UTAH CODE

(UNANNOTATED)

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION OF SOLID AND HAZARDOUS WASTE

ENVIRONMENTAL QUALITY CODE - HAZARDOUS SUBSTANCES

PART 3

Hazardous Substances Mitigation Act

(Title 19, Chapter 6, Part 3, Sections 301-326)

(Last Revised - 2010)

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Title 19 Chapter 6
ENVIRONMENTAL QUALITY CODE - HAZARDOUS SUBSTANCES

PART 3
Hazardous Substances Mitigation Act

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19-6-301. Short title.

This part is known as the "Hazardous Substances Mitigation Act."

19-6-302. Definitions.

As used in this part:

(1) (a) "Abatement action" means to take steps or contract with someone to take steps to eliminate or mitigate the direct or immediate threat to the public health or the environment caused by a hazardous materials release.

(b) "Abatement action" includes control of the source of the contamination.

(2) "Bona fide prospective purchaser" has the meaning given in 42 U.S.C. Sec. 9601(40) of CERCLA, but with the substitution of "executive director" for "President" and "part" for "chapter," and including "hazardous materials" where the term "hazardous substances" appears.

(3) "CERCLA" means 42 U.S.C. 9601 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act.

(4) "Cleanup action" means action taken according to the procedures established in this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous material from a facility.

(5) "Contiguous property owner" means a person who qualifies for the exemption from liability in 42 U.S.C. Sec. 9607(q)(1) of CERCLA, but with the substitution of "executive director" for "President" and "part" for "chapter."

(6) "Enforcement action" means the procedures contained in Section 19-6-306 to enforce orders, rules, and agreements authorized by this part.

(7) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous material or substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(b) "Facility" does not mean any consumer product in consumer use or any vessel.

(8) "Fund" means the Hazardous Substances Mitigation Fund created by Section 19-6-307.

(9) "Hazardous materials" means hazardous waste as defined in the Utah Hazardous Waste Management Regulations, PCBs, dioxin, asbestos, or a substance regulated under 42 U.S.C. Section 6991(7).

(10) "Hazardous substances" means the definition of hazardous substances contained in CERCLA.

(11) "Hazardous substances priority list" means a list of facilities meeting the criteria established by Section 19-6-311 that may be addressed under the authority of this part.

(12) "Innocent landowner" means a person who qualifies for the exemption from liability in 42 U.S.C. Sec. 9607(b)(3) of CERCLA.

(13) "National Contingency Plan" means the National Oil and Hazardous Substance Contingency plan established by CERCLA.

(14) "National Priority List" means the list established by CERCLA.

(15) "National priority list site" means a site in Utah that is listed on the National Priority List.

(16) "Proposed national priority list site" means a site in Utah that has been proposed by the Environmental Protection Agency for listing on the National Priority List.

(17) (a) "Release" means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of substances into the environment that is not authorized under state or federal law, rule, or regulation.

(b) "Release" includes abandoning or discarding barrels, containers, and other closed receptacles containing any hazardous material or substance, unless the discard or abandonment is authorized under state or federal law, rule, or regulation.

(18) "Remedial action" means action taken consistent with the substantive requirements of CERCLA according to the procedures established by this part to prevent, eliminate, minimize, mitigate, or clean up the release of a hazardous substance from a facility on the hazardous substances priority list.

(19) "Remedial action plan" means a plan for remedial action consistent with the substantive requirements of CERCLA and approved by the executive director.

(20) "Remedial investigation" means a remedial investigation and feasibility study as defined in the National Contingency Plan established by CERCLA.

(21) (a) "Responsible party" means:

(i) the owner or operator of a facility;

(ii) any person who, at the time any hazardous substance or material was disposed of at the facility, owned or operated the facility;

(iii) any person who arranged for disposal or treatment, or arranged with a transporter for transport, for disposal, or treatment of hazardous materials or substances owned or possessed by the person, at any facility owned or operated by another person and containing the hazardous materials or substances; or

(iv) any person who accepts or accepted any hazardous materials or substances for transport to a facility selected by that person from which there is a release that causes the incurrence of response costs.

(b) For hazardous materials or substances that were delivered by a motor carrier to any facility, "responsible party" does not include the motor carrier, and the motor carrier may not be considered to have caused or contributed to any release at the facility that results from circumstances or conditions beyond its control.

