of a disaster or state of emergency within the state; and

(15) make investigations and inspections necessary for the enforcement of this chapter. Inspections may be made of any person providing emergency medical services and may include personnel, vehicles, facilities, communications, equipment, methods, procedures, materials, and all other matters and things used in the provision of such services. Inspections may be made on a regular or special basis at such times and places as the department shall determine.

History: C. 1953, 26-8-5, enacted by L. 1981, ch. 126, § 9; 1988, ch. 169, § 15.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "Section 26-8-2" for "Subsection 26-8-2(9)" in Subsection (10).

26-8-6. Delegation of responsibilities to local departments — Collection of fees — Entry into reciprocity agreements — Authority of department.

The department may:

(1) delegate responsibilities to local health departments or other persons designated by the department for administering, planning, coordinating, inspecting, and evaluating local emergency medical services systems;

(2) collect fees pursuant to Subsections 26-8-4(17) and (20); and

(3) enter into reciprocity agreements with emergency medical services agencies in adjoining states that will assure the expeditious delivery of emergency medical services, including movement of patients, between states.

History: C. 1953, 26-8-6, enacted by L. 1981, ch. 126, § 9.

26-8-7. License or permit required for operation of emergency medical services — Hearing and ruling on new licenses — Licensees not common or contract carriers — Information required of licensees — Employees to be licensed.

(1) No person shall furnish, operate, conduct, maintain, advertise, or otherwise be engaged in or profess to be engaged in the provision of emergency medical services unless the person is licensed, designated, certified, or possesses the appropriate permit issued by the department pursuant to this chapter.

(2) New licenses may be issued only after public hearing and ruling by the committee that the public convenience and necessity requires the service. The committee shall cause notice of hearing to be served at least 40 days before the hearing upon every person who then holds a license to provide or who has applied for a license to provide emergency medical services in the territory proposed to be served by the applicant and upon other interested parties as determined by the committee. Any interested party may offer testimony for or against the granting of such certificate. If the committee finds that the public convenience and necessity requires the proposed service or any part thereof, it may issue the license as requested or issue it for the partial exercise of the privilege sought; otherwise it shall deny the application. The committee shall adopt hearing procedures as required by the Utah Administrative Rulemaking Act.

(3) Persons licensed under this chapter are neither common carriers nor contract carriers within the meaning of Chapter 6 of Title 54 and are not subject to the provisions of that chapter.

(4) Persons providing emergency medical services shall provide to the department information for the emergency medical services information system established pursuant to Subsection 26-8-5(5).

(5) No employer shall employ or permit any employee to perform any services for which a license or certificate is required by this chapter unless the person performing the services possesses the required license or certificate.

(6) Nothing contained in this chapter shall be construed to give the committee or the department acting under this chapter power to license, certify, issue permits for, or otherwise regulate activities, persons, facilities, or other matters, which activities, persons, facilities, or other matters are regulated pursuant to Chapter 22 of this title.

History: C. 1953, 26-8-7, enacted by L. 1981, ch. 126, § 9; 1985, ch. 181, § 3.

Amendment Notes. — The 1985 amendment substituted "40 days" for "five days" in Subsection (2) and made minor changes in phraseology.

Compiler's Notes. — Chapter 22 of this title, the Pro-Competitive Certificate of Need Act, referred to in Subsection (6), was repealed in 1986.

Cross-References. — Utah Administrative Rulemaking Act, § 63-46a-1 et seq.

26-8-8. Discrimination in provision of services prohibited — Religious objections to services.

(1) Emergency medical services shall be provided to all patients in need of such services to sustain life or prevent loss of life without regard to race, sex, color, creed, or prior inquiry as to ability to pay.

(2) Nothing in this chapter shall be construed to authorize any medical treatment or transportation of a person who objects thereto on religious grounds.

History: C. 1953, 26-8-8, enacted by L. 1981, ch. 126, § 9.

26-8-9. Out-of-state services — Reciprocity agreements.

No emergency medical services vehicle or personnel from another state may be used to pick up and transport patients within this state without first complying with this chapter except where a reciprocity agreement has been entered into between the department and an authorized representative of the other state, in accordance with Subsection 26-8-6(3). Such agreement shall state the personnel, services, and geographical areas involved.

History: C. 1953, 26-8-9, enacted by L. 1981, ch. 126, § 9.

26-8-10. Exemptions from application of chapter.

This chapter shall not apply to:

(1) emergency medical services vehicles or personnel from another state in time of disaster or that operate from a location outside this state and occasionally transport patients into this state for needed medical care;

(2) the occasional use of a privately owned, not for hire, ground, air, or water vehicle not ordinarily used or intended to be used in transporting patients;

(3) ambulances owned and operated by a private sole proprietor, partnership, or corporation for the sole benefit of its employees; and

(4) emergency medical services operated by an agency of the United States.

History: C. 1953, 26-8-10, enacted by L. 1981, ch. 126, § 9.

26-8-11. Persons and activities exempt from civil liability.

