

1 **NATURAL GAS, OIL, POLLUTANTS, AND HAZARDOUS**
2 **MATERIALS AMENDMENTS**

3 2014 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen G. Handy**

6 Senate Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

10 This bill addresses provisions related to natural gas, oil, pollutants, and hazardous
11 materials.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ enacts the Oil or Hazardous Liquids Release Act;
- 15 ▶ defines terms and amends definitions;
- 16 ▶ addresses a release of oil or a hazardous liquid in a critical area;
- 17 ▶ addresses unlawful activities, fines, and penalties related to natural gas, oil,
18 pollutants, and hazardous materials;
- 19 ▶ addresses duties and liabilities related to oil or a hazardous liquid;
- 20 ▶ addresses the authority of the Department of Environmental Quality to enter
21 property under certain circumstances;
- 22 ▶ addresses a requirement or prohibition related to oil or a hazardous liquid if that
23 requirement or prohibition is in conflict with a federal law or regulation;
- 24 ▶ addresses the duties and responsibilities of the Public Service Commission related
25 to natural gas or a hazardous liquid;
- 26 ▶ addresses rulemaking authority of the Public Service Commission;
- 27 ▶ addresses the inspection and examination of records or property by the Public



28 Service Commission or the Division of Public Utilities; and
29 ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36 **19-5-115**, as last amended by Laws of Utah 2013, Chapter 237
- 37 **54-8a-8**, as last amended by Laws of Utah 2011, Chapter 426
- 38 **54-13-1**, as last amended by Laws of Utah 2001, Chapter 9
- 39 **54-13-2**, as enacted by Laws of Utah 1989, Chapter 131
- 40 **54-13-3**, as enacted by Laws of Utah 1989, Chapter 131
- 41 **54-13-4**, as enacted by Laws of Utah 1989, Chapter 131
- 42 **54-13-8**, as enacted by Laws of Utah 2011, Chapter 426

43 ENACTS:

- 44 **19-1-601**, Utah Code Annotated 1953
- 45 **19-1-602**, Utah Code Annotated 1953
- 46 **19-1-603**, Utah Code Annotated 1953
- 47 **19-1-604**, Utah Code Annotated 1953
- 48 **19-1-605**, Utah Code Annotated 1953
- 49 **19-1-606**, Utah Code Annotated 1953
- 50 **19-1-607**, Utah Code Annotated 1953
- 51 **19-1-608**, Utah Code Annotated 1953
- 52 **19-1-609**, Utah Code Annotated 1953
- 53 **19-1-610**, Utah Code Annotated 1953



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

56 Section 1. Section **19-1-601** is enacted to read:

57 **Part 6. Oil or Hazardous Liquids Release Act**

58 **19-1-601. Title.**

59 This part is known as the "Oil or Hazardous Liquids Release Act."

60 Section 2. Section **19-1-602** is enacted to read:

61 **19-1-602. Definitions.**

62 As used in this part:

63 (1) (a) "Critical area" means an environmentally sensitive area.

64 (b) "Critical area" includes the following in the vicinity of a release:

65 (i) an outdoor area of public assembly, including an outdoor theater, park, playground,

66 or recreation area;

67 (ii) surface or subsurface areas in or adjacent to:

68 (A) a municipality;

69 (B) an unincorporated community;

70 (C) another residential area; or

71 (D) a commercial, agricultural, or education facility;

72 (iii) waters of the state;

73 (iv) a well or source of drinking water; or

74 (v) wetlands.

75 (2) (a) "Hazardous liquid" means an industrial liquid that:

76 (i) is transported in bulk; and

77 (ii) may constitute a menace or hazard if released:

78 (A) in a critical area; or

79 (B) under conditions that may constitute a threat to the public health and the

80 environment.

81 (b) "Hazardous liquid" includes:

82 (i) benzene;

83 (ii) biodiesel;

84 (iii) ethanol;

85 (iv) ethylbenzene;

86 (v) a solvent;

87 (vi) toluene;

88 (vii) xylene; or

89 (viii) a substance similar to a substance described in Subsections (2)(b)(i) through (vii).

