1-7-1989

Title 26: Health Code Chapter 14 Solid and Hazardous Waste Act - 1989 Replacement Volume

Utah Code Annotated

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

(2) (a) The committee 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 was received by the holder.

(3) As soon as a revocation under this section is final, the committee 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.

History: C. 1953, 26-13-29, enacted by L. 1981, ch. 126, § 14; 1987, ch. 161, § 59.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, made minor changes in phraseology and punctuation throughout the section.

26-13-30. Rules for administering certification for tax relief.

In addition to the powers granted it, the committee 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 pertaining to the committee in administering certification for tax relief on pollution control facilities.

History: C. 1953, 26-13-30, enacted by L. 1981, ch. 126, § 14.

CHAPTER 14

SOLID AND HAZARDOUS WASTE ACT

26-14-1. Short title.

This chapter shall be known and may be cited as the "Solid and Hazardous Waste Act."

History: C. 1953, 26-14-1, enacted by L. 1981, ch. 126, § 15.

Repeals and Reenactments. — Laws 1981, ch. 126, § 1 repealed former §§ 26-14-1 to 26-14-14 (L. 1923, ch. 90, §§ 1 to 10; 1931, ch. 52, § 1; R.S. 1933, 56-0-1 to 56-0-14; L. 1937, ch. 64, § 1; C. 1943, 56-0-1 to 56-0-14; L. 1959, ch. 42, § 1; 1971, ch. 48, § 1), relating to mosquito abatement districts. Present §§ 26-14-1 to 26-14-16 were enacted by § 15 of the act. For present provisions regarding mosquito abatement districts, see Chapter 27 of this title.

Cross-References. — Solid Waste Management Act, Chapter 32 of this title.

COLLATERAL REFERENCES

Utah Law Review. — Utah's Hazardous Waste Facility Siting Act: Burying Private and Local Interests to Facilitate Siting?, 1983 Utah L. Rev. 327.

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 244 et seq.

A.L.R. — Landowner's right to relief against pollution of his water supply by industrial or commercial waste, 39 A.L.R.3d 910.

Applicability of zoning regulations to waste disposal facilities of state or local governmental entities, 59 A.L.R.3d 1244.

Carrier's "public duty" exception to absolute or strict liability arising out of carriage of hazardous substances, 31 A.L.R.4th 658.

State and local regulation of private landowner's disposal of solid waste on own property, 37 A.L.R.4th 635.

State or local regulation of transportation of hazardous materials as pre-empted by Hazardous Materials Transportation Act (49 USCS § 1801 et seq.), 78 A.L.R. Fed. 289.

State or local regulation of toxic substances as pre-empted by Toxic Substances Control Act (15 USCS §§ 2601 et seq.), 84 A.L.R. Fed. 913.

Key Numbers. — Health and Environment ⇐ 25.5.

26-14-2. Definitions.

As used in this chapter:

(1) "Closure plan" means a plan under Section 26-14-8 to close a facility or site at which the owner or operator has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure

care at the facility or site. The committee may, by rule, define closure plans as major or minor.

(2) "Committee" means the Solid and Hazardous Wastes Committee.

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

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

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

(6) "Generation" or "generated" means the act or process of producing hazardous waste.

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

(8) "Infectious waste" means a solid waste that contains or may reasonably be expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.

(9) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(10) "Modification plan" means a plan under Section 26-14-8 to modify a facility or site for the purpose of treating, storing, or disposing of hazardous waste. The committee may, by rule, define modification plans as major or minor.

(11) "Operation plan" or "hazardous waste operation plan" means a plan under Section 26-14-8 to own, construct, or operate a facility or site for the purpose of treating, storing, or disposing of hazardous waste.

(12) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

(13) "Solid waste" means any garbage, refuse, sludge (including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility) or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Chapter 11, Title 26, or under the Federal Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

(14) "Storage" means the actual or intended containment of solid or hazardous wastes either on a temporary basis or for a period of years in such a manner as not to constitute disposal of such wastes.

(15) "Transportation" means the off-site movement of solid or hazardous wastes to any intermediate point or to any point of storage, treatment, or disposal.

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

(17) "Underground storage tank" means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c, et seq.

History: C. 1953, 26-14-2, enacted by L. 1981, ch. 126, § 15; 1987, ch. 217, § 1; 1988, ch. 151, § 1; 1988, ch. 163, § 1.

Amendment Notes. — The 1987 amendment, effective July 1, 1987, added the definition of "underground storage tank" and made minor changes in punctuation.

The 1988 amendment by Chapter 151, effective April 25, 1988, added the definitions of "closure plan," "modification plan," and "operation plan," and renumbered the other subsections accordingly.

The 1988 amendment by Chapter 163, effective April 25, 1988, added the definition of "infectious waste" and renumbered the following subsections accordingly.

This section has been reconciled by the Office of Legislative Research and General Counsel.

Cross-References. — Discharge permits for water pollutants, §§ 26-11-8 to 26-11-10.

Solid and Hazardous Wastes Committee, § 26-14-4.

26-14-3. 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 or any other source. The department, under the administration of the executive director, may provide professional, technical, and clerical staff and field and laboratory services for the benefit of the committee upon the request of the committee, the executive secretary or local governments. The extent of such services and assistance shall be limited by the funds available to the department for solid and hazardous waste matters.

History: C. 1953, 26-14-3, enacted by L. 1981, ch. 126, § 15.

26-14-4. Solid and Hazardous Wastes Committee — Members — Terms — Organization — Meetings.

The Solid and Hazardous Wastes Committee created by Section 26-1-7 shall be comprised of the director and eight members appointed by the governor with the consent of the Senate. The appointed members shall be knowledgeable about solid and hazardous waste matters and consist of: one representative of municipal government, one representative of county government, one representative of the manufacturing or fuel industry, one representative of the mining industry, one representative of the private solid waste disposal or solid waste recovery industry, one registered professional engineer, and two representatives of the public. Not more than four of the appointed members may be from the same political party. Members shall be appointed for terms of

four years each. Each member shall be eligible for reappointment. Committee members shall continue in 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. Vacancies shall be filled through appointment by the governor, after considering recommendations of the committee and with the consent of the Senate, for the unexpired term of the person whose office was vacated. The committee shall elect a chairman and vice-chairman on or before April 1 of each year from its membership. The committee members shall serve without compensation, but shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties, and shall receive a per diem allowance as approved by the governor. The committee shall hold a meeting at least once every three months including one meeting during each annual general session of the Legislature. Meetings shall be held on the call of the chairman, the executive secretary, or any three of the members. Five members constitute a quorum at any meeting, and the action of the majority of members present shall be the action of the committee.

History: C. 1953, 26-14-4, enacted by L. 1981, ch. 126, § 15; 1985, ch. 21, § 9.

Amendment Notes. — The 1985 amendment substituted "annual general session" for "general or budget session" in the tenth sentence and made minor changes in phraseology and punctuation.

Cross-References. — Per diem rates and travel expenses for state officers and employees, §§ 63-1-14.5, 63-1-15.

26-14-5. Powers of committee.

(1) The committee may:

(a) survey solid and hazardous waste generation and management practices within this state and, after public hearing and after providing the opportunities for comment by local governmental entities, industry, and other interested persons, prepare and revise, as necessary, a waste management plan for the state;

(b) carry out inspections pursuant to Section 26-14-9;

(c) hold hearings and compel the attendance of witnesses, the production of documents, and other evidence, administer oaths and take testimony; and receive such evidence it deems proper, or appoint hearing officers who shall be delegated these powers;

(d) issue orders necessary to effectuate the provisions of this chapter and implementing rules and enforce them by administrative and judicial proceedings, and cause the initiation of judicial proceedings to secure compliance with this chapter;

(e) settle or compromise any administrative or civil action initiated to compel compliance with this chapter and any rules adopted under this chapter;

(f) require submittal of specifications or other information relating to hazardous waste plans for review, and approve, disapprove, revoke, or review such plans;

(g) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, other states, interstate agencies, and affected groups, political subdivisions, industries, and other persons in carrying out the purposes of this chapter;

(h) promote the planning and application of resource recovery systems to prevent the unnecessary waste and depletion of natural resources;

(i) meet the requirements of federal law related and pertaining to hazardous wastes to insure that the hazardous wastes program provided for in this chapter is qualified to assume primacy from the federal government in control over hazardous waste; and

(j) exercise all other incidental powers necessary to carry out the purposes of this chapter.

(2) By May 1, 1989, the committee shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. That criteria shall apply to any facility or incinerator for which plan approval is required under Section 26-14-8.

History: C. 1953, 26-14-5, enacted by L. 1981, ch. 126, § 15; 1988, ch. 136, § 1; 1988, ch. 169, § 18; 1988 (4th S.S.), ch. 2, § 1.

Amendment Notes. — The 1988 amendment by Chapter 136, effective April 25, 1988, added Subsection (10) and redesignated former Subsection (10) as Subsection (11).

The 1988 amendment by Chapter 169, effective April 25, 1988, substituted "26-14-9" for "27-14-9" in Subsection (2) and made minor stylistic changes.

The 1988 amendments were reconciled by the Office of Legislative Research and General Counsel.

The 1988 (4th S.S.) amendment, effective September 20, 1988, designated the formerly undesignated introductory language as present Subsection (1); redesignated former Subsections (1) through (9) as present Subsections (1)(a) through (1)(i); redesignated former Subsection (11) as present Subsection (1)(j) and former Subsection (10) as present Subsection (2); in Subsection (2), added "By May 1, 1989, the committee shall" at the beginning of the first sentence; and made minor stylistic changes.

Cross-References. — Hazardous waste facilities management, Chapter 14b of this title.

Hazardous waste facility siting, Chapter 14a of this title.

26-14-5.5. Hearing procedure — Rulemaking authority and procedure.

(1) Hearings under Section 26-14-11 shall be conducted in a manner which guarantees the parties' due process rights. This includes, but is not limited to, the right to examine any evidence presented to the committee, the right to cross-examine any witness, and a prohibition of ex parte communication between any party and a member of the committee or the hearing officer. Final rules incorporating these procedures shall be adopted by the committee on or before October 1, 1988.

(2) Except as provided in Subsection (3), no rule which the committee adopts for the purpose of the state administering a program under the federal Resource Conservation and Recovery Act and, to the extent the committee may have jurisdiction, under the federal Comprehensive Environmental Response, Compensation and Liability Act, or the federal Emergency Planning and Community Right to Know Act of 1986, 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.

