

UTAH CODE
(UNANNOTATED)

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF SOLID AND HAZARDOUS WASTE

**ENVIRONMENTAL QUALITY CODE - HAZARDOUS WASTE
FACILITIES MANAGEMENT ACT**

(Title 19, Chapter 9, Sections 101-118)
(Last Revised 2008)



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Title 19 Chapter 9
ENVIRONMENTAL QUALITY CODE - HAZARDOUS WASTE
FACILITIES MANAGEMENT ACT

Table of Contents

19-9-101. Title	1
19-9-102. Definitions	1
19-9-103. Petition for creation of hazardous waste facilities authority -- Recommendation to governor -- Action by governor	1
19-9-104. Creation of authority -- Members	1
19-9-105. Powers of authority	1
19-9-106. Acquisition of sites by authority -- Property vested in state on disincorporation of authority	2
19-9-107. Fees	2
19-9-108. Obligations of authority -- Limitation -- Issuance	2
19-9-109. Security for obligations -- Provisions of security instruments	3
19-9-110. Application of proceeds from sale of obligations	3
19-9-111. Cost of acquisition or improvement of facility	3
19-9-112. Validity of signatures on obligations	3
19-9-113. Obligations as negotiable instruments	3
19-9-114. Personal liability on obligations	3
19-9-115. Tax exemption of property, income, and obligations of authority	3
19-9-116. Obligations as authorized investments and securities	3
19-9-117. Publication of resolution authorizing obligations -- Contesting validity -- Action to compel signing of obligations	4
19-9-118. Legal, accounting, and auditing services for authority	4

19-9-101. Title.

This chapter is known as the "Hazardous Waste Facilities Management Act."

19-9-102. Definitions.

As used in this chapter:

- (1) "Authority" means the Hazardous Waste Facilities Authority created pursuant to Section 19-9-104.
- (2) "Board" means the Solid and Hazardous Waste Control Board created pursuant to Section 19-1-106.
- (3) "Disposal" means the final disposition of hazardous wastes into or onto the lands, waters, and air of this state.
- (4) "Hazardous waste" has the same meaning as defined in Section 19-6-102.
- (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, including 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 waste.
- (8) "Storage" means the containment of hazardous waste 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.

19-9-103. Petition for creation of hazardous waste facilities authority -- Recommendation to governor -- Action by governor.

- (1) Any person who believes that the treatment, storage, and disposal of hazardous waste within the state are not being adequately serviced by private industry may file a petition with the board 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 board considers appropriate is given, the board shall conduct at least one public hearing on the issues raised by the petitioner.
- (4) At the conclusion of the hearing or hearings, the board shall approve or disapprove the petition. The action of the board shall be supported by written findings of fact which shall be served upon the petitioner by certified mail.
- (5) If the board 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 board for its reconsideration.

(6) If the recommendation is remanded, the board 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 board shall forward notice of its disapproval to the petitioner by certified mail.

19-9-104. Creation of authority -- Members.

(1) (a) The authority comprises ten members. If the requirements of Section 19-9-103 are met, the governor shall, with the consent of the Senate, appoint six members of the authority from the public-at-large.

(b) The remaining four members of the authority are:

- (i) the executive director of the Department of Environmental Quality;
- (ii) the director of the Governor's Office of Economic Development or the director's designee;
- (iii) the executive director of the Department of Natural Resources; and
- (iv) the executive director of the Department of Transportation.

(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.

(3) The governor shall name one public-at-large member as chairman of the authority responsible for the call and conduct of authority meetings.

(4) The authority may elect other officers as necessary.

(5) Five members of the authority present at a properly noticed meeting constitute a quorum for the transaction of official authority business.

(6) Public-at-large members are entitled to per diem and expenses for each day devoted to authority business at the rates established by the director of the Division of Finance under Sections 63A-3-106 and 63A-3-107.

19-9-105. 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 waste received for treatment, disposal, or storage by those private facilities;
- (5) promulgate rules pursuant to Title 63G, Chapter 3, 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 the 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. Sections 6901-6986, the Resource Conservation and Recovery Act of 1976, and this part;

(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 waste, subject to approval by the board; and

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

19-9-106. Acquisition of sites by authority -- Property vested in state on disincorporation of authority.

(1) The authority is authorized, pursuant to Title 78B, Chapter 6, Part 5, Eminent Domain, 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 board shall certify that the site meets the standards for eventual incorporation into an approved hazardous waste 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.

19-9-107. Fees.

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

(1) the quantity of hazardous waste processed;

(2) the difficulty encountered in the treatment, disposal or storage of such waste;

(3) 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;

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

(5) any other considerations that the authority considers relevant.

19-9-108. Obligations of authority -- Limitation -- Issuance.

(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 considers in its best interest that are not inconsistent with this part; 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.

19-9-109. Security for obligations -- Provisions of security instruments.

(1) The principal and interest on any obligation issued pursuant to this chapter 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 chapter 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 chapter 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.

19-9-110. 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.

19-9-111. Cost of acquisition or improvement of facility.

The cost of acquisition or improvement of any facility shall be considered 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.

19-9-112. 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.

19-9-113. Obligations as negotiable instruments.

All obligations of the authority are negotiable instruments within the purpose and meaning of Title 70A, Uniform Commercial Code, subject to any provision of such obligations that relate to registration.

19-9-114. Personal liability on obligations.

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

19-9-115. 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.

19-9-116. Obligations as authorized investments and securities.

Obligations issued pursuant to this chapter 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.

19-9-117. Publication of resolution authorizing obligations -- Contesting validity -- 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), 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.

19-9-118. 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) is inapplicable to the opinions of attorneys or accountants necessitated before issuance of any obligations.