

ENVIRONMENTAL CODE FINES

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the penalties for a violation of Title 19, Chapter 2, Air Conservation Act.

Highlighted Provisions:

- This bill:
 - ▶ increases civil penalties against a person who violates the Air Conservation Act;
 - and
 - ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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) As used in this section, the terms "knowingly," "willfully," and "criminal



28 negligence" shall mean as defined in Section 76-2-103.

29 (2) (a) A person who violates this chapter[;] or any rule, order, or permit issued or
30 made under this chapter is subject in a civil proceeding to a penalty not to exceed [~~\$10,000~~]
31 \$26,000 per day for each violation.

32 (b) Subsection (2)(a) also applies to rules made under the authority of Section
33 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
34 Subchapter II - Asbestos Hazard Emergency Response.

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

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

41 (a) an applicable standard or limitation;

42 (b) a permit condition; or

43 (c) a fee or filing requirement.

44 (4) A person is guilty of a third degree felony and is subject to imprisonment under
45 Section 76-3-203 and a fine of not more than [~~\$25,000~~] \$65,000 per day of violation who
46 knowingly:

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

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

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

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

55 (7) A person who knowingly violates any requirement of an applicable implementation
56 plan adopted by the board, more than 30 days after having been notified in writing by the
57 director that the person is violating the requirement, knowingly violates an order issued under
58 Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule

59 made under this chapter is guilty of a third degree felony and subject to imprisonment under
60 Section 76-3-203 and a fine of not more than [~~\$25,000~~] \$65,000 per day of violation in the case
61 of the first offense, and not more than [~~\$50,000~~] \$130,500 per day of violation in the case of
62 subsequent offenses.

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

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

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

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

73 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under
74 Section 76-3-204 and a fine of not more than [~~\$25,000~~] \$65,000 per day of violation if that
75 person with criminal negligence:

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

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

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

81 (c) A person is guilty of a second degree felony and is subject to imprisonment under
82 Section 76-3-203 and a fine of not more than [~~\$50,000~~] \$130,500 per day of violation if that
83 person:

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

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

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

89 (e) (i) A defendant who is an individual is considered to have acted knowingly under

90 Subsections (8)(c) and (d), if:

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

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

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

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

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

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

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

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

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

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

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

117 (i) define qualifying environmental enforcement activities; and

118 (ii) define qualifying extraordinary expenses.

Legislative Review Note
Office of Legislative Research and General Counsel