(3) The committee may adopt rules more stringent than corresponding federal regulations for the purposes described in Subsection (2), 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 envi-

ronmental information and studies contained in the record which form the basis for the conclusion.

History: C. 1953, 26-14-5.5, enacted by L. 1987, ch. 12, § 8.

Federal law. — For federal Resource Conservation and Recovery Act, see 42 U.S.C. § 6901 et seq.

For federal Comprehensive Environmental Response, Compensation and Liability Act ("Superfund"), see 42 U.S.C. § 9601 et seq.

For federal Emergency Planning and Community Right to Know Act of 1986, see 42 U.S.C. § 11001 et seq.

26-14-6. Rules of committee.

(1) The committee may make rules:

(a) establishing minimum standards for protection of the public health, for the storage, collection, transport, recovery, treatment, and disposal of solid waste, including approval of plans for the construction, extension, and operation of solid waste disposal sites. For purposes of this section, solid waste shall not include certain large volume wastes, such as inert construction debris used as fill material; drilling muds, produced waters, and other wastes associated with the exploration, development, or production of oil, gas, or geothermal energy; fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; solid wastes from the extraction, beneficiation, and processing of ores and minerals; and cement kiln dust; provided that such waste does not cause a public nuisance or public health hazard or is otherwise determined to be a hazardous waste;

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

(c) governing generators and transporters of hazardous wastes, owners and operators of hazardous waste treatment, storage, and disposal facilities, including, but not limited to, procedures and requirements for keeping records, monitoring, submitting reports and using a manifest, without treating high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling muds, and oil production brines in a manner more stringent than they are treated under federal standards;

(d) requiring an owner or operator of a treatment, storage, or disposal facility that is subject to a plan approval under Section 26-14-8 or which received waste after July 26, 1982, to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility;

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

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

(g) establishing standards governing underground storage tanks, in accordance with Section 26-14-24;

(h) (i) relating to collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities. However, those rules may only be enacted in accordance with the requirements

of Subsections 26-14-5.5(2) and (3) with regard to corresponding federal law;

(ii) for purposes of Subsection (1)(h), "health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, end state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries;

(i) relating to such other matters as the committee may deem necessary or appropriate to carry out the purposes of this chapter.

(2) If any of the following are determined to be hazardous waste and are therefore subjected to the provisions of this chapter, the committee shall, in the case of landfills or surface impoundments that receive those solid wastes, take into account the special characteristics of the wastes, the practical difficulties associated with applying requirements for other wastes to such wastes, and site specific characteristics, including, but not limited to, the climate, geology, hydrology, and soil chemistry at the site, so long as the modified requirements assure protection of human health and the environment and are no more stringent than federal standards applicable to such wastes:

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

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

(c) cement kiln dust waste.

(3) The committee shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. Those criteria shall apply to any facility or incinerator for which plan approval is required under Section 26-14-8.

History: C. 1953, 26-14-16, enacted by L. 1981, ch. 126, § 15; 1986, ch. 90, § 1; 1987, ch. 217, § 2; 1988, ch. 136, § 2; 1988, ch. 163, § 2; 1988 (4th S.S.), ch. 2, § 2.

Amendment Notes. — The 1986 amendment redesignated former Subsection (1) as present Subsection (1)(a); redesignated former Subsections (4) through (6) as present Subsections (5) through (7); and added Subsections (1)(b) and (4).

The 1987 amendment, effective July 1, 1987, redesignated former Subsection (7) as present Subsection (8), added present Subsection (7), and made minor changes in punctuation.

The 1988 amendment by Chapter 136, effective April 25, 1988, added Subsection (8) and redesignated former Subsection (8).

The 1988 amendment by Chapter 163, effective April 25, 1988, added present Subsection (9) and redesignated former Subsection (8).

The 1988 amendments were reconciled by the Office of Legislative Research and General Counsel.

The 1988 (4th S.S.) amendment, effective September 20, 1988, designated the formerly undesignated introductory language as present Subsection (1) and substituted "make" for "promulgate and adopt" therein; redesignated former Subsections (2) through (7) as present Subsections (1)(b) through (1)(g), and former Subsections (9)(a) and (9)(b) as present Subsections (1)(h)(i) and (1)(h)(ii); substituted "Subsection (1)(h)" for "this subsection" in Subsection (1)(h)(ii); redesignated former Subsection (10) as present Subsection (1)(i), former Subsection (1)(b) as present Subsection (2), former Subsections (1)(b)(i) through (1)(b)(iii) as present Subsections (2)(a) through (2)(c), and former Subsection (8) as present Subsection (3); and made

a series of minor punctuation and stylistic changes throughout the section.

Federal law. — Section 3001 of the federal Resource Conservation and Recovery Act of 1976, cited in Subsection (2), appears as 42 U.S.C. § 6921.

26-14-7. Executive secretary — Appointment — Powers.

The executive secretary shall be appointed by the director with the approval of the committee and shall serve under the administrative direction of the director. The executive secretary may:

(1) Develop programs for solid waste and hazardous waste management and control within 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 full-time employees necessary to carry out this chapter.

(4) As authorized by the committee pursuant to the provisions of this chapter, authorize any employee or representative of the department to conduct inspections as permitted in this chapter.

(5) Encourage, participate in, or conduct studies, investigations, research and demonstrations relating to solid waste and hazardous waste management and control necessary for the discharge of duties assigned under this chapter.

(6) Collect and disseminate information relating to solid waste and hazardous waste management control.

(7) As authorized by the committee pursuant 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.

(8) Review plans, specifications or other data relative to solid waste and hazardous waste control systems or any part of such systems as provided in this chapter.

(9) Cooperate with any person in studies and research regarding solid waste and hazardous waste management and control.

(10) Represent the state with the specific concurrence of the director in all matters pertaining to interstate solid waste and hazardous waste management and control including, under the direction of the committee, entering into interstate compacts and other similar agreements.

History: C. 1953, 26-14-7, enacted by L. 1981, ch. 126, § 15.

26-14-8. Hazardous wastes operation plan for facility or site — Approval required — Procedure — Time periods for review.

(1) (a) No person may own, construct, modify, or operate any facility or site for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the executive secretary for, a hazardous wastes operation plan for that facility or site.

(b) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section

3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., Section 6921, et seq., and who has submitted a proposed hazardous waste plan pursuant to this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved pursuant to this section.

(2) The executive secretary shall review each proposed hazardous wastes operation plan to determine whether that plan complies with the provisions of this chapter and the applicable rules of the committee.

(3) (a) If the facility is a class I or class II facility, the executive secretary shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the executive secretary shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) If the plan for a class I or II facility is determined to be complete, the executive secretary shall issue a notice of completeness. If the plan is determined by the executive secretary to be incomplete, he shall issue a notice of deficiency, listing the additional information to be provided by the applicant to complete the plan.

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

(e) If, within 180 days after determination that the operation plan for a class I or II facility is complete, the executive secretary determines that the proposed construction, installation, or establishment, or any part thereof, will not be in accordance with the applicable rules, he shall issue an order prohibiting construction, installation, or establishment of the proposal, in whole or in part.

(f) The following time periods shall not be included in the 180 day plan review period for a class I or II facility:

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

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

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

(4) If the facility is a class III or class IV facility, the executive secretary shall approve or disapprove that plan within 365 days from the date it is submitted. The following time periods shall not be included in the 365 day review period:

(a) time awaiting response from the owner or operator to requests for information issued by the executive secretary;

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

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

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

(6) Any person who owns or operates a facility or site required to have an approved hazardous wastes operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made pursuant to Subsection (2), unless the committee determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005(e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925(e).

(7) No proposed hazardous wastes operation plan may be approved unless it contains the information that the committee requires, including but not limited to:

(a) estimates of the composition, quantities, and concentrations of any hazardous wastes identified pursuant to this chapter and the proposed treatment, storage, or disposal of them;

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

(c) consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous wastes, evidence of financial responsibility in such form and amount as the committee may determine to be necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that those wastes subsequent to being treated, stored, or disposed of at such site or facility will not present a hazard to the public or the environment;

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

(e) plans, specifications, and other information that the committee considers relevant to determine whether the proposed hazardous wastes operation plan will comply with this chapter and the rules of the committee; and

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit.

(8) Approval of a hazardous wastes operation plan may be revoked, in whole or in part, upon the failure of the person to whom approval of the plan has been given to comply with that plan.

(9) All approved hazardous wastes operation plans shall be reviewed by the committee at least once every five years.

History: C. 1953, 26-14-8, enacted by L. 1981, ch. 126, § 15; 1986, ch. 90, § 2; 1987, ch. 161, § 60; 1988, ch. 151, § 2.

Amendment Notes. — The 1986 amendment made stylistic changes in Subsection (1); added the language beginning "or the facility's interim status" at the end of Subsection (3); added the language beginning "including schedules for corrective action" at the end of Subsection (4)(f); and deleted Subsection (8),

relating to treatment of plans as trade secrets or confidential.

The 1987 amendment, effective January 1, 1988, subdivided Subsection (2) and, in Subsection (2)(c), deleted the former last sentence concerning review of plans received the first six months after the effective date of the section; deleted former Subsection (6), as last amended by Laws 1986, ch. 90, § 2; designated former Subsection (7) as present Subsection (6); and made minor changes in phraseology and punctuation throughout the section.

The 1988 amendment, effective April 25, 1988, in Subsection (1)(a) substituted "executive secretary" for "committee"; designated former Subsection (2)(a) as Subsection (2) and substituted "executive secretary" for "committee"; redesignated former Subsections (2)(b) and (2)(c) as Subsections (3)(a) and (3)(b), rewriting them to such an extent as to make a detailed comparison impracticable; and added Subsections (3)(c) through (3)(f) and Subsections (4) and (5) and designated former Subsections (3) to (6) as Subsections (6) to (9).

Federal law. — Section 3010 of the federal Resource Conservation and Recovery Act of 1976, cited in Subsection (1)(b), appears as 42 U.S.C. § 6930.

Cross-References. — Classes of facilities, § 26-14-23.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control §§ 247-257.

A.L.R. — Validity and construction of statutes, ordinances, or regulations controlling discharge of industrial wastes into sewer systems, 47 A.L.R.3d 1224.

26-14-8.5. Moratorium on plan approvals.