(1) No licensed physician or licensed registered nurse who, in good faith, gives oral or written instructions to certified basic or advanced life support personnel for the provision of emergency care authorized by this chapter shall be liable for any civil damages as a result of issuing the instructions, unless found guilty of gross negligence or willful misconduct.

(2) No basic or advanced life support personnel who, during training or after certification, or licensed physician or registered nurse who in good faith,

provides emergency medical instructions or renders emergency medical care authorized by this chapter shall be liable for civil damages as a result of any acts or omissions, unless found guilty of gross negligence or willful misconduct.

(3) No certified basic or advanced life support personnel shall be subject to civil liability for failure to obtain consent in rendering emergency medical care authorized by this chapter to any individual regardless of age who is unable to give his consent where there is no other person present legally authorized to consent to emergency treatment, provided that such personnel act in good faith.

(4) No principal, agent, contractor, employee, or representative of an agency, organization, institution, corporation, or entity of state or local government that sponsors, authorizes, supports, finances, or supervises any functions of emergency medical services personnel certified and authorized pursuant to this chapter, including advanced life support personnel, shall be liable for any civil damages for any act or omission in connection with such sponsorship, authorization, support, finance, or supervision of such emergency medical services personnel, where the act or omission occurs in connection with their training, or occurs outside a hospital where the life of a patient is in immediate danger, unless the act or omission is inconsistent with the training of the emergency medical services personnel, and unless the act or omission is the result of gross negligence or willful misconduct.

(5) No physician who in good faith arranges for, requests, recommends, or initiates the transfer of a patient from a hospital to a critical medical care facility in another hospital, shall be liable for any civil damages as a result of such transfer where sound medical judgment indicates that the patient's medical condition is beyond the care capability of the transferring hospital, or the medical community in which that hospital is located, and where the physician has secured an agreement from the transferee facility to accept and render necessary treatment to the patient.

History: C. 1953, 26-8-11, enacted by L. 1981, ch. 126, § 9; 1985, ch. 181, § 4.

Amendment Notes. — The 1985 amendment inserted "provides emergency medical instructions or" in Subsection (2).

Effective Dates. — Section 5 of Laws 1985, ch. 181 provided: "This act takes effect on July 1, 1985."

Cross-References. — Good Samaritan statute, § 58-12-23.

COLLATERAL REFERENCES

A.L.R. — Liability for injury or death allegedly caused by activities of hospital "rescue team," 64 A.L.R.4th 1200.

26-8-12. Notice of violations.

(1) Whenever the department has reason to believe that a person who has a license, permit, or certificate issued under this chapter is in violation of this chapter, the department may cause written notice to be served upon the alleged violator. The notice shall specify the provisions of this chapter which have been violated and the facts which constitute the violation. The notice may include an order that necessary corrective action be taken and may fix a reasonable time for the violator to comply with the order.

(2) If any person requests a hearing, the department may conduct the hearings or may designate a hearings officer to act in its behalf.

(3) If requested, the committee shall review the department's orders or any orders issued by the executive director after adjudicative proceedings.

History: C. 1953, 26-8-12, enacted by L. 1981, ch. 126, § 9; 1987, ch. 161, § 50.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, rewrote Subsections (2) and (3) to such an extent that a detailed analysis is impracticable and deleted former Subsection (4) relating to judicial review.

26-8-13. Denial, suspension or revocation of license — Issuance of new license — Period of suspension.

(1) If a violation is found under Section 26-8-12, the department may deny, suspend, or revoke a license, certificate, or permit if it finds that there has been a failure to comply with the provisions of this chapter; or, it finds evidence of aiding, abetting, or permitting the commission of any illegal act, or it finds conduct adverse to the public health, morals, welfare, or safety of the people of the state.

(2) If a license, certificate, or permit is revoked, a new license, certificate, or permit may be issued after satisfactory evidence is submitted that the conditions upon which revocation was based have been corrected, after inspection and investigation have been made, and after compliance with all provisions of this chapter.

(3) Suspension of a license, certificate, or permit may be for a definite or indefinite period, and the department may restore a suspended license, certificate, or permit upon a determination that the conditions upon which suspension was based have been corrected and that the interests of the public will not be jeopardized by restoration of the license, certificate, or permit.

History: C. 1953, 26-8-13, enacted by L. 1981, ch. 126, § 9.

26-8-14. Injunction or other process to restrain or prevent operations in violation of chapter.

Notwithstanding the existence of any other remedy, the department may, upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an emergency medical services provider which is in violation of this chapter.

History: C. 1953, 26-8-14, enacted by L. 1981, ch. 126, § 9.

26-8-15. Violation of chapter a misdemeanor — Calling ambulance when not needed a misdemeanor.

(1) Any person who violates this chapter is guilty of a class A misdemeanor.

(2) Any person who willfully summons an ambulance or emergency response vehicle or reports that one is needed when such person knows that the ambulance or emergency response vehicle is not needed is guilty of a class A misdemeanor.

History: C. 1953, 26-8-15, enacted by L. 1981, ch. 126, § 9.

