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AIR QUALITY RULES AND PENALTIES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Robles

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the rulemaking authority of the Division of Air Quality and regulations regarding the incineration of medical waste, and extends the statute of limitations for violations of the Environmental Quality Code.

Highlighted Provisions:

This bill:

- ▶ authorizes the Air Quality Board within the Division of Air Quality to make rules that are more stringent than federal regulations under certain circumstances;
- ▶ increases civil penalties against a person who violates the Air Conservation Act;
- ▶ beginning January 1, 2015, prohibits the incineration of medical waste within a five-mile radius of a residential area;
- ▶ states that the statute of limitations for a violation of the Environmental Quality Code is five years; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 19-2-106, as renumbered and amended by Laws of Utah 1991, Chapter 112

29 19-2-115, as last amended by Laws of Utah 2012, Chapter 360

30 19-6-122, as renumbered and amended by Laws of Utah 1991, Chapter 112

31 78B-2-302, as last amended by Laws of Utah 2010, Chapter 89

32 ENACTS:

33 78B-2-307.5, Utah Code Annotated 1953



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section 19-2-106 is amended to read:

37 **19-2-106. Rulemaking authority and procedure.**

38 (1) Except as provided in Subsection (2), no rule which the board makes for the
39 purpose of administering a program under the federal Clean Air Act may be more stringent
40 than the corresponding federal regulations which address the same circumstances. In making
41 rules, the board may incorporate by reference corresponding federal regulations.

42 (2) (a) The board may make rules more stringent than corresponding federal
43 regulations for the purpose described in Subsection (1), only if it makes a written finding [~~after~~
44 ~~public comment and hearing and based on evidence in the record,~~] that corresponding federal
45 regulations are not adequate to protect public health and the environment of the state. Those
46 findings shall be accompanied by an opinion referring to and evaluating the public health and
47 environmental information and studies contained in the record which form the basis for the
48 board's conclusion.

49 (b) The findings described in Subsection (2)(a) may include reports or studies
50 conducted by scholars, health care professionals, or other sources if the board determines the
51 report or study is a credible source.

52 Section 2. Section 19-2-115 is amended to read:

53 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

54 (1) As used in this section, the terms "knowingly," "willfully," and "criminal
55 negligence" shall mean as defined in Section 76-2-103.

56 (2) (a) A person who violates this chapter, or any rule, order, or permit issued or made
57 under this chapter is subject in a civil proceeding to a penalty not to exceed [~~\$10,000~~] \$37,000
58 per day for each violation.

59 (b) Subsection (2)(a) also applies to rules made under the authority of Section
60 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
61 Subchapter II - Asbestos Hazard Emergency Response.

62 (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances
63 Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the
64 amounts specified in that section and shall be used in accordance with that section.

65 (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under
66 Section 76-3-204 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation if that
67 person knowingly violates any of the following under this chapter:

68 (a) an applicable standard or limitation;

69 (b) a permit condition; or

70 (c) a fee or filing requirement.

71 (4) A person is guilty of a third degree felony and is subject to imprisonment under
72 Section 76-3-203 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation who
73 knowingly:

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

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

78 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty
79 under Section 19-2-109.1.

80 (6) A person who willfully violates Section 19-2-120 is guilty of a class A
81 misdemeanor.

82 (7) A person who knowingly violates any requirement of an applicable implementation
83 plan adopted by the board, more than 30 days after having been notified in writing by the
84 director that the person is violating the requirement, knowingly violates an order issued under
85 Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule
86 made under this chapter is guilty of a third degree felony and subject to imprisonment under
87 Section 76-3-203 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation in the case
88 of the first offense, and not more than [~~\$50,000~~] \$75,000 per day of violation in the case of
89 subsequent offenses.

90 (8) (a) As used in this section:

91 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C.
92 Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).