Notwithstanding the requirements of Section 26-14-8, no plan approval shall be issued by the executive secretary until siting criteria have been established by the committee. The criteria shall also apply to all proposed facilities that have applied for but not received plan approval under Section 26-14-8.

History: C. 1953, 26-14-8.5, enacted by L. 1988 (4th S.S.), ch. 2, § 3.

Effective Dates. — Laws 1988 (4th S.S.), ch. 2, § 6, makes the act effective on September 20, 1988.

26-14-9. Inspections authorized.

Any duly authorized officer, employee or representative of the committee may, at any reasonable time and upon presentation of appropriate credentials, enter upon and inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated or disposed of, and have access to and the right to copy any records relating to such wastes, for the purpose of ascertaining compliance with this chapter and the rules of the committee. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining such samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

History: C. 1953, 26-14-9, enacted by L. 1981, ch. 126, § 15.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 255.

26-14-9.5. Information available to public — Confidentiality — Exemption from disclosure.

(1) Records, reports, or information obtained from any person under this chapter, or created by the Bureau of Solid and Hazardous Waste under this chapter, shall be available to the public, except that records, reports, or information may be withheld if they are:

(a) entitled to confidential treatment or trade secret protection;

(b) obtained from the United States Environmental Protection Agency and requested by that agency to be kept confidential; or

(c) exempt from disclosure under the laws of this state.

(2) Except as provided in Subsection 26-14b-21(2), the executive secretary of the committee shall make a determination with regard to the availability or confidentiality of records, reports, or information described in Subsection (1), and shall withhold disclosure if he determines that the records, reports, or information are exempt from disclosure in accordance with the terms of this section.

(3) Decisions of the executive secretary under this section may be appealed by any person to the committee. The proceedings and decision of the committee shall be in camera if requested by the executive secretary, or by the owner or operator of a facility that is seeking confidential treatment of information.

(a) Decisions of the committee under this section are subject to judicial review if a petition is filed with the district court within 30 days of the committee's decision. The committee's decision may not be overturned unless the court finds that its actions were arbitrary or capricious.

(b) If a requestor is denied access to information obtained by the department regarding facilities and sites for treatment, storage, or disposal of hazardous waste, and if the requestor substantially prevails on judicial review, reasonable attorney's fees and other costs of litigation may be assessed against the state.

(4) (a) Records, reports, or information are entitled to confidential treatment or trade secret protection under Subsection (1)(a) if:

(i) the owner or operator claims confidentiality and submits sufficient information justifying that claim; and

(ii) the records, reports, or information are determined, in accordance with the procedures of this section, to be entitled to confidential treatment or trade secret protection based on the standards of the Freedom of Information Act, 5 U.S.C. Sec. 552, and applicable federal regulations, or under the Utah Rules of Civil Procedure regarding privileged materials.

(b) Information submitted to justify a claim of confidentiality or trade secret under Subsection (a) shall be deemed sufficient for purposes of the executive secretary's determination under Subsection (2), if the owner or operator:

(i) certifies that the records, reports, or information are entitled to protection under Subsection (a); and

(ii) summarizes the bases for the claim and the actions which the owner or operator has taken to protect the confidentiality of those records, reports, or information.

(c) Records, reports, or information determined to be entitled to confidential treatment or trade secret protection may not be made available to the public. Any person who knowingly and wilfully divulges or discloses any records, reports, or information entitled to protection under this subsection is liable for damages proximately caused by the disclosure.

History: C. 1953, 26-14-9.5, enacted by L. 1986, ch. 90, § 3; 1987, ch. 225, § 1.

Amendment Notes. — The 1987 amendment, effective March 16, 1987, so rewrote this section as to make a detailed analysis impracticable.

Cross-References. — Siting criteria, §§ 26-14-5, 26-14-6.

26-14-10. Variances — Requirements for application — Procedure.

(1) If the committee determines that the application of, or compliance with, any requirements of this chapter would cause undue or unreasonable hardship to any person, it may issue a variance from any of those requirements. No variance shall be granted except upon application for it. Immediately upon receipt of an application for a variance, the committee shall give public notice of the application and provide for an opportunity for a public hearing. A variance granted for more than one year shall contain a timetable for coming into compliance with this chapter and shall be conditioned on adherence to that timetable.

(2) Any variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate for the initial granting of a variance. No renewal shall be granted except on application for it. Immediately upon receipt of an application for renewal, the committee shall give public notice of the application and provide for an opportunity for a public hearing.

(3) The committee may review any variance during the term for which it was granted. The procedure for such review shall be the same as that for an original application and the variance previously granted may be revoked upon a finding that the conditions and the terms upon which the variance was granted are not being met.

(4) Any variance or renewal shall exist at the discretion of the committee and shall not constitute a right of the applicant or holder. However, any person adversely affected by the granting, denial or revocation of any variance or renewal by the committee may obtain judicial review of the committee's decision by filing a petition in district court within 30 days from the date of notification of the decision. The decision of the committee shall not be overturned upon such review unless the court finds that the actions of the committee were arbitrary or capricious.

History: C. 1953, 26-14-10, enacted by L. 1981, ch. 126, § 15.

26-14-11. Notice of violations — Order for correction — Civil action to enforce.

(1) Whenever the committee determines that any person is in violation of any applicable approved hazardous wastes operation plan or solid waste plan, the requirements of this chapter, or any of the committee's rules, it may cause written notice of that violation to be served upon the alleged violator. The notice shall specify the provisions of the plan, this chapter or rule alleged to have been violated and the facts alleged to constitute the violation.

(2) The committee may:

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

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

(3) Pending promulgation of rules for corrective action under Section 26-14-6, the committee may issue corrective action orders on a case-by-case basis, as necessary to carry out the purposes of this chapter.

History: C. 1953, 26-14-11, enacted by L. 1981, ch. 126, § 15; 1986, ch. 90, § 4; 1987, ch. 161, § 61.

Amendment Notes. — The 1986 amendment added the last sentence of Subsection (1).

The 1987 amendment, effective January 1, 1988, redesignated the former second and third sentences of Subsection (1) as present Subsection (2) and the former fourth sentence as present Subsection (3) and deleted former Subsections (2) and (3), as last amended by Laws 1986, ch. 90, § 4.

26-14-12. Prohibited violations.

No person shall violate any order, plan, rule, or other requirement issued or adopted pursuant to this chapter.

History: C. 1953, 26-14-12, enacted by L. 1981, ch. 126, § 15.

26-14-13. Violations — Penalties.

(1) Any person who violates any order, plan, rule, or other requirement issued or adopted under this chapter shall be subject in a civil proceeding to a penalty of not more than $10,000 per day for each day of violation.

(2) Any person who knowingly transports or causes to be transported any hazardous waste to a facility in this state which does not have an approved hazardous wastes operation plan or permit, knowingly treats, stores, or disposes of any hazardous waste without having an approved hazardous wastes operation plan or permit, knowingly transports without a manifest or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest, or makes any false statement or representation with respect to any report, plan, manifest or other documentation required pursuant to this chapter or any rules adopted pursuant thereto shall be guilty of a class A misdemeanor and shall be subject to a fine of not more than $15,000 for each day of violation upon first conviction or not more than $25,000 for any subsequent conviction.

History: C. 1953, 26-14-13, enacted by L. 1981, ch. 126, § 15; 1983, ch. 137, § 1; 1986, ch. 90, § 5.

Amendment Notes. — The 1986 amendment in Subsection (2) inserted "or causes to be transported," inserted "or permit" in two places, and inserted "knowingly transports without a manifest or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest."

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

26-14-14. Proof of service of notice, order, or other document.

Proof of service of any notice, order or other document issued by, or under the authority of, the committee may be made in the same manner as in the service of a summons in a civil action. Proof of service shall be filed with the committee or may be made by forwarding a copy of that notice, order, or other document by registered mail, directed to the person at his last known address, with an affidavit to that effect being filed with the committee.

History: C. 1953, 26-14-14, enacted by L. 1981, ch. 126, § 15.

Cross-References. — Proof of service of summons in civil action, Rules of Civil Procedure, Rule 4.

26-14-15. Imminent danger to health or environment — Authority of director to initiate action to restrain.

Notwithstanding any other provision of this chapter, upon receipt of evidence that the handling, transportation, treatment, storage, or disposal of any solid or hazardous waste, or a release from an underground storage tank, is presenting an imminent and substantial danger to health or the environment, the director may bring suit on behalf of this state in the district court to immediately restrain any person contributing, or who has contributed, to that action to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be appropriate.

History: C. 1953, 26-14-15, enacted by L. 1981, ch. 126, § 15; 1987, ch. 217, § 3.

Amendment Notes. — The 1987 amendment, effective July 1, 1987, deleted "storage" preceding "treatment, storage" and inserted "or a release from an underground storage tank."

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 257.

26-14-16. Application of chapter subject to state assumption of primary responsibility from federal government — Authority of political subdivisions.

(1) The requirements of this chapter applicable to the generation, treatment, storage or disposal of hazardous waste, and the rules adopted thereunder, shall not take effect until such time as this state is qualified to assume, and does assume, primacy from the federal government for the control of hazardous wastes.

(2) Nothing in this chapter shall be construed to in any way alter the authority of political subdivisions of the state to control solid and hazardous wastes within their local jurisdictions so long as any local laws, ordinances, or rules are not inconsistent with this chapter or the rules of the committee.

History: C. 1953, 26-14-16, enacted by L. 1981, ch. 126, § 15.

26-14-17. Restrictions on high level nuclear waste placement in state.

The State of Utah shall not approve the placement in Utah of high level nuclear waste unless the Governor, after consultation with the county commission of the affected county and with concurrence of the legislature, specifically approves such placement.

History: L. 1981, ch. 125, § 1.

26-14-18. "High level nuclear waste" defined.

As used in this act, "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, but does not include medical or institutional wastes, naturally occurring radioactive materials, or uranium mill tailings.

History: L. 1981, ch. 125, § 2.
Meaning of "this act." — Laws 1981, ch. 125 enacted § 26-14-17 and this section.

26-14-19. Authority of director to abate spill — Procedures.

(1) For the purpose of this chapter, "spill" means the accidental or deliberate discharging, leaking, pumping, pouring, emitting, emptying, or dumping of materials into the environment, but does not include any activity that:

(a) occurred before the effective date of this section; or

(b) is authorized under state or federal law, regulation, permit, or other approval.