Cross-References. — Penalties for misdemeanors, §§ 76-3-204, 76-3-301.

CHAPTER 9
RURAL HEALTH SERVICES

Section
26-9-1. Assistance to rural communities by department.
Section
26-9-2. Responsibility of department for coordinating rural health programs.

26-9-1. Assistance to rural communities by department.

The department shall assist rural communities in dealing with primary health care needs relating to recruiting health professionals, planning, and technical assistance. The department shall assist the communities, at their request, at any stage of development of new or expanded primary health care services and shall work with them to improve primary health care by providing information to increase the effectiveness of their systems, to decrease duplication and fragmentation of services, and to maximize community use of private gifts, and local, state, and federal grants and contracts.

History: C. 1953, 26-9-1, enacted by L. 1981, ch. 126, § 10.

Repeals and Reenactments. — Laws 1981, ch. 126, § 1 repealed former §§ 26-9-1 to 26-9-13 (L. 1945, ch. 59, §§ 1 to 6, 10, 11; C. 1943, Supp., 35-6a-1 to 35-6a-6, 35-6a-10, 35-6a-11; L. 1947, ch. 151, § 1; 1951 (1st S.S.), ch. 6, §§ 1, 2), relating to the Children's Crippling Diseases Hospital. Present §§ 26-9-1 and 26-9-2 were enacted by § 10 of the act.

26-9-2. Responsibility of department for coordinating rural health programs.

The department shall be the lead agency responsible for coordinating rural health programs and shall insure that resources available for rural health are efficiently and effectively used.

History: C. 1953, 26-9-2, enacted by L. 1981, ch. 126, § 10.

CHAPTER 10
FAMILY HEALTH SERVICES

Sunset Act. — See Section 63-55-7 for the termination date of the Division of Family Health Services.

Section
26-10-1. Definitions.
26-10-2. Maternal and child health and crippled children's services provided by department.
26-10-3. Director of family health services programs.
26-10-4. State plan for maternal and child health services.
26-10-5. Plan for school health services.
26-10-6. Phenylketonuria (PKU) and other metabolic disease tests.
26-10-7. Dental health programs — Appointment of director.

26-10-1. Definitions.

As used in this chapter:

(1) "Maternal and child health services" means:

(a) the provision of educational, preventative, diagnostic, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward reducing infant mortality and improving the health of mothers and children provided, however, that nothing in this section shall be construed to allow any agency of the state to interfere with the rights of the parent of an unmarried minor in decisions about the providing of health information or services;

(b) the development, strengthening, and improvement of standards and techniques relating to such services and care;

(c) the training of personnel engaged in the provision, development, strengthening, or improvement of such services and care; and

(d) necessary administrative services connected with paragraphs (a), (b), and (c) of this subsection.

(2) "Crippled children's services" means:

(a) the early location of crippled children, provided that any program of prenatal diagnosis for the purpose of detecting the possible disease or handicaps of an unborn child will not be used for screening, but rather will be utilized only when there are medical or genetic indications which warrant diagnosis;

(b) the provision for such children of preventitive, diagnosis, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward the diagnosis of the condition of such children or toward the restoration of such children to maximum physical and mental health;

(c) the development, strengthening, and improvement of standards and techniques relating to such services and care;

(d) the training of personnel engaged in the provision, development, strengthening, or improvement of such services and care; and

(e) necessary administrative services connected with paragraphs (a), (b), and (c) of this subsection.

History: C. 1953, 26-10-1, enacted by L. 1981, ch. 126, § 11.

Compiler's Notes. — Former Chapter 10 of Title 26, providing for licensing and regulation of hospitals, was repealed by Laws 1953, ch. 42, § 10. For present provisions regarding licensure and inspection of health facilities, see Chapter 21 of this title.

26-10-2. Maternal and child health and crippled children's services provided by department.

The department shall provide for maternal and child health and crippled children's services to individuals who need such services and cannot reasonably obtain them from other sources.

History: C. 1953, 26-10-2, enacted by L. 1981, ch. 126, § 11.

26-10-3. Director of family health services programs.

The executive director may appoint a director of family health services programs who shall be a board certified pediatrician or obstetrician with at least two years experience in public health programs.

History: C. 1953, 26-10-3, enacted by L. 1981, ch. 126, § 11.

26-10-4. State plan for maternal and child health services.

The department shall prepare and submit a state plan for maternal and child health services as required by Title II of the Public Health Services Act. The plan shall be the official state plan for the state and shall be used as the basis for administration of Title V programs within the state.

History: C. 1953, 26-10-4, enacted by L. 1981, ch. 126, § 11.

Public Health Services Act. — See 42 U.S.C. § 201 et seq.

26-10-5. Plan for school health services.

The department shall establish a plan for school health services for pupils in elementary and secondary schools. The department shall cooperate with the state office of education and local health departments in developing such plan and shall coordinate activities between these agencies. The plan may provide for the delivery of health services by and through intermediate and local school districts and local health departments.

History: C. 1953, 26-10-5, enacted by L. 1981, ch. 126, § 11.