(c) "Responsible party" under Subsections (21)(a)(i) and (ii) does not include:

(i) any person who does not participate in the management of a facility and who holds indicia of ownership:

(A) primarily to protect a security interest in a facility; or

(B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan;

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D) and 40 CFR 300.1105, National Contingency Plan; or

(iii) any person, including a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan who holds indicia of ownership and did not participate in the management of a facility prior to foreclosure in accordance with 42 U.S.C. Sec. 9601(20)(E)(ii) of CERCLA.

(d) The exemption created by Subsection (21)(c)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(e) The terms "security interest," "participate in management," "foreclose," and "foreclosure" under this part are defined in accordance with 42 U.S.C. Sec. 9601(20)(E), (F), and (G) of CERCLA.

(22) "Scored site" means a facility in Utah that meets the requirements of scoring established by the National Contingency Plan for placement on the National Priority List.

19-6-302.5. Retroactive effect.

(1) The Legislature finds the language in this part, prior to the passage of this act, did not clearly set forth procedures for identifying responsible parties and allocating among those parties response costs at sites where hazardous substances or materials have been released. This lack of clarity has interfered with effective allocation of costs of cleanup as required by this part.

(2) It is the intent of the Legislature that this act provides clarification of the Legislature's original intent to facilitate cleanups of hazardous substances or materials by providing clarification of procedures for allocating liability and response costs.

(3) (a) It is the intent of the Legislature that liability as determined under this act applies retroactively to any release of a hazardous substance or material subject to or currently in the process of investigation, abatement, or corrective action under this part as of the effective date of this act.

(b) Any responsible party whose liability for cleanup costs is absolved or altered by the provisions of this act is subject only to further costs or action as required by this part.

19-6-303. Rulemaking provisions.

The executive director may regulate hazardous substances releases by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the substantive requirements of CERCLA, to establish the requirements for remedial investigation studies and remedial action plans.

19-6-304. Inspections.

(1) Upon presentation of appropriate credentials and at any reasonable time, any authorized officer, employee, or representative of the department may:

(a) enter and inspect any property, premises, or place where he has reason to believe there is a hazardous materials or substances release;

(b) copy any records relating to those hazardous materials or substances to determine compliance with this part and the rules made under authority of this part; and

(c) inspect and take samples of any suspected hazardous material or substance.

(2) If the department's representative takes samples of any suspected hazardous material or substance under authority of this section, he shall:

(a) give a receipt describing the sample taken to the owner, operator, or agent who has control of the suspected hazardous material or substance;

(b) if requested and if possible, give the owner, operator, or agent a split sample of the suspected hazardous material or substance equal in volume or weight to the portion he retains; and

(c) if an analysis of any sample is made, upon request, promptly furnish a copy of the results of the analysis to the owner, operator, or agent.

19-6-306. Penalties -- Lawsuits.

(1) Any person who violates any final order or rule issued or made under this part is 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 violates the terms of any agreement made under authority of this part is subject in a civil proceeding to pay:

(a) any penalties stipulated in the agreement; or

(b) if no penalties are stipulated in the agreement, a penalty of not more than $10,000 per day for each day of violation.

(3) The executive director shall deposit all civil penalties collected under the authority of this section into the General Fund.

(4) (a) The executive director may enforce any orders issued under authority of this part by bringing a suit to enforce the order in the district court in Salt Lake County or in the district court in the county where the hazardous substances release occurred.

(b) After a remedial investigation has been completed, the executive director may bring a suit in district court against all responsible parties, asking the court for injunctive relief and to apportion liability among the responsible parties for performance of remedial action.

19-6-307. Hazardous Substances Mitigation Fund -- Uses.

(1) There is created a restricted special revenue fund entitled the "Hazardous Substances Mitigation Fund."

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

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

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

(c) monies received by the state under Section 19-6-310 and Section 19-6-316.

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

(b) All interest earned on fund monies shall be deposited into the fund.

(4) The executive director may use fund monies to:

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

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

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

(d) pay the amount required by the federal government as the state's portion of the cost of cleanups under 42 U.S.C. 6991 et seq., the Leaking Underground Storage Tank Trust Fund, as appropriated by the Legislature for that purpose.

19-6-308. Hazardous Substances Mitigation Fund -- Prohibited uses.

The executive director may not use fund monies to pay for:

(1) property damage or bodily injury resulting from a hazardous material or substance release; or

(2) property damage or bodily injury resulting from remedial studies or abatement action taken to address a hazardous material or substance release.