(2) (a) Notwithstanding any other provision of this chapter, upon receipt of evidence that a hazardous waste, PCB, dioxin, or asbestos spill, or a release from an underground storage tank, is presenting a direct and immediate threat to public health or the environment, the director may issue an order requiring any person responsible for the spill to take abatement action within the time specified in the order or the director may bring suit on behalf of the state in the district court to require the person to take immediate abatement action.

(b) If the director makes the further determination that the responsible person cannot be located, or is unwilling or unable to take abatement action, the director may take reasonable actions to use the funds received under Section 26-14-20 to investigate and abate the direct and immediate threat or to contract for abatement.

(3) (a) Any party aggrieved by an order issued under Subsection (2)(a) or by determinations or actions of the director under Subsection (2)(b) may obtain an adjudicative proceeding and judicial review.

(b) If the director makes the determinations under Subsection (2), the director may use the funds received under Section 26-14-20 for abatement action even if an adjudicative proceeding or judicial review is pending.

(4) (a) The director may recover costs of investigation and abatement undertaken under this section from any person contributing, or who has contributed, to a direct and immediate threat that the director abates using the funds provided by Subsection (2).

(b) That person is strictly liable for costs.

(c) The court shall apportion liability among responsible parties proportionate to their respective contributions to the spill, and may not impose joint and several liability on such persons.

(d) The burden of proving proportionate contribution shall be borne by each responsible person, and is met if the person establishes the approximate quantity of its waste contributed to or contained in the vessel, container, tank, or other facility from which the spill occurred.

(e) If a responsible person does not prove its proportionate contribution, the court shall apportion liability to the person based on fairness, equity, and available evidence.

(f) The failure of the director to name all responsible parties shall not constitute a defense to an action under this section.

(5) Nothing in this section affects the jurisdiction or authority of the Board of Oil, Gas, and Mining under Chapter 6, Title 40.

History: C. 1953, 26-14-19, enacted by L. 1985, ch. 176, § 1; 1987, ch. 161, § 62; 1987, ch. 217, § 4.

Amendment Notes. — The 1987 amendment by ch. 217, effective July 1, 1987, inserted "or a release from an underground storage tank" in Subsection (1)(a).

The 1987 amendment by ch. 161, effective January 1, 1988, reorganized and redesignated the provisions of this section as last amended by Laws 1985, ch. 176, § 1; redesignated former Subsection (2) as present Subsection (3) and rewrote the provisions to the extent that a detailed analysis is impracticable; and made minor changes in phraseology and punctuation throughout the section.

This section is set out above as reconciled by the Office of Legislative Research and General Counsel.

Effective date of this section. — The phrase "effective date of this section" in Subsection (1) means the effective date of Laws 1985, ch. 176, § 1, which was March 18, 1985.

26-14-20. Money deposited as dedicated credits — Balance nonlapsing — Director to submit annual report.

(1) All money received by the state under Section 26-14-19, and any voluntary contributions received for the cleanup of hazardous waste sites, shall be deposited by the Division of Environmental Health as dedicated credits for the purposes outlined in Section 26-14-19. Any unexpended balance at the end of the fiscal year is nonlapsing.

(2) The director shall submit an annual report to the Legislature which includes any investigation or abatement action taken for which disbursements were made or obligated, the amounts disbursed or obligated, and the method and amount of any reimbursements.

History: C. 1953, 26-14-20, enacted by L. 1985, ch. 176, § 2; 1988, ch. 113, § 1.

Amendment Notes. — The 1988 amendment divided Subsection (1) into the present two sentences, and in the first sentence inserted "and any voluntary contributions received for the cleanup of hazardous waste sites."

26-14-20.5. Action against insurer or guarantor.

In a case where a cause of action exists against an owner or operator of a treatment, storage, or disposal facility, based upon conduct for which the committee requires evidence of financial responsibility under Subsection 26-14-8(4)(c), and that owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code; or, jurisdiction over an owner or operator, who is likely to be solvent at the time of judgment, cannot be obtained in state or federal court, the cause of action may be asserted directly against an insurer or guarantor of that owner or operator. In such an action the insurer or guarantor is entitled to assert all rights and defenses available to the owner or operator, in addition to rights and defenses which would be available to the insurer or guarantor in an action brought against him by the owner or operator.

History: C. 1953, 26-14-21, enacted by L. 1986, ch. 90, § 6.

Bankruptcy Code. — The federal Bankruptcy Code, referred to in the first sentence, is codified as 11 U.S.C. § 1 et seq.

26-14-21. Hazardous waste disposal fee.

(1) Beginning March 1, 1988, an owner or operator of any commercial hazardous waste disposal facility or site which primarily receives wastes generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator, and which is subject to the requirements of Section 26-14-8, shall collect from the generator a fee of $6 per ton, or fraction thereof, on all hazardous waste generated in this state that is received at the facility or site for disposal or treatment, and shall collect from the generator a fee of $9 per ton, or fraction thereof, on all hazardous waste generated outside of this state that is received at the facility for disposal or treatment. Those funds shall be used to compensate the department for the costs of administering provisions of the hazardous waste program under this chapter.

(2) If, on or before July 1, 1989, the state has not received final approval from the federal government to administer the Hazardous Waste Management Program under the federal Resource Conservation and Recovery Act, including full authorization to issue permits under that act, the fees described in Subsection (1) shall become $3 per ton, or fraction thereof, on all hazardous waste generated in this state, and shall become $5 per ton, or fraction thereof, on all hazardous waste generated outside of this state.

(3) Beginning March 1, 1991, the fees described in Subsection (1), if not previously reduced under Subsection (2), shall become $3 per ton, or fraction thereof, on all hazardous waste generated in this state, and $5 per ton, or fraction thereof, on all hazardous waste generated outside of this state.

(4) Fees imposed pursuant to Subsection (1) shall be paid on a monthly basis by the owner or operator to the department, on or before the 15th day of the month following the month in which the fee accrued.

(5) The owner or operator shall submit with his monthly fee a form, as prescribed by the department, specifying information required by the depart-

ment to verify the amount of waste received and the amount of the fee for which the owner or operator is liable.

History: C. 1953, 26-14-22, enacted by L. 1986, ch. 91, § 1; 1988, ch. 151, § 3.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, in the first sentence of Subsection (1) substituted "1988" for "1986" and "collect from the generator a fee of $6" for "be charged a fee of $3" and inserted "generated in this state that is" and the language beginning "and shall collect from the generator"; in the second sentence of Subsection (1) deleted "relating to off-site disposal of hazardous waste" following "waste program"; and added present Subsections (2) and (3), designating former Subsections (2) and (3) as Subsections (4) and (5).

Federal law. — For Resource Conservation and Recovery Act, see 42 U.S.C. § 6901 et seq.

For federal approval of state administration of program, see 54 Fed. Reg. 7417 (February 21, 1989).

26-14-22. Use of hazardous waste disposal fees.

(1) Except as provided in Subsection (2), all fees received by the department under Section 26-14-21 shall be deposited by the Division of Environmental Health as dedicated credits for the purposes of administering provisions of the hazardous waste program relating to off-site disposal of hazardous waste under this chapter.

(2) At least 10% of the fees received under Section 26-14-22 shall be allocated to the county in which the remitting disposal facility or site is located, for the purpose of carrying out its hazardous waste monitoring and response programs.

History: C. 1953, 26-14-23, enacted by L. 1986, ch. 91, § 2.

26-14-23. Class designation of facilities — Fees for filing and plan review.

(1) Facilities which are subject to payment of fees under this section or Section 26-1-6 for plan reviews under Section 26-14-8 shall be designated by the department as either class I, class II, class III, or class IV facilities. Commercial facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, incinerators, or underground injection wells, which primarily receive wastes generated by off-site sources not owned, controlled, or operated by the facility owner or operator, shall be designated as class I facilities.

(2) The maximum fee for filing and review of each class I facility operation plan shall be $150,000, and shall be due and payable as follows:

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

(b) Upon issuance by the executive secretary of a notice of completeness pursuant to Section 26-14-8, the owner or operator of the facility shall pay to the department an additional nonrefundable sum of $50,000.

(c) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional $50,000.

(3) (a) Incinerators that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator shall be designated as class II facilities.

(b) The maximum fee for filing and review of each class II facility operation plan shall be $90,000, and shall be due and payable as follows:

(i) The owner or operator of a class II facility shall, at the time of filing for plan review under Section 26-14-8, pay to the department the nonrefundable sum of $50,000.

(ii) The department shall bill the owner or operator of the facility for any additional actual costs of plan review, up to an additional $40,000.

(4) (a) Facilities containing either landfills, surface impoundments, land treatment units, thermal treatment units, or underground injection wells, that primarily receive wastes generated by sources owned, controlled, or operated by the facility owner or operator, shall be designated as class III facilities.

(b) The maximum fee for filing and review of each class III facility operation plan shall be $25,000 and shall be due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of $100.

(ii) The department shall bill the owner or operator of each class III facility for actual costs of operation plan review, up to an additional $24,900.

(5) (a) All other hazardous waste facilities shall be designated as class IV facilities.

(b) The maximum fee for filing and review of each class IV facility operation plan shall be $10,000 and shall be due and payable as follows:

(i) The owner or operator shall, at the time of filing for plan review, pay to the department the nonrefundable sum of $100.

(ii) The department shall bill the owner or operator of each class IV facility for actual costs of operation plan review, up to an additional $9,900.

(6) (a) The maximum fee for filing and review of each major modification plan and major closure plan for a class I, class II, or class III facility shall be $25,000 and shall be due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of $100.

(ii) The department shall bill the owner or operator of the facility for actual costs of the review, up to an additional $24,900.

(b) The maximum fee for filing and review of each minor modification and minor closure plan for a class I, class II, or class III facility, and of any modification or closure plan for a class IV facility, shall be $10,000, and shall be due and payable as follows:

(i) The owner or operator shall, at the time of filing for that review, pay to the department the nonrefundable sum of $100.

(ii) The department shall bill the owner or operator of the facility for actual costs of review up to an additional $9,900.

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

(b) The owner or operator of a class IV facility may obtain a plan review within the time periods for a class II facility operation plan by

paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

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

(d) An owner or operator of a class I, class II, or class III facility who submits a minor modification plan or a minor closure plan, and an owner or operator of a class IV facility who submits a modification plan or a closure plan, may obtain a plan review within the time periods for a class II facility operation plan by paying, at the time of filing for plan review, the maximum fee for a class III facility operation plan.