26-10-6. Phenylketonuria (PKU) and other metabolic disease tests.

The department shall establish rules requiring each newborn infant to be tested for the presence of phenylketonuria (PKU) and other metabolic diseases which may result in mental retardation or brain damage and for which a preventive measure or treatment is available and for which a laboratory

diagnostic test method has been found reliable. The department may charge a fee for such tests, sufficient to cover costs for laboratory analysis and follow-up. Such fees shall be handled in accordance with Section 26-1-6. The provisions of this section shall not apply to any infant whose parents object thereto on the grounds that they are members of a specified, well recognized religious organization whose teachings are contrary to such tests.

History: C. 1953, 26-10-6, enacted by L. 1981, ch. 126, § 11.

26-10-7. Dental health programs — Appointment of director.

The department shall establish and promote programs to protect and improve the dental health of the public. The executive director shall appoint a director of the dental health program who shall be a dentist licensed in the state with at least one year of training in an accredited school of public health or not less than two years of experience in public health dentistry.

History: C. 1953, 26-10-7, enacted by L. 1981, ch. 126, § 11.

CHAPTER 11
WATER POLLUTION CONTROL ACT

Section	
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26-11-1. Short title.

This chapter shall be known as and may be cited as the "Utah Water Pollution Control Act."

History: C. 1953, 26-11-1, enacted by L. 1981, ch. 126, § 12.

Compiler's Notes. — Former Chapter 11 of Title 26, relating to hospital surveys and construction, was repealed by Laws 1953, ch. 42, § 10.

26-11-2. Definitions.

As used in this chapter:

(1) "Committee" means the water pollution control committee.

(2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(3) "Director" means the chief environmental health officer within the state appointed by the executive director.

(4) "Discharge" means the addition of any pollutant to any waters of the state.

(5) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

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

(7) "Executive secretary" means the executive secretary of the committee.

(8) "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government.

(9) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any 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. This term does not include return flows from irrigated agriculture.

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

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

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

(13) "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.

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

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

(16) "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.

(17) "Waters of the state" means all 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 are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be "waters of the state."

History: C. 1953, 26-11-2, enacted by L. 1981, ch. 126, § 12.

COLLATERAL REFERENCES

A.L.R. — Validity and construction of anti-water pollution statutes and ordinances, 32 A.L.R.3d 215.

26-11-3. Administrative functions performed by department — Additional services and assistance.

The department shall perform the administrative functions of this chapter, including the acceptance and administration of grants from the federal government and from other sources, public or private, to carry out the functions of this chapter. Upon the request of the committee or the executive secretary, the department may provide professional, technical, and clerical staff and field and laboratory services. The extent of such services and assistance shall be limited by the funds available to the department for water pollution matters. Nothing in this chapter shall impair the responsibilities of the department and its executive director.

History: C. 1953, 26-11-3, enacted by L. 1981, ch. 126, § 12.

26-11-4. Water Pollution Control Committee — Assumption of functions of prior committee.

The Water Pollution Control Committee, created under Section 26-1-7, shall assume all of the functions, powers, duties, rights, and responsibilities of the Committee on Water Pollution created by Chapter 174, Laws of Utah 1967.

History: C. 1953, 26-11-4, enacted by L. 1981, ch. 126, § 12.

Compiler's Notes. — The Committee on Water Pollution was created by Laws 1967, ch. 174, § 28, which appeared as § 73-14-2.5 before its repeal in 1981.

26-11-5. Members of committee — Appointment — Terms — Organization — Meetings — Per diem.

(1) Committee members currently serving on the Committee on Water Pollution, created under Chapter 174, Laws of Utah 1967, shall serve on the committee throughout the terms for which they were appointed. The committee is comprised of the director of environmental health, and ten other members appointed by the governor, with the advice and consent of the Senate. No more than six of the appointed members may be from the same political party. The appointed members, insofar as practicable, shall include the following: one member representing the mineral industries; one member representing the food processing industries; one member representing other manufacturing industries; two members who are officials of municipal government or their representatives involved in the management or operation of wastewater treatment facilities; one member representing agricultural and livestock interests; one member representing fish, wildlife and recreation interests; one member representing improvement and service districts; and two members at large, selected with due consideration of the areas of the state affected by water pollution and not representing other interests named in this subsection. Vacancies shall be filled by the appointment of another person by the governor, with the advice and consent of the Senate, for the unexpired term of the person whose office was vacated. Members shall be appointed for terms of four years and are eligible for reappointment. Members shall hold office until the expiration of their terms and until their successors are appointed, not to exceed 90 days after the formal expiration of their terms.

(2) The committee shall organize and annually select one of its members as chairman and one of its members as vice-chairman, shall hold at least four regular meetings each calendar year and shall keep minutes of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request for a special meeting signed by three or more members of the committee. Each member of the committee and the executive secretary shall be notified in writing of the time and place of each meeting. Five members of the committee shall constitute a quorum for the transaction of business, and the action of a majority of members present shall be the action of the committee.