19-6-309. Emergency provisions.

(1) (a) If the executive director has reason to believe any hazardous materials release that occurred after March 18, 1985, is presenting a direct and immediate threat to public health or the environment, the executive director may:

(i) issue an order requiring the owner or operator of the facility to take abatement action within the time specified in the order; or

(ii) bring suit on behalf of the state in the district court to require the owner or operator to take immediate abatement action.

(b) If the executive director determines the owner or operator cannot be located or is unwilling or unable to take abatement action, the executive director may:

(i) reach an agreement with one or more potentially responsible parties to take abatement action; or

(ii) use fund monies to investigate the release and take abatement action.

(2) The executive director may use monies from the fund created in Section 19-6-307:

(a) for abatement action even if an adjudicative proceeding or judicial review challenging an order or a decision to take abatement action is pending; and

(b) to investigate a suspected hazardous materials release if he has reason to believe the release may present a direct and immediate threat to public health.

(3) This section takes precedence over any conflicting provision in this part.

19-6-310. Apportionment of liability -- Liability agreements -- Legal remedies.

(1) The executive director may recover only the proportionate share of costs of any investigation and abatement performed under Section 19-6-309 and this section from each responsible party, as provided in this section.

(2) (a) In apportioning responsibility for the investigation and abatement, or liability for the costs of the investigation and abatement, in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release; and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous materials contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the executive

director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of investigation and abatement costs.

(3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(4) (a) Any party who incurs costs under Section 19-6-309 and this section in excess of his liability may seek contribution from any other party who is or may be liable under Section 19-6-309 and this section for the excess costs in the district court.

(b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).

(5) (a) A party who has resolved his liability in an agreement under Section 19-6-309 and this section is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement.

(6) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Section 19-6-309 and this section, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Section 19-6-309 and this section may seek contribution from any person who is not party to an agreement under Section 19-6-309 and this section.

(7) (a) An agreement made under Section 19-6-309 and this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Section 19-6-309 and this section or any other applicable authority.

(8) (a) The executive director may not recover costs of any investigation performed under the authority of Subsection 19-6-309(2)(b) if the investigation does not confirm that a release presenting a direct and immediate threat to public health has occurred.

(b) This subsection takes precedence over any conflicting provision of this section regarding cost recovery.

19-6-311. Hazardous substances priority list.

(1) The executive director shall develop and, as frequently as is necessary, revise a hazardous substances priority list by making a rule that:

(a) identifies separately national priority list sites, proposed national priority list sites, and scored sites that pose a significant threat to the public health or the environment; and

(b) declares those sites to be eligible to be addressed under the authority granted by this part.

(2) The executive director may not spend fund monies or use the authority granted by this part to address any facilities containing hazardous substances that are not on the hazardous substances priority list.

(3) The executive director shall remove facilities from the hazardous substances priority list when appropriate.

19-6-312. Preinvestigation requirements.

Before undertaking any remedial investigations on a facility on the hazardous substances priority list, the executive director shall make reasonable attempts to:

(1) identify potentially responsible parties for each facility; and

(2) send written notice to each potentially responsible party informing him of his potential responsibility.

19-6-313. Priority of other statutes.

The executive director may not spend fund monies or take action under authority of Sections 19-6-314 through 19-6-320 to address hazardous substances on any facility listed on the hazardous substances priority list if the facility can be cleaned up under any other state statute.

19-6-314. Remedial investigations of priority list sites -- Parties involved -- Powers of the executive director.

(1) All remedial investigations conducted under the authority of this section shall:

(a) meet the substantive requirements of CERCLA;

(b) follow procedures established by the National Contingency Plan to avoid inconsistent state and federal action; and

(c) include recommendations for remedial action.

(2) (a) After determining that a hazardous substance release is occurring from a national priority list site or proposed national priority list site, and identifying responsible parties under Section 19-6-312, the executive director shall make reasonable efforts to reach an agreement with the identified responsible parties to conduct a remedial investigation.

(b) The executive director may define in the agreement the scope of the remedial investigation, the form of the report, and the time limits for completion of the investigation.

(c) If any responsible party fails to perform as required under an agreement entered under the authority of

this section, the executive director may take action to enforce the agreement.

(3) (a) If the executive director is unable to reach an agreement with one or more responsible parties to perform a remedial investigation, the executive director may issue an order directing one or more responsible parties to perform the remedial investigation.