(8) All fees received by the department under this section shall be deposited in the General Fund as nonlapsing dedicated credits for plan reviews in accordance with Subsection (10) and Section 26-14-8.

(9) (a) The executive secretary shall establish an accounting procedure that separately accounts for fees paid by each owner or operator who submits an operation plan for approval under Section 26-14-8 and pays fees for plan reviews under this section or Section 26-1-6. All fees paid by the owner or operator shall be credited to that owner or operator. The executive secretary shall account for costs actually incurred in reviewing each operation plan and may only utilize the fees of each owner or operator for review of that owner or operator's plan.

(b) If the costs actually incurred by the department in reviewing an operation plan of any facility are less than the nonrefundable fee paid by the owner or operator under this section, the department may, upon approval or disapproval of the plan by the committee or upon withdrawal of the plan by the owner or operator, utilize any remaining funds that have been credited to that owner or operator for the purposes of administering provisions of the hazardous waste programs and activities authorized by this chapter.

(10) With regard to any review of an operation plan, modification plan, or closure plan that is pending on April 25, 1988, the effective date of this act, the executive secretary may assess fees for that plan review. In no case may the total amount of fees paid by an owner or operator of a facility whose plan review is affected by this subsection exceed the maximum fees allowable under this section for the appropriate class of facility.

(11) The department shall maintain accurate records of its actual costs for each plan review. Those records shall be available for public inspection.

History: C. 1953, 26-14-24, enacted by L. 1986, ch. 91, § 3; 1988, ch. 151, § 4.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, so rewrote the section as to make a detailed comparison impracticable.

Severability Clauses. — Laws 1988, ch. 151, § 5 provided that if any provision of the act, or the application of any provision to any person or circumstance, is held invalid, the remainder of the act is given effect without invalid provision or application.

26-14-23.3. Local zoning authority powers.

Nothing in this chapter prohibits any local zoning authority from adopting zoning criteria for commercial hazardous waste disposal facilities or sites that are more stringent than any requirements adopted by the department.

History: C. 1953, 26-14-23.3, enacted by L. 1988 (4th S.S.), ch. 2, § 4.
Effective Dates. — Laws 1988 (4th S.S.), ch. 2, § 6, makes the act effective on September 20, 1988.

26-14-23.5. Facilities to meet local zoning requirements.

Notwithstanding any provisions of this chapter, persons seeking to operate a commercial hazardous waste disposal facility or site shall meet all local zoning requirements before beginning operations.

History: C. 1953, 26-14-23.5, enacted by L. 1988 (4th S.S.), ch. 2, § 5.
Effective Dates. — Laws 1988 (4th S.S.), ch. 2, § 6, makes the act effective on September 20, 1988.

26-14-24. Underground storage tank program — Rules — Contracts — Authority to obtain information, monitor, and inspect.

(1) The committee shall establish an underground storage tank program and promulgate rules governing underground storage tanks, which include requirements for certification of tank installers and inspectors, and the requirements for underground storage tanks set forth in Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c, et seq., and applicable, final federal regulations.

(2) Rules established by the committee under Subsection (1) shall meet federal requirements for assumption of primacy for regulation of underground storage tanks in lieu of the federal government, in accordance with Section 9004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c.

(3) The department may enter into a contract or cooperative agreement with a political subdivision or its designee, for the performance of some or all of the department's underground storage tank program responsibilities within the jurisdiction of that political subdivision, and may provide funding through contract, if:

(a) Performance of the state's underground storage tank program obligations through such a contract or cooperative agreement is not prohibited by state or federal law, and will not result in loss of federal funding;

(b) The committee determines that the political subdivision or its designee is capable of and willing to satisfactorily discharge its responsibilities under the contract or cooperative agreement; and

(c) The committee determines that the contract or cooperative agreement will be practicable and effective.

(4) Nothing in this section precludes the committee from taking necessary enforcement action, which is authorized under this chapter, in any political subdivision.

(5) For the purposes of developing rules, conducting studies, or enforcing the provisions of this section, any authorized officer, employee, or representa-

tive of the committee may require an owner or operator of an underground storage tank to:

(a) furnish him with information relating to the tank, its associated equipment and its contents;

(b) conduct monitoring or testing of the tank;

(c) provide him access to all records relating to the tank, for inspection or copying, at reasonable times;

(d) provide him access, at reasonable times, to any establishment or other place where the tank is located;

(e) permit him to inspect and sample any contents of the tank, and any surrounding soils, air, surface water, or groundwater; and

(f) permit him to monitor or test the tank and associated equipment.

History: C. 1953, 26-14-24, enacted by L. 1987, ch. 217, § 5.

Effective Dates. — Laws 1987, ch. 217, § 7 makes the act effective on July 1, 1987.

26-14-25. Fees on underground storage tanks — Procedure for assessment — Limitation on amount — Use.

The department may annually assess fees against owners or operators of underground storage tanks which have not been closed. The annual fee assessed from July 1, 1987 through June 30, 1988, shall be $25 per tank, and shall be used by the department to cover the costs of developing the underground storage tank program. Thereafter, the committee, after public comment and hearing, and based on the evidence in the record, may assess annual fees against owners or operators of underground storage tanks which have not been closed, provided that those fees have been submitted to and approved by the Legislature as part of the department's annual appropriation request. Those annual fees may not exceed $100 per tank, and shall be used by the department for administration of the underground storage tank program, in accordance with Section 26-14-24.

History: C. 1953, 26-14-25, enacted by L. 1987, ch. 217, § 6.

Effective Dates. — Laws 1987, ch. 217, § 7 makes the act effective on July 1, 1987.

CHAPTER 14a
HAZARDOUS WASTE FACILITY SITING

26-14a-1. Short title.

This act shall be known and may be cited as the "Hazardous Waste Facility Siting Act."

History: L. 1981, ch. 130, § 1.

COLLATERAL REFERENCES

Utah Law Review. — The Availability of 42 U.S.C. § 1983 in Challenges of Land Use Planning Regulations: A Developer's Dream Come True?, 1982 Utah L. Rev. 571.

Utah's Hazardous Waste Facility Siting Act: Burying Private and Local Interests to Facilitate Siting?, 1983 Utah L. Rev. 327.

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 244 et seq.

A.L.R. — Applicability of zoning regulations to waste disposal facilities of state or local governmental entities, 59 A.L.R.3d 1244.

State or local regulation of transportation of hazardous materials as pre-empted by Hazardous Materials Transportation Act (49 USCS § 1801 et seq.), 78 A.L.R. Fed. 289.

State or local regulation of toxic substances as pre-empted by Toxic Substances Control Act (15 USCS §§ 2601 et seq.), 84 A.L.R. Fed. 913.

Key Numbers. — Health and Environment ⇐ 25.5.

26-14a-2. Legislative findings — Purpose.

Economic and population growth of the state have resulted in the generation of hazardous wastes. Increased industrial expansion, however, is essential to the citizens of this state because of the need to provide jobs for future residents and because of the improvement in the standard of living that continued economic development brings.

There exists within our state a critical shortage of approved hazardous waste treatment, disposal, and storage facility sites. This shortage is expected to increase in the future because of federal and state regulations enacted pursuant to the Resource Conservation and Recovery Act of 1976. Technology and management practices currently exist to treat, dispose, and store hazardous wastes without unacceptable environmental and health effects. The legislature finds it is necessary for the public good to take an active role in the approval of hazardous waste treatment, disposal, and storage facility sites.

Therefore, it is the legislature's purpose in this act to require the State Hazardous Waste Committee, consistent with acceptable impacts upon the environment and upon public health, to develop a statewide plan for siting hazardous waste treatment, disposal, and storage facilities and to authorize the committee to certify sites suitable for the construction and operation of such facilities.

History: L. 1981, ch. 130, § 2.

Federal law. — The Resource Conservation and Recovery Act of 1976 is codified as 42 U.S.C. § 6901 et seq.

Hazardous Waste Committee. — See §§ 26-14-4 and 26-14-5 for provisions regarding the Solid and Hazardous Wastes Committee.

26-14a-3. Definitions.

(1) "Committee" means the Solid and Hazardous Wastes Committee created pursuant to Section 26-1-7.

(2) "Disposal" means the final disposition of hazardous wastes into or onto the lands, waters, and air of this state.

(3) "Hazardous wastes" means wastes as defined in Section 26-14-2.

(4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site used or intended to be used for the treatment, storage, or disposal of hazardous waste materials, including but not limited to physical, chemical, or thermal processing systems, incinerators, and secure landfills.

(5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.

(6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the committee pursuant to Sections 26-14a-5 and 26-14a-6.

(7) "Storage" means the containment of hazardous wastes for a period of more than 90 days.

(8) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to another usable material, or reduced in volume and suitable for ultimate disposal.

History: L. 1981, ch. 130, § 3; 1988, ch. 169, § 19.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "Solid and Hazardous Wastes" for "Hazardous waste" and "26-1-7" for "26-37-2" in Subsection (1) and substituted "26-14-2" for "26-37-2" in Subsection (3).

Cross-References. — Membership and powers of Solid and Hazardous Wastes Committee, §§ 26-14-4, 26-14-5.

26-14a-4. Other provisions relating to hazardous wastes.

This chapter shall not be construed to supersede any other state or local law relating to hazardous waste; except, as otherwise provided in Section 26-14a-8.

History: L. 1981, ch. 130, § 4.

26-14a-5. Guidelines for facility siting — Considerations in adopting.

(1) The committee, after the conduct of public hearings and written comment and within one year after the effective date of this act, shall adopt and publish guidelines for the location of hazardous waste treatment, storage and disposal facilities. The guidelines shall ensure that facilities are sited so that the wastes located there will not constitute an unacceptable health hazard or impact the environment in an unacceptable manner.

(2) Proposed guidelines for siting shall take into account the following considerations:

(a) the zoning classification of the site proposed and its proximity to present or projected land use dedicated to industrial development;

(b) the existing land uses and the density of population in areas neighboring the proposed site;

(c) the density of population in areas adjacent to probable hazardous waste delivery routes;

(d) the risk and impact of accidents which might occur during the transportation of hazardous wastes to the site;

(e) the determination of areas that are dedicated to an incompatible public use or are unsuitable for other reasons for the location of hazardous wastes;

(f) the geology of the proposed site with special attention to the presence of fault zones and the risk of contamination to ground and surface waters through leaching and runoff;

(g) the risk to life and property from fires or explosions that might occur if improper storage and disposal methods are used;

(h) the economic and environmental impact of the proposed facility site location upon local governmental units adjacent to, or within which, the facility is proposed for location;

(i) closure and post-closure monitoring and maintenance requirements; and

(j) such other criteria as are required for the siting of hazardous wastes under state or federal law.