- 90 (3) (a) "Oil" means oil of any kind that:
- 91 (i) is in liquid form;
- 92 (ii) is transported in bulk; and
- 93 (iii) may constitute a menace or hazard if released:
- 94 (A) in a critical area; or
- 95 (B) under conditions that may constitute a threat to the public health and the
- 96 environment.
- 97 (b) "Oil" includes:
- 98 (i) asphalt;
- 99 (ii) aviation fuel;
- 100 (iii) crude oil;
- 101 (iv) diesel;
- 102 (v) fuel oil;
- 103 (vi) gasoline;
- 104 (vii) kerosene;
- 105 (viii) petroleum;
- 106 (ix) tar; or
- 107 (x) a substance similar to a substance described in Subsections (3)(b)(i) through (ix).
- 108 (4) "Process water" means water:
- 109 (a) used in an industrial process, manufacturing, or oil and gas production; and
- 110 (b) that may constitute a menace or hazard if released:
- 111 (i) in a critical area; or
- 112 (ii) under conditions that may constitute a threat to the public health and the
- 113 environment.
- 114 (5) "Process water impoundment" means an area used to store process water.
- 115 (6) "Release" means:
- 116 (a) discharging;
- 117 (b) emitting;
- 118 (c) escaping;
- 119 (d) leaching;
- 120 (e) leaking; or

121 (f) spilling.

122 (7) "Transporter" means a:

123 (a) pipeline;

124 (b) rail car; or

125 (c) tanker truck.

126 Section 3. Section **19-1-603** is enacted to read:

127 **19-1-603. Unlawful conduct.**

128 It is unlawful for any person who owns, operates, or has control over an oil or
129 hazardous liquids transporter or a process water impoundment to cause a release under
130 conditions that may constitute a threat to the public health or the environment.

131 Section 4. Section **19-1-604** is enacted to read:

132 **19-1-604. Duty to notify department.**

133 A person who owns, operates, or has control over an oil or hazardous liquids transporter
134 or a process water impoundment shall immediately notify the department of a release that may
135 constitute a threat to the public health or the environment.

136 Section 5. Section **19-1-605** is enacted to read:

137 **19-1-605. Duty to remove.**

138 A person who owns, operates, or has control over an oil or hazardous liquids transporter
139 or a process water impoundment shall immediately collect and remove all of the oil, hazardous
140 liquids, or process water released under conditions that may constitute a threat to public health
141 or the environment.

142 Section 6. Section **19-1-606** is enacted to read:

143 **19-1-606. Strict liability.**

144 A person who owns, operates, or has control over an oil or hazardous liquids transporter
145 or a process water impoundment is strictly liable, without regard to fault, for all of the damages
146 sustained as the result of a release that may constitute a threat to public health or the
147 environment.

148 Section 7. Section **19-1-607** is enacted to read:

149 **19-1-607. Liability for expenses.**

150 A person shall pay for the expenses the department incurs in responding to or abating a
151 release if the person:

152 (1) owns, operates, or has control over an oil or hazardous liquids transporter or a
153 process water impoundment; and

154 (2) releases, spills, or dumps oil, hazardous liquid, or process water released under
155 conditions that may constitute a threat to public health or the environment.

156 Section 8. Section **19-1-608** is enacted to read:

157 **19-1-608. Access.**

158 The department may enter upon any public or private property, premises, or place for
159 the purpose of collecting, containing, controlling, dispersing, removing, or treating any oil,
160 hazardous liquid, or process water if:

161 (1) the oil, hazardous liquid, or process water is released under conditions that may
162 constitute a threat to public health or the environment; and

163 (2) the person who owns, operates, or has control over the oil or hazardous liquids
164 transporter or process water impoundment from which the oil, hazardous liquid, or process
165 water is released fails to collect, contain, control, disperse, remove, or treat the oil, hazardous
166 liquid, or process water.

167 Section 9. Section **19-1-609** is enacted to read:

168 **19-1-609. Civil penalty.**

169 (1) Subject to the other provisions of this section, the department may assess a civil
170 penalty of not to exceed \$50,000 against a person who violates this part.

171 (2) Each day a release is a threat to public health or the environment is considered to be
172 a separate violation of this part.

173 (3) The penalty provided in this section is in addition to any other penalty provided by
174 law.

175 Section 10. Section **19-1-610** is enacted to read:

176 **19-1-610. Part does not require or prohibit action in conflict with federal law or**
177 **regulation.**

178 This part may not require or prohibit any action if the requirement or prohibition is in
179 direct conflict with an applicable federal law or regulation.

180 Section 11. Section **19-5-115** is amended to read:

181 **19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and**
182 **rules of political subdivisions.**

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

185 (2) ~~[Any]~~ (a) Subject to Subsection (2)(b), any person who violates this chapter, or any
186 permit, rule, or order adopted under ~~[it]~~ this chapter, upon a showing that the violation
187 occurred, is subject in a civil proceeding to a civil penalty of not to exceed ~~[\$10,000 per day of~~
188 ~~violation]~~ \$25,000.