(b) The executive director may define in the order the scope of the remedial investigation, the form of the report, and the time limits for completion of the remedial investigation.

(4) (a) If the executive director is unable to obtain an agreement with one or more responsible parties to perform a remedial investigation, chooses not to order any responsible party to perform the remedial investigation, or determines that the remedial investigation performed by a responsible party does not meet the substantive requirements of CERCLA, he may direct the department to conduct or correct the remedial investigation.

(b) The executive director may recover the costs incurred in conducting a remedial investigation from responsible parties according to the standards contained in Section 19-6-316.

19-6-315. Remedial investigations of scored sites -- Parties involved -- Powers of the executive director.

(1) All remedial investigations conducted under the authority of this section shall:

(a) meet the substantive requirements of CERCLA; and

(b) include recommendations for remedial action.

(2) (a) After determining that a hazardous substance release is occurring from a scored site and identifying responsible parties under Section 19-6-312, the executive director shall make reasonable efforts to reach an agreement with the identified responsible parties to perform a remedial investigation.

(b) The executive director may define in the agreement the scope of the investigation, the form of the report, and the time limits for completion of the investigation.

(c) If the potentially responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.

(3) (a) If the executive director is unable to reach an agreement with one or more responsible parties to perform a remedial investigation, or determines that the remedial investigation performed by responsible parties does not meet the substantive requirements of CERCLA, he may direct the department to conduct or correct the remedial investigation.

(b) The executive director may recover the costs incurred in conducting a remedial investigation from responsible parties according to the standards contained in Section 19-6-316.

19-6-316. Liability for costs of remedial investigations -- Liability agreements.

(1) The executive director may recover only a proportionate share of costs of any remedial investigation performed under Sections 19-6-314 and 19-6-315 from each responsible party, as provided in this section.

(2) (a) In apportioning responsibility for the remedial investigation, or liability for the costs of the remedial investigation, in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the executive director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of investigation costs.

(3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(4) (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in district court.

(b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).

(5) (a) A party who has resolved his liability in an agreement under Sections 19-6-314 through this section is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this Subsection (5)(b) reduces the potential liability of other responsible parties by the amount of the agreement.

(6) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-314 through this section, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-314 through this section may seek contribution from any person who is not party to an agreement under Sections 19-6-314 through this section.

(7) (a) An agreement made under Sections 19-6-314 through this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Sections 19-6-314 through this section or any other applicable authority.

19-6-317. Remedial investigation report -- Remedial action plan implementation -- Legal remedies.

(1) Upon receipt of a remedial investigation report for a national priority list site, the executive director shall:

(a) review the report;

(b) provide a period for public comment;

(c) issue an order defining a remedial action plan consistent with CERCLA for the facility; and

(d) follow the procedures established by the National Contingency Plan to avoid inconsistent state and federal action.

(2) (a) To implement the remedial action plan, the executive director shall seek to reach an agreement with all responsible parties to perform the remedial action.

(b) The executive director may define in the agreement the remedial action required and the time limits for completion of the remedial action.

(c) If the responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.

(3) (a) If the executive director is unable to reach an agreement with one or more responsible parties to perform remedial action, he may order all responsible parties to perform the remedial action.

(b) The executive director may define in the order the remedial action required and the time limits for completion of the remedial action.

19-6-318. Remedial action liability -- Liability agreements.

(1) (a) In apportioning responsibility for the remedial action in any administrative proceeding or judicial action under Sections 19-6-317 and 19-6-319, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (1)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section

either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (1)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (1)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the director shall apportion liability to the party solely based on available evidence and the standards of Subsection (1)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of remedial action costs.

(2) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(3) (a) Any party who incurs costs under Sections 19-6-317 through 19-6-320 in excess of his liability may seek contribution from any other party who is or may be liable under Sections 19-6-317 through 19-6-320 for the excess costs in district court.

(b) In resolving claims made under Subsection (3)(a), the court shall allocate costs using the standards set forth in Subsection (1).

(4) (a) A party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320 is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this Subsection (4)(b) reduces the potential liability of other responsible parties by the amount of the agreement.

(5) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (1) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-317 through 19-6-320 may seek contribution from any person who is not party to an agreement under Sections 19-6-317 through 19-6-320.

(6) (a) An agreement made under Sections 19-6-317 through 19-6-320 may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments, he may recover the amount using the authority of Sections 19-6-317 through 19-6-320 or any other applicable authority.

19-6-319. Remedial action investigation report -- Remedial action plan implementation -- Enforcement provisions.