History: L. 1981, ch. 130, § 5.

Effective date of this act. — The phrase "effective date of this act" in Subsection (1) means the effective date of Laws 1981, ch. 130, which was May 12, 1981.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 250.

26-14a-6. Siting plan — Procedure for adoption — Review — Effect.

(1) After completion of the guidelines, the committee shall prepare and publish a preliminary siting plan for the state. The preliminary siting plan, which shall not become final until adopted by the committee in accordance with the procedures specified in Subsection (2) and shall be based upon the guidelines adopted under Section 26-14a-5 and be published within one year after adoption of the guidelines.

(2) (a) After completion of its guidelines, the committee shall publish notice of intent to prepare a siting plan. The notice shall invite all interested persons to nominate sites for inclusion in the siting plan. It shall be published at least twice in not less than two newspapers with statewide circulation and shall also be sent to any person, business, or other organization that has notified the committee of an interest or involvement in hazardous waste management activities.

(b) Nominations for the location of hazardous waste sites shall be accepted by the committee for a period of 120 days after the date of first publication of notice. Nominations may include a description of the site or sites suggested or may simply suggest a general area. In addition, any nomination may provide data and reasons in support of inclusion of the site nominated.

(c) The committee, in cooperation with other state agencies and private sources, shall then prepare an inventory of the hazardous wastes generated in the state, those likely to be generated in the future, and those being generated in other states that are likely to be treated, disposed of, or stored in the state; the sites within the state currently being used for hazardous wastes and those suggested through the nomination process; the treatment, storage, and disposal processes and management practices that are required to comply with Section 26-14-8; and an estimate of the public and private costs for meeting the long-term demand for hazardous waste treatment, disposal, and storage facilities.

(d) After the hazardous waste inventory and cost estimate are complete, the committee, with the use of the guidelines developed in Section 26-14a-5, shall provide for the geographical distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment, and storage for the next 25 years. The committee shall not exclude any area of the state from consideration in the selection of potential sites but, to the maximum extent possible, shall give preference to sites located in areas already dedicated through zoning or other land use regulations to industrial use or to areas located near such uses. However, the committee shall give consideration to excluding an area designated for disposal of uranium mill tailings or for disposal of nuclear wastes unless the proposed disposal site is approved by the affected county through its board of county commissioners.

(e) The committee shall also analyze and identify areas of the state where, due to the concentration of industrial waste generation processes or to favorable geology or hydrology, the construction and operation of hazardous waste treatment, disposal, and storage facilities appears to be technically, environmentally, and economically feasible.

(3) The preliminary siting plan prepared pursuant to Subsection (2) shall, before adoption, be distributed to all units of local government located near existing or proposed sites. Notice of the availability of the preliminary siting plan for examination shall be published at least twice in two newspapers, if available, with general circulation in the areas of the state that potentially will be affected by the plan. The committee shall also issue a statewide news release that informs persons where copies of the preliminary siting plan may be inspected or purchased at cost. After release of the preliminary siting plan, the committee shall hold not less than two public hearings in different areas of the state affected by the proposed siting plan to allow local officials and other interested persons to express their views and submit information relevant to the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release of the plan. Within 30 days after completion of such hearings, the committee shall prepare and make available for public inspection a summary of public comments. The committee, between 30 and 60 days after publication of the public comments, shall prepare a final siting plan. The final siting plan shall be widely distributed to members of the public, and the committee, at any time between 30 and 60 days after release of the final plan, on its own initiative or that of interested parties, shall hold not less than two public hearings in each area of the state affected by the final plan to allow local officials and other interested persons to express their views. The committee, within 30 days after the last hearing, shall vote to adopt, adopt with modification, or reject the final siting plan. Any person adversely affected by

the committee's decision may seek judicial review of the decision by filing a petition for review with the district court for Salt Lake County within 90 days after the committee's decision.

(4) Judicial review may be had, however, only on the grounds that the committee violated the procedures set forth in this section, that it acted without or in excess of its powers, or that its actions were arbitrary or capricious and not based on substantial evidence.

(5) If the final siting plan is adopted, the committee shall cause it to be published. After publication of the final siting plan, the committee shall engage in a continuous monitoring and review process to ensure that the long-range needs of hazardous waste producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An annual review of the adequacy of the plan shall be conducted and published by the committee. If necessary, the committee may amend the siting plan to provide additional sites or delete sites which are no longer suitable. Before any plan amendment adding or deleting a site is adopted, the committee, upon not less than 20 days' public notice, shall hold at least one public hearing in the area where the affected site is located.

(6) After adoption of the final plan, an applicant for approval of a plan to construct and operate a hazardous waste treatment, storage, and disposal facility who seeks protection under this act shall select a site contained on the final site plan. Nothing in this chapter, however, shall be construed to prohibit the construction and operation of an approved hazardous waste treatment, storage, and disposal facility at a site which is not included within the final site plan, but such a facility is not entitled to the protections afforded under this chapter.

History: L. 1981, ch. 130, § 6; 1988, ch. 169, § 20.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "26-14-8" for "26-37-7" in Subsection (2)(c); substituted "chapter" for "act" in two places in the second sentence of Subsection (6); and made minor stylistic changes.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 250.

26-14a-7. Exclusive remedy for devaluation of property caused by approved facility.

(1) Before construction of a hazardous waste management facility, but in no case later than nine months after approval of a plan for a hazardous waste treatment, storage, or disposal facility, any owner or user of property adversely affected by approval may bring an action in a district court of competent jurisdiction against the owner of the proposed facility. If the court determines that the planned construction and operation of the hazardous waste management facility will result in the devaluation of the plaintiff's property or will otherwise interfere with the plaintiff's rights in the property, it shall order the owner to compensate the plaintiff in an amount equal to the value of the plaintiff's loss.

(2) The remedy provided in Subsection (1) of this section is the exclusive remedy for owners or users aggrieved by the proposed construction and opera-

tion of a hazardous waste treatment, disposal or storage facility, and no court has jurisdiction to enjoin the construction or operation of any facility located at a site included in the siting plan adopted by the committee.

(3) Nothing in this act shall prevent an owner or user of property aggrieved by the construction and operation of a facility from seeking damages that result from a subsequent modification of the design or operation of a facility but such damages are limited to the incremental damage that results from the modification. Any action for such damages shall be brought within nine months after the plans for modification of the design or operation of the facility are approved.

(4) For the purpose of assessing damages, the value of the rights affected is fixed at the date the facility plan is approved and the actual value of the right at that date is the basis for the determination of the amount of damage suffered, and no improvements to the property subsequent to the date of approval of the plans shall be included in the assessment of damages. Similarly, for any subsequent modification of a facility, value is fixed at the date of approval of the amended facility plan.

(5) The owner or operator of a proposed facility may, at any time before an award of damages, abandon the construction or operation of the facility or any modification and cause the action to be dismissed. As a condition of dismissal, however, the owner or operator shall compensate the plaintiff for any actual damage sustained as a result of construction or operation of the facility before abandonment together with court costs and a reasonable attorney's fee.

(6) Nothing in this chapter shall prevent a court from enjoining any activity at a hazardous waste facility that is outside of, or not in compliance with, the terms and conditions of an approved hazardous waste operations plan.

History: L. 1981, ch. 130, § 7.

COLLATERAL REFERENCES

A.L.R. — Landowner's right to relief against pollution of his water supply by industrial or commercial waste, 39 A.L.R.3d 910.

26-14a-8. Facility at site approved in siting plan — Exemption from zoning and local approval requirements — Transportation restrictions limited.

The construction or operation of a hazardous waste treatment, storage, or disposal facility at a site included within the siting plan is not required to conform to any local zoning or other land use regulation, law, or ordinance. The owner of any hazardous waste treatment, storage, or disposal facility proposed to be located at a site included in the siting plan is not required to obtain approval of the site from any county or municipal planning commission or similar authority and no local unit of government may prohibit or unduly restrict the transportation of hazardous waste through the governmental unit to an approved hazardous waste treatment, storage, or disposal facility.

History: L. 1981, ch. 130, § 8.

COLLATERAL REFERENCES

A.L.R. — Applicability of zoning regulations to waste disposal facilities of state or local governmental entities, 59 A.L.R.3d 1244.

26-14a-9. Facilities subject to Industrial Facilities and Development Act.

The financing, acquiring, constructing, reconstructing, improving, maintaining, equipping or finishing of a hazardous waste treatment, disposal, or storage facility is deemed, where applicable, to be a "project," subject to the Utah Industrial Facilities [and] Development Act.

History: L. 1981, ch. 130, § 9.
Cross-References. — Utah Industrial Facilities and Development Act, Chapter 17 of Title 11.

CHAPTER 14b

HAZARDOUS WASTE FACILITIES MANAGEMENT

26-14b-1. Short title.

This act shall be known and may be cited as the "Hazardous Waste Facilities Management Act."

History: L. 1981, ch. 131, § 1.
Meaning of "this act." — Laws 1981, ch. 131 enacted §§ 26-14b-1 to 26-14b-18.

COLLATERAL REFERENCES

Utah Law Review. — Utah's Hazardous Waste Facility Siting Act: Burying Private and Local Interests to Facilitate Siting?, 1983 Utah L. Rev. 327.
Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 244 et seq.
A.L.R. — State or local regulation of transportation of hazardous materials as pre-empted by Hazardous Materials Transportation Act (49 USCS § 1801 et seq.), 78 A.L.R. Fed. 289.
State or local regulation of toxic substances as pre-empted by Toxic Substances Control Act (15 USCS §§ 2601 et seq.), 84 A.L.R. Fed. 913.
Key Numbers. — Health and Environment ⇐ 25.5.

26-14b-2. Definitions.

As used in this chapter:

(1) "Authority" means the hazardous waste facilities authority created pursuant to Section 26-14b-4.

(2) "Committee" means the Solid and Hazardous Wastes Committee created pursuant to Section 26-1-7.

(3) "Disposal" means the final disposition of hazardous wastes into or onto the lands, waters, and air of this state.

(4) "Hazardous wastes" means wastes defined in Section 26-14-2.