189 (b) Each day a spill or discharge is a threat to public health or the environment is
190 considered to be a separate violation of this chapter.

191 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment
192 under Section 76-3-204 and a fine not exceeding \$25,000 per day ~~[who]~~ if the person, with
193 criminal negligence:

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

196 (ii) violates Section 19-5-113;

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

199 (iv) manages sewage sludge in violation of this chapter or rules adopted under ~~[it]~~ this
200 chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

201 (b) A person is guilty of a third degree felony and is subject to imprisonment under
202 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation ~~[who]~~ if the person
203 knowingly:

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

206 (ii) violates Section 19-5-113;

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

209 (iv) manages sewage sludge in violation of this chapter or rules adopted under ~~[it]~~ this
210 chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

211 (4) A person is guilty of a third degree felony and subject to imprisonment under
212 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if
213 that person knowingly:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

252 (ii) The defendant has the burden of proof to establish any affirmative defense under
253 this Subsection (5)(e) and shall prove that defense by a preponderance of the evidence.

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

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

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

262 (8) (a) The attorney general is the legal advisor for the board and the director and shall
263 defend ~~[them]~~ the board and the director in all actions or proceedings brought against ~~[them]~~
264 the board and the director.

265 (b) The county attorney or district attorney as appropriate under Section ~~17-18a-202~~ or
266 ~~17-18a-203~~ in the county in which a cause of action arises, shall bring any action, civil or
267 criminal, requested by the director, to abate a condition that exists in violation of, or to
268 prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the
269 board or the director issued under this chapter.

270 (c) The director may initiate any action under this section and be represented by the
271 attorney general.

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

275 (10) Any political subdivision of the state may enact and enforce ordinances or rules

276 for the implementation of this chapter that are not inconsistent with this chapter.

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

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

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

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

286 Section 12. Section **54-8a-8** is amended to read:

287 **54-8a-8. Civil penalty for damage -- Exceptions -- Other remedies.**

288 (1) A civil penalty may be imposed for a violation of this chapter as provided in this
289 section.

290 (2) A civil penalty under this section may be imposed on:

291 (a) any person who violates this chapter, in an amount no greater than \$5,000 for each
292 violation, with a maximum civil penalty of \$100,000 per excavation; [or]

293 (b) an excavator who fails to provide notice of an excavation in accordance with
294 Section **54-8a-4**, in an amount no greater than \$500, in addition to the amount under
295 Subsection (2)(a); or

296 (c) an operator who fails to mark or who mismarks an underground facility required to
297 be marked by this chapter, in an amount no greater than \$1,000, in addition to the amount
298 under Subsection (2)(a).

299 (3) Notwithstanding Subsection (2)(a), a penalty under this chapter may not be
300 imposed on an excavator or operator unless:

301 (a) the excavator or operator fails to comply with this chapter and damages an
302 underground facility; or

303 (b) the penalty is imposed under Subsection (2)(c).

304 (4) The amount of a civil penalty under this section shall be made taking into
305 consideration the following:

306 (a) the excavator's or operator's history of any prior violation or penalty;

- 307 (b) the seriousness of the violation;
- 308 (c) any discharge or pollution resulting from the damage;
- 309 (d) the hazard to the health or safety of the public;
- 310 (e) the degree of culpability and willfulness of the violation;
- 311 (f) any good faith of the excavator or operator; and
- 312 (g) any other factor considered relevant, including the number of past excavations
- 313 conducted by the excavator, the number of location requests made by the excavator and the
- 314 number of location markings made for the excavator or by the operator.
- 315 (5) "Good faith," as used in Subsection (4)(f), includes actions taken before the filing
- 316 of an action for civil penalty under this section to:
 - 317 (a) remedy, in whole or in part, a violation of this chapter; or
 - 318 (b) mitigate the consequences and damages resulting from a violation of this chapter.
- 319 (6) (a) A civil penalty may not be imposed on an excavator if the damage to an
- 320 underground facility results from an operator's:
 - 321 (i) failure to mark; or
 - 322 (ii) inaccurate marking or locating of the operator's underground facilities.
- 323 (b) In addition to or in lieu of part of or all of a civil penalty, the excavator or operator
- 324 may be required to undertake actions that are designed to prevent future violations of this
- 325 chapter, including attending safety and compliance training, improving internal monitoring and
- 326 compliance processes and procedures, or any other action that may result in compliance with
- 327 this chapter.
- 328 (7) Subsection (1) does not apply to an excavation made:
 - 329 (a) during an emergency, if reasonable precautions are taken to protect any
 - 330 underground facility;
 - 331 (b) in agricultural operations;
 - 332 (c) for the purpose of finding or extracting natural resources; or
 - 333 (d) with hand tools on property owned or occupied by the excavator.
- 334 (8) (a) A civil penalty under this section is in addition to any damages that an operator
- 335 or an excavator may seek to recover.
- 336 (b) In an action brought under this section, the prevailing party shall be awarded its
- 337 costs and attorney fees as determined by the court.