(3) Committee members serve without compensation, but may receive a per diem allowance as approved by the governor, and are reimbursed for actual and necessary expenses incurred in the performance of their official duties.

History: C. 1953, 26-11-5, enacted by L. 1981, ch. 126, § 12; L. 1985, ch. 166, § 1.

Amendment Notes. — The 1985 amendment substituted "ten" for "eight" and "six" for "five" in the second and third sentences, respectively, of Subsection (1); substituted the requirement that two committee members represent municipal government for the requirement that one member represent municipalities in the fourth sentence of Subsection (1); inserted "one member representing improvement and service districts" in the fourth sentence of Subsection (1); and made minor changes in phraseology.

Compiler's Notes. — The Committee on Water Pollution, referred to in the first sentence in Subsection (1), was created by Laws 1967, ch. 174, § 28, which appeared as § 73-14-2.5 before its repeal in 1981.

26-11-5.5. Limitation on effluent limitation standards for BOD, SS, coliforms, 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, the committee shall not establish, under Section 26-11-6, effluent limitation standards for Biochemical Oxygen Demand (BOD), Total Suspended Solids (SS), coliforms, and pH for domestic or municipal sewage which 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 shall 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 shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

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

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

History: C. 1953, 26-11-5.5, enacted by L. 1985, ch. 248, § 1.

Effective Dates. — Section 2 of Laws 1985, ch. 248, provided: "This act takes effect July 1, 1985."

Federal law. — The Federal Water Pollution Control Act is codified as 33 U.S.C. § 1251.

26-11-6. Powers and duties of committee.

The committee shall have and may exercise the following powers and duties, provided that pollution which results in hazards to the public health shall be given priority:

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

(2) 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;

(3) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes thereof as it may deem advisable and necessary for the discharge of its duties;

(4) collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof;

(5) promulgate, adopt, modify, or repeal standards of quality of the waters of the state and classify such waters according to their reasonable uses in the interest of the public under such conditions as the committee may prescribe for the prevention, control, and abatement of pollution;

(6) promulgate, adopt, modify, repeal, and enforce rules, including effluent limitations and standards, implementing or effectuating the powers and duties of the committee;

(7) issue, modify, or revoke orders (a) prohibiting or abating discharges; (b) requiring the construction of new treatment works or any parts thereof, or the modification, extension, or alteration of existing treatment works or any parts thereof, or the adoption of other remedial measures to prevent, control, or abate pollution; and (c) setting standards of water quality, classifying waters or evidencing any other determination by the committee under this chapter;

(8) review plans, specifications, or other data relative to disposal systems or any part thereof, and issue construction permits for the installation or modification of treatment works or any parts of them;

(9) after public notice and opportunity for a public hearing, issue, continue in effect, revoke, modify or deny, discharge permits, under such reasonable conditions as it may prescribe, to prevent or control the discharge of pollutants, including effluent limitations, for the discharge of wastes into the waters of the state;

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

(11) exercise all incidental powers necessary to carry out the purposes of this chapter, including delegation to the department of its duties when administrative efficiency can better be achieved thereby;

(12) meet the requirements of federal law related and pertaining to water pollution;

(13) establish and conduct a continuing planning process for control of water pollution including, but not limited to, the specification and implementation of maximum daily loads of pollutants; and

(14) adopt rules governing underground injections and require permits therefor, for the purpose of protecting drinking water sources, except in respect of the wells, pits, and ponds covered by Subsection 40-6-5(2). Underground injection is deemed to endanger drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system as defined in Subsection 26-12-2(7), of any contaminant and if the presence of such contaminant may result in such systems not complying with any national primary drinking water standards or may otherwise adversely affect the health of persons. Rules adopted hereunder may include, but not be limited to, inspection, monitoring, recordkeeping, and reporting requirements.

History: C. 1953, 26-11-6, enacted by L. 1981, ch. 126, § 12; 1982, ch. 47, § 1.

26-11-6.5. Rulemaking authority and procedure.

(1) Except as provided in Subsection (2), no rule which the committee adopts for the purpose of the state administering a program under the federal Clean Water Act or the federal Safe Drinking Water Act may be more stringent than the corresponding federal regulations which address the same circumstances. In adopting such rules, the committee may incorporate by reference corresponding federal regulations.

(2) The committee may adopt 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 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 committee's conclusion.

History: C. 1953, § 26-11-6.5, enacted by L. 1987, ch. 12, § 2.

Federal laws. — For federal Clean Water Act, referred to in Subsection (1), see 33 U.S.C. § 1251 et seq. The Clean Water Act is also known as the Federal Water Pollution Control Act.

For federal Safe Drinking Water Act, referred to in Subsection (1), see 21 U.S.C. § 349 and 42 U.S.C. §§ 300f to 300j-10.

26-11-7. Executive secretary — Appointment — Duties.