(5) "Hazardous waste treatment, disposal, and storage facility" means a facility or site used or intended to be used for the treatment, storage, or disposal of hazardous waste materials, including but not limited to, physical, chemical, or thermal processing systems, incinerators, and secure landfills.

(6) "Obligations" means any notes, debentures, interim certificates, mortgage certificates, revenue bonds or other evidence of financial indebtedness, but does not mean any general obligation bonds.

(7) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.

(8) "Storage" means the containment of hazardous wastes for a period of more than 90 days.

(9) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to another usable material, or reduced in volume and suitable for ultimate disposal.

History: L. 1981, ch. 131, § 2; 1988, ch. 169, § 21.
Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted "chapter" for "act" in the introductory phrase; changed the subsection designations from (a) through (i) to (1) through (9); inserted "Solid and" before "Hazardous" and substituted "26-1-7" for "26-37-2" in Subsection (2); and substituted "26-14-2" for "26-37-2" in Subsection (4).
Cross-References. — Membership and powers of Solid and Hazardous Wastes Committee, §§ 26-14-4, 26-14-5.

26-14b-3. Petition for creation of Hazardous Waste Facilities Authority — Procedure on petition — Recommendation to governor — Action by governor.

(1) Any person who believes that the treatment, storage, and disposal of hazardous wastes within the state are not being adequately serviced by private industry may file a petition with the committee seeking the creation and establishment of a Hazardous Waste Facilities Authority.

(2) The petition shall be signed by the petitioner and set forth with particularity the reasons petitioner is relying upon in support of the petitioner's conclusion that the hazardous waste needs are not being satisfied.

(3) Upon the receipt of a petition, and after such public notice of the date and place of hearing as the committee deems appropriate is given, the committee shall conduct at least one public hearing on the issues raised by the petitioner.

(4) At the conclusion of the hearing or hearings, the committee shall approve or disapprove the petition. The action of the committee shall be supported by written findings of fact which shall be served upon the petitioner by certified mail.

(5) If the committee approves the petition, it shall make a written recommendation to the governor that action be taken to create and establish the authority. The governor, within 30 days after receipt of the recommendation, shall affirm it or remand the recommendation to the committee for its reconsideration.

(6) If the recommendation is remanded, the committee shall reconsider its action and either reapprove or disapprove the petition. If the petition is reapproved, it shall forward a notice of its reapproval to the governor who shall proceed to create and establish the authority; otherwise, the committee shall forward notice of its disapproval to the petitioner by certified mail.

History: L. 1981, ch. 131, § 3.

26-14b-4. Creation of authority — Members — Appointment — Terms — Chairman — Quorum — Compensation.

(1) If compliance is had with the requirements of Section 26-14b-3, the governor shall proceed to create and appoint the members of the authority which shall be composed of ten members appointed by the governor with the advice of the senate, as follows:

(a) the director of the Department of Health;

(b) the director of the Department of Community and Economic Development;

(c) the director of the Department of Natural Resources;

(d) the director of the Department of Transportation; and

(e) six members from the public-at-large.

(2) Public-at-large members, no more than three of whom shall be from the same political party, shall be appointed to six-year terms of office, subject to removal by the governor with or without cause. Initial public-at-large members shall be appointed, respectively, in equal numbers, to two-year terms of office.

(3) The governor shall name one public-at-large member as chairman of the authority who is responsible for the call and conduct of authority meetings. The authority may elect such other officers as it deems necessary. Five members of the authority present at a duly noticed meeting shall constitute a quorum for the transaction of official authority business. Public-at-large members are entitled to per diem and expenses, for each day devoted to authority business, in accordance with the schedule promulgated under Section 63-2-15.

History: L. 1981, ch. 131, § 4.

Compiler's Notes. — Section 63-2-15, cited in Subsection (3), was repealed in 1981. For present provisions regarding per diem rates and travel expenses, see §§ 63-1-14.5 and 63-1-15.

26-14b-5. Powers of authority.

The authority is a body corporate and politic that may:

(1) sue and be sued in its own name;

(2) have a seal and alter the seal at will;

(3) borrow money and issue obligations, including refunding obligations, and provide for the rights of holders of those obligations;

(4) establish hazardous waste treatment, disposal, or storage surcharge schedules for facilities operated by, or under authority of, the authority, and require all private facility operators who contract with the authority to collect fees for all hazardous wastes received for treatment, disposal, or storage by those private facilities;

(5) promulgate rules pursuant to Chapter 46a, Title 63, the Utah Administrative Rulemaking Act, governing the exercise of its powers and fulfillment of its purposes;

(6) enter into contracts and leases and execute all instruments necessary, convenient, or desirable;

(7) acquire, purchase, hold, lease, use, or dispose of any property or any interest in property that is necessary, convenient, or desirable to carry out the purposes of this chapter, and sell, lease, transfer, and dispose of any property or interest in property at any time required in the exercise of its power, including, but not limited to, the sale, transfer, or disposal of any materials, substances, or sources or forms of energy derived from any activity engaged in by the authority;

(8) contract with experts, advisers, consultants, and agents for needed services;

(9) appoint officers and employees required for the performance of its duties, and fix and determine their qualifications and duties;

(10) make, or contract for, plans, surveys, and studies necessary, convenient, or desirable to effectuate its purposes and powers and prepare any recommendations with respect to those plans, surveys, or studies;

(11) receive and accept aid or contributions from any source, including the United States or this state, in the form of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this chapter, subject to the conditions imposed upon that aid or contributions consistent with this chapter;

(12) enter into agreements with any department, agency, or instrumentality of the United States or this state, or any financial institution, or contractor for the purpose of leasing and operating any facility;

(13) consent to the modification of any obligation with the holder of that obligation, to the extent permitted by the obligation, relating to rates of interest or to the time and payment of any installment of principal or interest, or to the modification of any other contract, mortgage, mortgage loan, mortgage loan commitment, or agreement of any kind to which it is a party;

(14) pledge revenues from any hazardous waste treatment, disposal, and storage facility to secure payment of any obligations relating to that facility, including interest on, and redemption of, those obligations;

(15) execute or cause to be executed, mortgages, trust deeds, indentures, pledge agreements, assignments, security agreements, and financing statements that encumber property acquired, constructed, reconstructed, renovated, or repaired with the proceeds from the sale of such obligations;

(16) exercise the power of eminent domain;

(17) do all other things necessary to comply with the requirements of 42 U.S.C. §§ 6901 to 6986, the Resource Conservation and Recovery Act of 1976, and this chapter;

(18) contract for the construction, operation, and maintenance of hazardous waste treatment, storage, and disposal facilities, including plants, works, instrumentalities, or parts thereof, for the collection, conveyance, treatment, exchange, storage, and disposal of hazardous wastes, subject to approval by the committee; and

(19) exercise any other powers or duties necessary or appropriate to carry out and effectuate this chapter.

History: L. 1981, ch. 131, § 5; 1987, ch. 161, § 63.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, substituted "chapter" for "act" throughout the section; in Subsection (5), inserted "Chapter 46a, Title 63"; in Subsection (17), inserted "42 U.S.C. §§ 6901 to 6986"; in Subsection (18), deleted from the end "pursuant to Section 26-37-7"; and made minor changes in phraseology and punctuation throughout the section.

26-14b-6. Acquisition of sites by authority — Property vested in state on disincorporation of authority.

(1) The authority is authorized, pursuant to Chapter 34, Title 78, to acquire sites sufficient in number to meet the hazardous waste treatment, storage, and disposal needs of the state if, in the judgment of the authority, private operators are not adequately meeting such needs. Exercise of the power of eminent domain to acquire such sites is declared to be for a public purpose and use.

(2) Before the purchase or condemnation of any site by the authority, the committee shall certify that the site meets the standards for eventual incorporation into an approved hazardous wastes operations plan.

(3) If the authority is disincorporated for any reason, all its property shall vest in, and become the property of, the state, which shall succeed to all the rights and liabilities of the authority which exist at the time of vestiture in the state.

History: L. 1981, ch. 131, § 6.

26-14b-7. Fees charged at authority facilities.

Fees for the treatment, disposal, and storage of hazardous wastes at facilities operated by, or under subcontract with the authority shall be set by the authority based upon the following considerations:

(a) the quantity of hazardous wastes processed;

(b) the difficulty encountered in the treatment, disposal or storage of such wastes;

(c) the maintenance expense and the expense of other legal obligations incurred pursuant to post-closure monitoring and liability requirements related to the long-term disposal or storage;

(d) the operation and maintenance expense incident to the facility and to the debt retirement obligations of the authority; and

(e) any other considerations deemed relevant by the authority.

History: L. 1981, ch. 131, § 7.

26-14b-8. Obligations of authority — Limitation — Issuance — Terms — Expenses.

(1) All obligations of the authority shall plainly state that they are limited and that neither the credit of the state nor its taxing authority is pledged in whole or in part in payment of such obligations.

(2) All obligations, before issuance, shall be authorized by resolution of the authority and may:

(a) be executed and delivered from time to time, as the authority determines;

(b) be sold at public or private sale in such manner as the authority determines;

(c) be in such form and denominations as the authority determines;

(d) be of such tenor as the authority determines;

(e) be in registered or bearer form either as to principal, interest, or both;

(f) be payable in such installments and at such times as the authority determines;

(g) be payable at such places, either within or without this state, as the authority determines;

(h) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, as the authority determines;

(i) be redeemable prior to maturity, with or without premium;

(j) contain any other provisions the authority deems in its best interest that are not inconsistent with this act; and

(k) bear facsimile signatures and seals.

(3) Any or all expenses, premiums, or commissions incurred in the issuance and sale of its obligations may be paid either from the proceeds of the sale of such obligations or from revenues generated by the projects involved.

History: L. 1981, ch. 131, § 8.

26-14b-9. Security for obligations — Provisions of security instruments.

(1) The principal and interest on any obligation issued pursuant to this act shall be secured by:

(a) a pledge and assignment of the proceeds earned by the facility built and acquired with the proceeds of the obligations;

(b) a mortgage or trust deed on the facility built and acquired with the proceeds from the obligations; and

(c) such other security on the facility as is deemed most advantageous by the authority.

(2) Obligations authorized for issuance under this act and any mortgage or other security given to secure such obligations may contain any provisions customarily contained in security instruments, including, but not limited to:

(a) the fixing and collection of fees from the facility;

(b) the maintenance of insurance on the facility;

(c) the creation and maintenance of special funds to receive revenues earned by the facility; and

(d) the rights and remedies available to obligation holders in the event of default.

