

WATER QUALITY ACT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill addresses enforcement of water quality provisions.

Highlighted Provisions:

This bill:

- ▶ attributes to an organization the actions of an individual acting wholly within the individual's employment with the organization;
- ▶ provides that an individual acting wholly within the individual's employment with an organization is not subject to certain legal actions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-5-115, as last amended by Laws of Utah 2013, Chapter 237

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

Section 1. Section **19-5-115** is amended to read:

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

~~[(1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in~~

Section ~~76-2-103~~.]

(1) As used in this section:

(a) "Criminal negligence" means the same as that term is defined in Section ~~76-2-103~~.

(b) "Knowingly" means the same as that term is defined in Section ~~76-2-103~~.

(c) "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.

(d) "Serious bodily injury" means bodily injury that 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.

(e) "Willfully" means the same as that term is defined in Section ~~76-2-103~~.

(2) ~~[Any]~~ A person who violates this chapter, or any permit, rule, or order adopted under ~~[it]~~ this chapter, 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.

(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 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]~~ this chapter.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section ~~76-3-203~~ and a fine not 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] this chapter.

(4) A person 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] this chapter; or

(b) falsifies, tampers with, or knowingly renders inaccurate [any] a monitoring device or method required to be maintained under this chapter.

~~[(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)]~~ (5) (a) 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] this chapter; and

(ii) knows at that time that the person is placing another person in imminent danger of

86 death or serious bodily injury.

87 ~~[(e)]~~ (b) If a person is an organization, ~~[it]~~ the organization shall, upon conviction of
88 violating Subsection (5)~~[(b)]~~(a), be subject to a fine of not more than \$1,000,000.

89 ~~[(d)]~~ (c) (i) A defendant who is an individual is considered to have acted knowingly if:
90 (A) the defendant's conduct placed another person in imminent danger of death or
91 serious bodily injury; and

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

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

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

99 ~~[(e)]~~ (d) (i) It is an affirmative defense to prosecution under this Subsection (5) that the
100 conduct charged was consented to by the person endangered and that the danger and conduct
101 charged were reasonably foreseeable hazards of:

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

103 (B) medical treatment or medical or scientific experimentation conducted by
104 professionally approved methods and the other person was aware of the risks involved ~~[prior~~
105 ~~to]~~ before giving consent.

106 (ii) The defendant has the burden of proof to establish ~~[any]~~ an affirmative defense
107 under this Subsection (5)~~[(e)]~~(d) and shall prove that defense by a preponderance of the
108 evidence.

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

112 (7) (a) The director may begin a civil action for appropriate relief, including a
113 permanent or temporary injunction, for any violation or threatened violation for which ~~[it]~~ the

114 director is authorized to issue a compliance order under Section 19-5-111.

115 (b) ~~[Actions shall be brought]~~ The director shall bring a civil action in the district court
116 where the violation or threatened violation occurs.

117 (8) (a) The attorney general is the legal advisor for the board and the director and shall
118 defend ~~[them in all actions or proceedings]~~ the board or director in an action or proceeding
119 brought against ~~[them]~~ the board or director.

120 (b) The county attorney or district attorney, as appropriate under Section 17-18a-202 or
121 17-18a-203, in the county in which a cause of action arises, shall bring ~~[any]~~ an action, civil or
122 criminal, requested by the director, to abate a condition that exists in violation of, or to
123 prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the
124 board or the director issued under this chapter.

125 (c) The director may initiate ~~[any]~~ an action under this section and be represented by
126 the attorney general.

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

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

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

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

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

139 (i) define qualifying environmental enforcement activities; and

140 (ii) define qualifying extraordinary expenses.

141 (12) (a) For purposes of this section or an ordinance or rule enacted by a political

142 subdivision under Subsection (10), an act performed by an individual wholly within the scope
143 of the individual's employment with an organization, is attributed to the organization.

144 (b) Notwithstanding the other provisions of this section, an action may not be brought
145 against an individual acting wholly within the scope of the individual's employment with an
146 organization if the action is brought under:

147 (i) this section;

148 (ii) an ordinance or rule issued by a political subdivision under Subsection (10); or

149 (iii) any local law or ordinance governing discharge.