The executive secretary shall be appointed by the director with the approval of the committee, shall serve under the administrative direction of the director, and shall have the following duties:

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

(2) 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;

(3) employ such full-time employees as may be necessary to carry out the provisions of this chapter;

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

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

(6) collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof;

(7) as authorized by the committee and subject to the provisions of this chapter, enforce rules adopted or revised by the committee through the issuance of orders which may be subsequently amended or revoked by the committee. Such orders may include, but not be limited to, (a) prohibiting

or abating discharges of wastes into the waters of the state; (b) requiring the construction of new control facilities or any parts thereof or the modification, extension, or alteration of existing control facilities or any parts thereof, or the adoption of other remedial measures to prevent, control, or abate water pollution;

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

(9) as authorized by the committee and subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including, but not limited to, certification to any state or federal authorities for tax purposes only if the fact of construction, installation, or acquisition of any facility, land, or building, machinery or equipment, or any part of the same conforms with this chapter;

(10) cooperate, where the committee deems appropriate, with any person in studies and research regarding water pollution and its control, abatement and prevention; and

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

History: C. 1953, 26-11-7, enacted by L. 1981, ch. 126, § 12.

26-11-8. Discharge of pollutants unlawful — Discharge permit required.

(1) Except as provided in this chapter or rules adopted under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any wastes in a location where there is probable cause to believe they will cause pollution. Any such action is a public nuisance.

(2) It is unlawful for any person, without first securing a permit from the executive secretary as authorized by the committee, to:

(a) make any discharge not authorized under an existing valid discharge permit;

(b) construct, install, modify, or operate any treatment works or part thereof or any extension or addition thereto, or construct, install, or operate any establishment or extension or modification of or addition to it, the operation of which would probably result in a discharge.

History: C. 1953, 26-11-8, enacted by L. 1981, ch. 126, § 12.

NOTES TO DECISIONS

Liability.

Defendant could be held liable on either the theory of strict liability or under the doctrine of nuisance per se for the pollution of plaintiff's culinary water wells caused by the percolation of defendant's toxic formation waters, which were stored on defendant's land, into the subterranean water system that fed plaintiff's wells since the storage of the toxic formation water in an area adjacent to plaintiff's wells constituted an abnormally dangerous and inappropriate use of the land in light of its proximity to the plaintiff's property and was unduly hazardous to the plaintiff's use of his well water, and the acts of the defendant were in violation of § 76-10-801 and former § 73-14-5, which was in effect at the time. Branch v. Western Petroleum, Inc., 657 P.2d 267 (Utah 1982).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law — Judicial Decisions — Torts, 1987 Utah L. Rev. 244.

Brigham Young Law Review. — Causation in Acid Rain Litigation: Facilitating Proof with Joint Liability Theories, 1983 B.Y.U. L. Rev. 657.

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 134, 135.

C.J.S. — 93 C.J.S. Waters § 50.

A.L.R. — Validity and construction of anti-water pollution statutes and ordinances, 32 A.L.R.3d 215.

26-11-9. Discharge permits — Requirements and procedure for issuance.

(1) The committee may prescribe conditions for and require the submission of plans, specifications, and other information to the executive secretary in connection with the issuance of permits.

(2) Each discharge permit shall have a fixed term not exceeding five years. Upon expiration of a discharge permit, a new permit may be issued by the executive secretary as authorized by the committee after notice and an opportunity for public hearing and upon condition that the discharge meets or will meet all applicable requirements of this chapter, including the conditions of any permit granted by the committee.

(3) The committee may require notice to the executive secretary of the introduction of pollutants into publicly owned treatment works and indentification to the executive secretary of the character and volume of any such pollutant of any significant source subject to pretreatment standards under Section 307(b) of the federal Clean Water Act. The executive secretary shall provide in the permit for compliance with such pretreatment standards.

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

(5) The committee 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 interfere with, pass through or otherwise are incompatible with the treatment works.

History: C. 1953, 26-11-9, enacted by L. 1981, ch. 126, § 12.

Federal law. — Section 307(b) of the federal Clean Water Act, referred to in Subsection (3), appears as 33 U.S.C. § 1317(2).

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 134, 135.
C.J.S. — 93 C.J.S. Waters § 50.

26-11-10. Grounds for revocation, modification, or suspension of discharge permit.

Any permit issued under this chapter may be revoked, modified, or suspended in whole or in part during its term or after a hearing requested by the permit holder, for cause, including, but not limited to:

(1) violation of any condition of the permit;

(2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(3) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge. For purposes of this subsection only, "condition" shall not include statutory or regulatory effluent limitations enacted or adopted during the permit term, other than for toxic pollutants.

History: C. 1953, 26-11-10, enacted by L. 1981, ch. 126, § 12.

26-11-11. Designation of areas with quality control problems by governor — Classification of waters — Adoption of standards of quality.

(1) The governor may identify and designate by boundary, or make a determination not to designate, areas within the state which, as a result of urban-industrial concentration or other factors, have substantial water quality control problems, and designate planning agencies and waste treatment management agencies for these areas.

(2) The committee may group the waters of the state into classes according to their present most reasonable uses, and after public hearing, upgrade and reclassify from time to time the waters of the state to the extent that it is practical and in the public interest.