(3) All mortgages, trust deeds, security agreements or trust indentures on a facility shall provide in the event of foreclosure, that no deficiency judgment may be entered against the authority, the state, or any of the state's political subdivisions.

(4) Any mortgage or other security instrument securing such obligations may provide that in the event of a default in the payment of principal or interest or in the performance of any agreement, that payment or performance may be enforced by the appointment of a receiver with power to charge and collect fees and to apply the revenues from the facility in accordance with the provisions of the security instrument.

(5) Any mortgage or other security instrument made pursuant to this act may also provide that in the event of default in payment or breach of a condition, that the mortgage may be foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee under the mortgage or the holder of any obligation secured by such mortgage may, if the highest bidder, purchase the security at foreclosure sale.

History: L. 1981, ch. 131, § 9.
Meaning of "this act." — See note under § 26-14b-1.

26-14b-10. Application of proceeds from sale of obligations.

Proceeds from the sale of obligations shall be applied solely to the purposes for which they were issued. Accrued interest and premiums received upon such sale and any proceeds not needed for the purposes for which the obligations were issued, however, shall be applied to payment of principal or interest on such obligations.

History: L. 1981, ch. 131, § 10.

26-14b-11. Cost of acquisition or improvement of facility.

The cost of acquisition or improvement of any facility is deemed to include:

(1) the actual cost of land acquisition and improvements to the land; and

(2) the actual cost of construction, alteration, or remodeling of a facility, including maintenance and the cost of equipping it; the cost of architectural and engineering fees; the cost of legal and accounting fees incurred incident to issuance of such obligations; the cost of fees for financial advisors and printing; and the interest on such obligations for a reasonable period of time.

History: L. 1981, ch. 131, § 11.

26-14b-12. Validity of signatures on obligations.

If, at the time of delivery of an obligation, the member or officer who signed the obligation no longer occupies such position, the signature or facsimile is nevertheless valid and sufficient for all purposes.

History: L. 1981, ch. 131, § 12.

26-14b-13. Obligations as negotiable instruments.

All obligations of the authority are negotiable instruments within the purpose and meaning of the Utah Uniform Commercial Code, subject to any provision of such obligations that relate to registration.

History: L. 1981, ch. 131, § 13.
Cross-References. — Uniform Commercial Code, Title 70A. — Negotiable instruments, Chapter 3 of Title 70A.

26-14b-14. Personal liability on obligations.

No person who executes an obligation issued pursuant to this act is personally liable on account of such action.

History: L. 1981, ch. 131, § 14.
Meaning of "this act." — See note under § 26-14b-1.

26-14b-15. Tax exemption of property, income and obligations of authority.

All property acquired or held by the authority is declared to be public property used for essential public and governmental purposes. All property owned by the authority and all income derived from it is exempt from taxation by the state or its political subdivisions. All principal and income derived by holders of obligations issued by the authority is also exempt from taxation by the state or its political subdivisions, except for the corporate franchise tax.

History: L. 1981, ch. 131, § 15; 1984, ch. 61, § 8.

Amendment Notes. — The 1984 amendment added "except for the corporate franchise tax" to the end of the section.

26-14b-16. Obligations as authorized investments and securities.

Obligations issued pursuant to this act are securities in which all persons and organizations authorized to invest in obligations of this state may properly and legally invest. These obligations are also declared to be securities which may properly and legally be deposited with, and received by, any state, county, or municipal officer.

History: L. 1981, ch. 131, § 16.

26-14b-17. Publication of resolution authorizing obligations — Contesting validity of resolution — Action to compel signing of obligations.

(1) Each resolution adopted by the authority authorizing the issuance of obligations shall be published in a newspaper with general circulation in the state. For a period of 30 days after the date of publication, any interested person may contest the legality of the resolution, the obligations authorized by it, or any provision made for the security and payment of the proposed obligations. At the expiration of the 30-day period, no person, except as otherwise provided in Subsection (2) of this section, has standing to contest the validity of such action.

(2) If any official required to sign obligations refuses to sign them, alleging that the obligations are illegal, the authority may bring an original action in the state supreme court for a writ of mandamus to compel the official to sign the obligations.

History: L. 1981, ch. 131, § 17.

26-14b-18. Legal, accounting and auditing services for authority.

(1) The attorney general shall provide all legal services, and the state auditor, all accounting and auditing services, for the authority without reimbursement.

(2) Subsection (1) of this section is inapplicable to the opinions of attorneys or accountants necessitated before issuance of any obligations.

History: L. 1981, ch. 131, § 18.

26-14b-19. Cooperative agreements with federal government — Legislative findings.

Due to the enactment of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, P.L. 96-510, and recognizing the applicability of that act to the unauthorized or accidental discharge of hazardous substances or to inactive hazardous waste sites in the state of Utah, the legislature finds and declares it to be in the public interest to enter into agreements with the federal Environmental Protection Agency to undertake activities and perform remedial and removal actions as provided by P.L. 96-510, to protect the public health, safety and welfare.

History: L. 1983, ch. 134, § 1.
Federal law. — The federal Comprehensive Environmental Response, Compensation and Liability Act ("Superfund") is codified as 42 U.S.C. § 9601 et seq.

26-14b-20. Health department authority to enter cooperative agreements.

The Department of Health, on behalf of the state, is authorized to undertake such activities and enter into contracts and cooperative agreements with the Federal Environmental Protection Agency as provided by the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, P.L. 96-510.

History: L. 1983, ch. 134, § 2.
Federal law. — See note under § 26-14b-19.

26-14b-21. Information available to public — Exemption from disclosure — Procedures.

(1) Records, reports, or information obtained from any person, or created by the Bureau of Solid and Hazardous Waste, in the course of performing activities under contracts and cooperative agreements authorized by Section 26-14b-20, or in the course of investigation or litigation under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 6901 [9601], et seq., shall be made available to the public unless they are exempt from disclosure or entitled to confidential treatment or trade secret protection under Subsection 26-14-9.5(1) or (4).

(2) The director of the Bureau of Solid and Hazardous Waste shall determine whether the records, reports, or information described in Subsection (1), and the records, reports, or information obtained from any person or created by the Bureau of Solid and Hazardous Waste in the course of investigation or litigation under Section 26-14-15 or 26-14-19, are exempt from disclosure.

(3) Decisions of the director of the Bureau of Solid and Hazardous Waste under this section are subject to judicial review if a petition is filed with the district court within 30 days after the director's decision. The director's decision may not be overturned unless the court finds that his decision was arbitrary or capricious.

History: C. 1953, 26-14b-21, enacted by L. 1987, ch. 225, § 2.

Effective Dates. — Laws 1987, ch. 225, § 3 makes the act effective on July 1, 1987.

CHAPTER 14c

INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE

26-14c-1. Policy and purpose of compact.

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

History: L. 1982, ch. 37, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61A Am. Jur. 2d Pollution Control § 244 et seq.

A.L.R. — State or local regulation of transportation of hazardous materials as pre-empted by Hazardous Materials Transportation Act (49 USCS § 1801 et seq.), 78 A.L.R. Fed. 289.

Key Numbers. — Health and Environment ⇔ 25.5.

26-14c-2. Definitions.

As used in this compact:

(1) "Facility" 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.

(2) "Low-level waste" 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. Low-level waste does not include waste containing more than ten nanocuries of transuranic contaminates 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.

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

History: L. 1982, ch. 37, § 2.

26-14c-3. Practices of party states regarding low-level waste shipments — Fees for inspections.

Each party state agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) periodic unannounced inspection of the premises of the generators and the waste management activities thereon;

(3) authorization of the containers in which the waste may be shipped, and a requirement that generators use only the type of containers authorized by the state;

(4) assurance that inspections of the carriers which transport the waste are conducted by proper authorities, and appropriate enforcement action taken for violations;

(5) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that the violations do not recur. This action may include the inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this compact. Nothing in this section shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this section.

History: L. 1982, ch. 37, § 3.

26-14c-4. Acceptance of low-level waste by facilities in party states — Requirements for acceptance of waste generated outside region of party states — Cooperation in determining site of facility required within region of party states — Allowance of access to low-level waste and hazardous chemical waste disposal facilities by certain party states — Establishment of fees and requirements by host states.

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of that party state's own low-level waste, shall accept low-level waste generated in any party state if the waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Section 26-14c-5.

(3) Until Subsection (2) of this section takes effect, facilities located in any party state may accept low-level waste generated outside of any of the party states only if the waste is accompanied by a certificate of compliance issued by an official of the state in which the waste shipment originated. The certificate shall be in such form as may be required by the host state, and shall contain at least the following:

(a) the generator's name and address;

(b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his or her agent or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state; and

(d) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of the waste during shipment or after the waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that may be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any party state as the host of the facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access

to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to the facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of the facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, and maintenance and contingency requirements are met including adequate bonding.

History: L. 1982, ch. 37, § 4.

26-14c-5. Governor to designate state official as person responsible for administration of compact — Designated officials comprise Northwest Low-level Waste Compact Committee — Meetings of committee — Duties relating to existing regulations — Authority to make arrangements with entities outside region of party states.

The governor of each party state shall designate one state official as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest Low-level Waste Compact Committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in the regulations. Notwithstanding any provision of Section 26-14c-4 to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may consider appropriate. However, it shall require a two-thirds vote of all members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

History: L. 1982, ch. 37, § 5.

26-14c-6. Eligible party states — Requirements regarding joinder and withdrawal from compact — Consent of Congress.

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect under Subsection (1), any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Subsection (2) of Section 26-14c-4 shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

History: L. 1982, ch. 37, § 6.
Federal law. — Public Law 96-573 is codified as 42 U.S.C. §§ 2021b to 2021d.

CHAPTER 15
GENERAL SANITATION

26-15-1. Definitions.

As used in this chapter:

(1) "Food handler" means any person working part-time or full-time in a food service establishment who moves food or food containers, prepares, stores, or serves food, or comes in contact with any food, utensil, tableware or equipment, or washes the same. The term also includes owners, supervisors and management persons, and any other person working in a food-service establishment. The term also includes any operator or person employed by one who handles food dispensed through vending machines, or who comes into contact with food contact surfaces or containers, equipment, utensils, or packaging materials used in connection with vending machine operations, or who otherwise services or maintains one or more such machines.

(2) "Individual wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the water pollution control committee and the executive director.

(3) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human occupancy, habitation, or use which threatens the public health or well being of the people within the state.