(1) Upon receipt of a remedial action investigation report for a proposed national priority list site or a scored site, the executive director shall:

(a) review the report;

(b) provide a period for public comment; and

(c) issue an order defining the remedial action plan for the facility.

(2) (a) To implement the remedial action plan, the executive director shall seek to reach an agreement with all responsible parties to perform the remedial action.

(b) In reaching an agreement for a proposed national priority list site, the executive director shall follow procedures established by the National Contingency Plan to avoid inconsistent state and federal action.

(c) The executive director may define in the agreement the remedial action required and the time limits for completion of the remedial action.

(d) If the responsible parties fail to perform as required under an agreement entered under the authority of this section, the executive director may take action to enforce the agreement.

19-6-320. Remedial action completion procedures -- Legal remedies.

(1) A party who has entered an agreement or who has been issued a final order under the authority of Sections 19-6-317 through this section shall send notice to the executive director when the remedial action for the facility is completed.

(2) Upon notice that remedial action at a facility is complete, the executive director shall inspect the facility to determine if the remedial action plan as implemented meets the substantive requirements of CERCLA.

(3) If the executive director determines that the remedial action plan as implemented meets the substantive requirements of CERCLA, except for any ongoing activities at the facility, including operation, maintenance, or monitoring, he shall issue a notice of agency action declaring that remedial action at the facility is complete and removing the facility from the hazardous substances priority list.

(4) (a) If the executive director determines that the remedial action plan for a national priority list site, as implemented, does not meet the substantive requirements of CERCLA, he may issue an order directing the responsible parties to take additional actions to implement the remedial action plan.

(b) If the responsible parties refuse to comply with the order the executive director may take enforcement action.

(5) (a) If the executive director determines that the remedial action plan for a proposed national priority list

site or a scored site has not been properly and completely implemented according to the agreement between the executive director and the responsible parties, or is not consistent with the substantive requirements of CERCLA, he shall request that the responsible parties take additional actions to fulfill the agreement to implement the remedial action plan.

(b) If the responsible parties refuse to comply with the request, the executive director may take action to enforce the agreement.

19-6-321. Construction with other state and federal laws -- Governmental immunity.

(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way the obligations or liability of any person under a contract or any other provision of this part or state or federal law, including common law, for damages, indemnification, injury, or loss associated with a hazardous material or substance release or a substantial threat of a hazardous material or substance release.

(2) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

(3) Nothing in this part affects, limits, or modifies in any way the authority granted to the state, any state agency, or any political subdivision under other state or federal law.

19-6-322. Cooperative agreements with federal government -- Legislative findings.

Due to the enactment of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, PL 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 PL 96-510, to protect the public health, safety, and welfare.

19-6-323. Department authority to enter cooperative agreements.

The department, on behalf of the state, is authorized to undertake 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, PL 96-510.

19-6-325. Voluntary agreements -- Parties -- Funds -- Enforcement.

(1) (a) Under this part, and subject to Subsection (1)(b), the executive director may enter into a voluntary agreement with a responsible party providing for the responsible party to conduct an investigation or a cleanup action on sites that contain hazardous materials.

(b) The executive director and a responsible party may not enter into a voluntary agreement under this part unless all known potentially responsible parties:

(i) have been notified by either the executive director or the responsible party of the proposed agreement; and

(ii) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.

(2) (a) The executive director may receive funds from any responsible party that signs a voluntary agreement allowing the executive director to:

(i) review any proposals outlining how the investigation or cleanup action is to be performed; and

(ii) oversee the investigation or cleanup action.

(b) Funds received by the executive director under this section shall be deposited in the fund and used by the executive director as provided in the voluntary agreement.

(3) If a responsible party fails to perform as required under a voluntary agreement entered into under this part, the executive director may take action and seek penalties to enforce the agreement as provided in the agreement.

(4) The executive director may not use the provisions of Section 19-6-310, 19-6-316, or 19-6-318 to recover costs received or expended pursuant to a voluntary agreement from any person not a party to that agreement.

(5) (a) Any party who incurs costs under a voluntary agreement in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in district court.

(b) In resolving claims made under Subsection (5)(a), the court shall allocate costs using the standards in Subsection 19-6-310(2).

(6) This section takes precedence over conflicting provisions in this chapter regarding agreements with responsible parties to conduct an investigation or cleanup action.

19-6-326. Written assurances.

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

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

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