(3) The committee may establish standards of quality for each classification consistent with most reasonable present and future uses of such waters, and such standards may be modified or changed from time to time. Prior to classifying waters, setting quality standards or modifying or repealing them the committee shall conduct public hearings in connection therewith. Notice of public hearing for the consideration, adoption, or amendment of the classifications of waters and standards of purity and quality thereof shall specify the waters concerning which a classification is sought to be made for which standards are sought to be adopted and the time, date, and place of the hearing. The notice shall be published at least twice in a newspaper of general circulation in the area affected and shall be mailed at least 30 days before the public hearing to the chief executive of each political subdivision of the area affected and to such other person as the committee has reason to believe will be affected by such classification and the setting of such standards.

(4) The adoption of standards of quality for the waters of the state and classification of such waters or any modification or change thereof shall be effectuated by an order of the committee which shall be published in a newspaper of general circulation in the area affected. In classifying waters and setting standards of water quality, adopting rules, or making any modification or change thereof, the committee shall allow and announce a reasonable time, not exceeding statutory deadlines contained in the federal Clean Water Act, for persons discharging wastes into the waters of the state to comply with such classification or standards and may, after public hearing if requested by the permittee, set and revise schedules of compliance and include these schedules within the terms and conditions of permits for the discharge of pollutants.

(5) Any discharge in accord with such classification or standards, as authorized by a permit, shall not be deemed to be pollution for the purpose of this chapter.

History: C. 1953, 26-11-11, enacted by L. 1981, ch. 126, § 12.

Federal law. — The federal Clean Water Act, cited in Subsection (4), which is also known as the Federal Water Pollution Control Act, is codified as 33 U.S.C. § 1251.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 149-151.

26-11-12. Notice of violations.

(1) (a) Whenever the committee determines there are reasonable grounds to believe that there has been a violation of this chapter or any order of the committee, it may give written notice to the alleged violator specifying the provisions that have been violated and the facts that constitute the violation.

(b) The notice shall require that the matters complained of be corrected. The notice may order the alleged violator to appear before the committee at a time and place specified in the notice and answer the charges.

(2) The committee shall conduct a hearing according to the procedures and requirements of Chapter 46b, Title 63, the Administrative Procedures Act, if one is requested by the alleged violator.

History: C. 1953, 26-11-12, enacted by L. 1981, ch. 126, § 12; 1987, ch. 161, § 51; 1988, ch. 72, § 1.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, rewrote the provisions of this section to the extent that a detailed analysis is impracticable.

The 1988 amendment, effective April 25, 1988, subdivided Subsection (1); rewrote Subsection (2), which had read, "The committee shall afford an opportunity for a hearing if one is requested by the alleged violator"; and made minor stylistic changes.

Cross-References. — Summons, Rules of Civil Procedure, Rule 4.

26-11-13. Hearings conducted by committee — Hearing on denial or revocation of permit conducted by executive director.

(1) (a) The hearings authorized by Section 26-11-12, except hearings for a person who is denied a permit or whose permit has been revoked, may be conducted by the committee at a regular or special meeting, or by an examining officer designated by the committee.

(b) All decisions shall be rendered by a majority of the committee.

(2) (a) A hearing for a person who has been denied a permit, or who has had a permit revoked, shall be conducted before the executive director or his designee.

(b) The decision of the executive director is final and binding on all parties as a final determination of the committee unless an appeal is taken.

(3) All hearings shall be conducted according to the procedures and requirements of Chapter 46b, Title 63, the Administrative Procedures Act.

History: C. 1953, 26-11-13, enacted by L. 1981, ch. 126, § 12; 1987, ch. 12, § 3; 1987, ch. 161, § 52; 1988, ch. 72, § 2.

Amendment Notes. — The 1987 amendment, by Chapter 12, added Subsection (3).

The 1987 amendment, by Chapter 161, effective January 1, 1988, designated the previously undesignated provisions of Subsections (1) and (2); in Subsection (1)(b), deleted the second sentence which read "A record or summary of the hearings shall be taken together with findings of fact and conclusions of law made by the committee"; in Subsection (2)(a), deleted the former second sentence which read "A record or summary of the hearings shall be taken together with written findings of fact made by the executive director"; and made minor changes in phraseology and punctuation throughout the section.

The 1988 amendment, effective April 25, 1988, deleted former Subsections (1)(c) to (1)(f), providing that committee members may examine and subpoena witnesses; substituted the present provision in Subsection (3) for former provisions that listed some procedural requirements for hearings to guarantee the parties' due process rights; and made a minor stylistic change.

Cross-References. — Witnesses, amount of fees and mileage, § 21-5-4.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 180, 181.

C.J.S. — 39A C.J.S. Health and Environment § 112.

Key Numbers. — Health and Environment ⇐ 25.7; Waters and Water Courses ⇐ 77.

26-11-14. Power of committee to enter property for investigation — Records and reports required of owners or operators.

