

ENVIRONMENTAL CRIMES AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

AN ACT RELATING TO ENVIRONMENTAL QUALITY; INCREASING CRIMINAL PENALTIES AND FINES IN THE AIR CONSERVATION ACT, THE RADIATION CONTROL ACT, THE WATER QUALITY ACT, AND THE USED OIL MANAGEMENT ACT.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

19-2-115, as last amended by Chapter 250, Laws of Utah 1995

19-3-110, as enacted by Chapter 112, Laws of Utah 1991

19-5-107, as last amended by Chapter 114, Laws of Utah 1995

19-5-115, as last amended by Chapter 114, Laws of Utah 1995

19-6-722, as enacted by Chapter 283, Laws of Utah 1993

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

Section 1. Section **19-2-115** is amended to read:

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

(1) The terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.

~~(1)~~ (2) (a) Any person who violates this chapter, or any rule, order, or permit issued or adopted under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for each violation.

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

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

~~[(2)]~~ (3) A person ~~[who knowingly violates any of the following established under this chapter]~~ is guilty of ~~[an infraction]~~ a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine of not more than [\$10,000] \$25,000 per day [for each] of violation if that person knowingly violates any of the following under this chapter:

- (a) ~~[any]~~ an applicable standard or limitation;
- (b) ~~[any]~~ a permit condition; or
- (c) ~~[any]~~ a fee or filing requirement.

~~[(3)]~~ (4) A person is guilty of ~~[an infraction]~~ a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than [\$10,000 for each instance] \$25,000 per day of violation who knowingly:

- (a) makes any false material statement, representation, or certification ~~[in any form]~~, in any notice or report required by permit; or
- (b) renders inaccurate any monitoring device or method required to be maintained by this chapter or applicable rules made under this chapter.

~~[(4)]~~ (5) Any fine or penalty assessed under Subsections ~~[(1) or]~~ (2) or (3) is in lieu of any penalty under Section 19-2-109.1.

~~[(5)]~~ (6) Any person who willfully violates ~~[Subsection (2) or (3), or]~~ Section 19-2-120 is guilty of a class A misdemeanor.

~~[(6)(a)]~~ (7) Any person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the executive secretary that he is violating the requirement, or knowingly violates an order issued under Section 19-2-110(1)(a) is guilty of a ~~[criminal offense]~~ third degree felony and subject to imprisonment under Section 76-3-203 and a fine not more than \$25,000 per day [for each] of violation in the case of the first offense, and not more than \$50,000 per day [for each] of violation in the case of subsequent offenses.

~~[(b)]~~ Any person who violates a written order requiring the person to comply with the requirements of an implementation plan is guilty of a criminal offense and subject to a fine not more than \$25,000 per day for each violation in the case of a first offense, and not more than \$50,000 per

day for each violation in the case of subsequent offenses.]

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

(i) "Hazardous air pollutant" means any hazardous air pollutant listed pursuant to 42 USC 7412 or any extremely hazardous substance listed pursuant to 42 USC 11002(a)(2).

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

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

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

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

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

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

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

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

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

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

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

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

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

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

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

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

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

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

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

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

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

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Section 2. Section **19-3-110** is amended to read:

19-3-110. Criminal penalties.

(1) Any person who knowingly violates any provision of Sections 19-3-104 through 19-3-113 or lawful orders or rules adopted by the department under those sections shall in a criminal proceeding:

(a) for the first violation, be guilty of a class B misdemeanor; and

(b) for a subsequent similar violation within two years, be guilty of a [class A misdemeanor] third degree felony.

(2) In addition, a person is liable for any expense incurred by the department in removing or abating any violation.

(3) Conviction under Sections 19-3-104 through 19-3-113 does not relieve the person convicted from civil liability for any act which was also a violation of the public health laws.

Section 3. Section **19-5-107** is amended to read:

19-5-107. Discharge of pollutants unlawful -- Discharge permit required.

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

(b) [~~Any~~] For purposes of injunctive relief, any violation of this subsection is a public nuisance.

(2) (a) A person may not generate, store, treat, process, use, transport, dispose, or otherwise manage sewage sludge, except in compliance with this chapter and rules made under it.

(b) [~~Any~~] For purposes of injunctive relief, any violation of this subsection is a public nuisance.

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

(a) make any discharge or manage sewage sludge not authorized under an existing valid discharge permit; or

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

Section 4. Section **19-5-115** is amended to read:

19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and rules of political subdivisions.

(1) The terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.

~~[(1)]~~ (2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed \$10,000 per day of violation.

~~[(2)]~~ (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding \$25,000 per day [shall be assessed against any person who willfully or with gross negligence] who with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107 (1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107 (3);

(ii) violates Section 19-5-113;

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

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(b) ~~[Any]~~ A person [twice convicted under this subsection shall be punished by] is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not [exceeding] to exceed \$50,000 per day of violation[-] who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

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

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

~~[(3) Any]~~ (4) A person [who] is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation

if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it[,-]; or [who]

(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter [~~shall be punished by a fine not exceeding \$10,000 or by imprisonment for not more than six months, or by both~~].

(5) (a) As used in this section:

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

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

(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

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

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

(d) (i) A defendant who is an individual is considered to have acted knowingly if:

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

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

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

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

(e) (i) It is an affirmative defense to prosecution under Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

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

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

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (e) and must prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections 19-5-115(3) through 19-5-115(5), a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

~~[(4)]~~ (7) (a) The board may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

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

~~[(5)]~~ (8) (a) The attorney general is the legal advisor for the board and its executive secretary and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the board, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the executive secretary issued under this chapter.

(c) The board may itself initiate any action under this section and be represented by the attorney general.

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

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

[(8)] (11) (a) Except as provided in Subsection (b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

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

(c) The department shall regulate reimbursements by making rules that:

- (i) define qualifying environmental enforcement activities; and
- (ii) define qualifying extraordinary expenses.

Section 5. Section **19-6-722** is amended to read:

19-6-722. Criminal penalties.

(1) A violation of any applicable provision of this part is a class [B] A misdemeanor, except:

(a) any violation involving hazardous waste is governed by provisions of this chapter that address hazardous waste;

(b) any violation of Section 19-6-714 or 19-6-715 regarding the recycling fee is subject to penalties authorized under Section 19-6-716.

(2) Any person who knowingly conducts any activities identified in Subsection 19-6-113(3) regarding hazardous waste in conjunction with any operations under this part is subject to the enforcement actions and penalties identified in Subsection 19-6-113(4).

(3) All penalties collected under this section shall be deposited in the account created in Section 19-6-719.