93 (ii) "Organization" means a legal entity, other than a government, established or
94 organized for any purpose, and includes a corporation, company, association, firm, partnership,
95 joint stock company, foundation, institution, trust, society, union, or any other association of
96 persons.

97 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of
98 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
99 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

100 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under
101 Section 76-3-204 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation if that
102 person with criminal negligence:

103 (A) releases into the ambient air any hazardous air pollutant; and

104 (B) places another person in imminent danger of death or serious bodily injury.

105 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is
106 carrying out the employee's normal activities and who is not a part of senior management
107 personnel or a corporate officer.

108 (c) A person is guilty of a second degree felony and is subject to imprisonment under
109 Section 76-3-203 and a fine of not more than [~~\$50,000~~] \$75,000 per day of violation if that
110 person:

111 (i) knowingly releases into the ambient air any hazardous air pollutant; and

112 (ii) knows at the time that the person is placing another person in imminent danger of
113 death or serious bodily injury.

114 (d) If a person is an organization, it shall, upon conviction of violating Subsection
115 (8)(c), be subject to a fine of not more than \$1,000,000.

116 (e) (i) A defendant who is an individual is considered to have acted knowingly under
117 Subsections (8)(c) and (d), if:

118 (A) the defendant's conduct placed another person in imminent danger of death or
119 serious bodily injury; and

120 (B) the defendant was aware of or believed that there was an imminent danger of death

121 or serious bodily injury to another person.

122 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
123 the defendant.

124 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
125 knowledge, including evidence that the defendant took affirmative steps to be shielded from
126 receiving relevant information.

127 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the
128 conduct charged was freely consented to by the person endangered and that the danger and
129 conduct charged were reasonably foreseeable hazards of:

130 (A) an occupation, a business, a profession; or

131 (B) medical treatment or medical or scientific experimentation conducted by
132 professionally approved methods and the other person was aware of the risks involved prior to
133 giving consent.

134 (ii) The defendant has the burden of proof to establish any affirmative defense under
135 this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.

136 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law,
137 all penalties assessed and collected under the authority of this section shall be deposited in the
138 General Fund.

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

142 (c) The department shall regulate reimbursements by making rules in accordance with
143 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

144 (i) define qualifying environmental enforcement activities; and

145 (ii) define qualifying extraordinary expenses.

146 Section 3. Section **19-6-122** is amended to read:

147 **19-6-122. Facilities to meet local zoning requirements -- Restriction on**
148 **incineration of medical waste.**

149 (1) Notwithstanding any provisions of this part, persons seeking to operate a
150 commercial hazardous waste disposal facility or site shall meet all local zoning requirements
151 before beginning operations.

152 (2) Beginning on January 1, 2015, incineration of medical waste is prohibited within a
153 five-mile radius of a residential area.

154 Section 4. Section **78B-2-302** is amended to read:

155 **78B-2-302. Within one year.**

156 An action may be brought within one year:

157 (1) for liability created by the statutes of a foreign state;

158 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,
159 or to an individual and the state, except when the statute imposing it prescribes a different
160 limitation;

161 (3) except as provided in Section 78B-2-307.5, upon a statute, or upon an undertaking
162 in a criminal action, for a forfeiture or penalty to the state;

163 (4) for libel, slander, false imprisonment, or seduction;

164 (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned
165 upon either civil or criminal process;

166 (6) against a municipal corporation for damages or injuries to property caused by a
167 mob or riot;

168 (7) except as otherwise expressly provided by statute, against a county legislative body
169 or a county executive to challenge a decision of the county legislative body or county
170 executive, respectively; or

171 (8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious
172 Land Use Act.

173 Section 5. Section **78B-2-307.5** is enacted to read:

174 **78B-2-307.5. Within five years.**

175 An action may be brought within five years upon a statute in Title 19, Environmental
176 Quality Code, for a forfeiture or penalty to the state.

Legislative Review Note
as of 2-10-14 2:59 PM

Office of Legislative Research and General Counsel