(1) The committee or its authorized representative shall, after presentation of credentials, have the power to enter at reasonable times upon any private or public property for the purpose of sampling, inspecting, or investigating matters or conditions relating to pollution or the possible pollution of any waters of the state, effluents or effluent sources, monitoring equipment, or records required to be maintained under this chapter.

(2) The committee may require the owner or operator of a disposal system, including a system discharging into publicly owned treatment works, to estab-

lish and maintain reasonable records and make reports relating to the operation of the system, install, use, and maintain monitoring equipment or methods, sample, and analyze effluents, and provide other information reasonably required. The records, reports, and information shall be available to the public unless it is shown, for other than effluent information, that if made public the information would disclose methods or processes entitled to protection as trade secrets. Records, reports, or information on methods or processes declared by the permit holder to be entitled to trade secret protection shall remain confidential, except that these records, reports, or information may be disclosed to authorized persons concerned with the administration of this chapter, and the authorized person shall maintain the confidentiality thereof to the extent permitted by law. The committee shall make available such information, upon request, to the U.S. Environmental Protection Agency, insofar as it relates to a delegated federal program. In the event such information is released to the U.S. Environmental Protection Agency, the committee shall convey any claim of confidentiality and simultaneously notify the person who submitted the information of its release.

History: C. 1953, 26-11-14, enacted by L. 1981, ch. 126, § 12.

26-11-15. Spills or discharges of oil or other substance — Notice to executive secretary.

Any person who spills or discharges any oil or other substance which may cause the pollution of the waters of the state shall immediately notify the executive secretary of the spill or discharge, any containment procedures undertaken, and a proposed procedure for cleanup and disposal, in accordance with rules of the committee.

History: C. 1953, 26-11-15, enacted by L. 1981, ch. 126, § 12.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 182, 183.

C.J.S. — 39A C.J.S. Health and Environment § 109.

26-11-16. Violations — Penalties — Civil actions by committee — Ordinances, rules and regulations of political subdivisions.

(1) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject, in a civil proceeding, to a penalty not exceeding $10,000 per day.

(2) (a) A fine not exceeding $25,000 per day shall be assessed against any person who willfully or with gross negligence:

(i) discharges pollutants in violation of Subsection 26-11-8(1) or in violation of any condition or limitation included in a permit issued under Subsection 26-11-8(2);

(ii) violates Section 26-11-14; or

(iii) violates a pretreatment standard or toxic effluent standard for publicly-owned treatment works.

(b) Any person twice convicted under this subsection shall be punished by a fine not exceeding $50,000 per day.

(3) Any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall be punished by a fine not exceeding $10,000 or by imprisonment for not more than six months, or by both.

(4) (a) The committee may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 26-11-12.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(5) (a) The attorney general is the legal advisor for the committee and its executive secretary, and shall defend them in all actions or proceedings brought against them.

(b) The county attorney, in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the committee, 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 committee or the executive secretary issued under this chapter.

(c) The committee may itself initiate any such action and shall be represented by the attorney general.

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

(7) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

History: C. 1953, 26-11-16, enacted by L. 1981, ch. 126, § 12; 1987, ch. 161, § 53.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, in Subsection (2)(a), inserted at the beginning "A fine not exceeding $25,000 per day shall be assessed against"; in Subsection (2)(a)(iii), deleted from the end of the section "shall be punished by a fine not exceeding $25,000 per day"; in Subsection (4)(a), substituted "26-11-12" for "26-11-12(1)"; and made minor changes in phraseology and punctuation throughout the section.

COLLATERAL REFERENCES

C.J.S. — 39A C.J.S. Health and Environment § 113; 93 C.J.S. Waters §§ 53-56.

Key Numbers. — Health and Environment ⇐ 25.7; Waters and Water Courses ⇐ 73-77.

26-11-17. Repealed.

Repeals. — Laws 1987, ch. 161, § 314 repeals § 26-11-17, as last amended by Laws 1986, ch. 47, § 9, relating to judicial review, effective January 1, 1988. For comparable provisions, see § 26-11-13.

26-11-18. Chapter deemed auxiliary and supplementary to other laws.

This chapter shall not be construed as repealing any laws relating to the pollution of waters or any conservation laws, but shall be held and construed as auxiliary and supplementary thereto, except to the extent that the same are in direct conflict herewith.

History: C. 1953, 26-11-18, enacted by L. 1981, ch. 126, § 12.

26-11-19. Purpose and construction of chapter.

It is the purpose of this chapter to provide additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the state. Nothing contained herein shall be construed to abridge or alter rights of action or remedies in equity or under common or statutory law, criminal or civil, nor shall any provision of this chapter, or any act done by virtue thereof, be construed as estopping the state or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under common or statutory law to suppress nuisances or to abate pollution.

History: C. 1953, 26-11-19, enacted by L. 1981, ch. 126, § 12.

26-11-20. State permits not required where federal government has primary responsibility.

If for any reason, including cessation of federal funding, the federal government has the primary responsibility for the discharge permit or underground injection permit programs in this state, discharge or underground injection permits established by this chapter shall not be required.

History: C. 1953, 26-11-20, enacted by L. 1981, ch. 126, § 12.