338 Section 13. Section 54-13-1 is amended to read:

339 CHAPTER 13. NATURAL GAS AND HAZARDOUS LIQUIDS PIPELINE SAFETY

340 54-13-1. Definitions.

341 As used in this chapter~~[, "intrastate"]~~:

342 (1) "Hazardous Liquid Pipeline Safety Act" means the Hazardous Liquid Pipeline
343 Safety Act of 1979, 49 U.S.C. Sec. 60101 et seq.

344 (2) "Intrastate pipeline transportation" ~~[and "pipeline facilities" have the definitions set~~
345 ~~forth]~~ has the same meaning as "pipeline transportation" in the Natural Gas Pipeline Safety Act
346 of 1968, 49 U.S.C. ~~[Section]~~ Sec. 60101, except that the transporting occurs only intrastate.

347 (3) "Pipeline facility" is as defined in the Natural Gas Pipeline Safety Act of 1968, 49
348 U.S.C. Sec. 60101.

349 Section 14. Section 54-13-2 is amended to read:

350 54-13-2. Commission's responsibilities.

351 (1) The commission is responsible for establishing safety standards and practices for
352 intrastate pipeline transportation and shall make and enforce rules required by the federal
353 Natural Gas Pipeline Safety Act and the federal Hazardous Liquid Pipeline Safety Act to
354 maintain state control over the regulation of intrastate pipeline transportation.

355 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
356 commission may make and enforce rules more stringent than required by the federal Natural
357 Gas Pipeline Safety Act and the federal Hazardous Liquid Pipeline Safety Act.

358 Section 15. Section 54-13-3 is amended to read:

359 54-13-3. Rules.

360 ~~[The]~~ (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
361 Act, the commission shall adopt and enforce rules pursuant to Section 54-13-2, including rules
362 ~~[which]~~ that:

363 ~~[(1)]~~ (a) incorporate the safety standards established under the federal Natural Gas
364 Pipeline Safety Act that are applicable to intrastate pipeline transportation; and

365 ~~[(2)]~~ (b) require ~~[persons]~~ a person engaged in intrastate pipeline transportation to:

366 ~~[(a)]~~ (i) maintain records and to submit reports and information to the commission to
367 enable the commission to determine whether the person is acting in compliance with this
368 chapter or rules adopted under this chapter; ~~[and]~~

369 ~~(b)~~ (ii) file, with the commission for its approval, a plan for inspection and
370 maintenance of each pipeline facility[-];

371 (iii) annually file an emergency response plan with the commission and local
372 emergency responders;

373 (iv) perform leak tests at specific time intervals;

374 (v) maintain corrosion records for the life of a pipe on which corrosion appears;

375 (vi) maintain a current map of the person's pipeline, which may include requiring a
376 geographic information system map of the person's facilities; and

377 (vii) satisfy training requirements for system operators, including contractors and
378 locators.

379 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
380 commission may make rules:

381 (a) identifying areas as high consequence areas, including:

382 (i) areas of dense population;

383 (ii) areas of critical importance for water supply, water quality, or wildlife habitat; or

384 (iii) areas with seismic concerns;

385 (b) requiring a person engaged in intrastate pipeline transportation to:

386 (i) identify pipeline facilities located in high consequence areas; and

387 (ii) employ specific safety technologies, such as automatic shut-off valves and remote
388 controlled valves, on pipeline facilities located in high consequence areas; and

389 (c) providing for a lower threshold for reporting leaks or damage to pipeline facilities
390 than established in federal law.

391 Section 16. Section **54-13-4** is amended to read:

392 **54-13-4. Inspection and examination of records and properties.**

393 Officers, employees, or agents authorized by the commission or the Division of Public
394 Utilities, upon presenting appropriate credentials to the person in charge, may inspect and
395 examine, at reasonable times and in a reasonable manner, the records and properties of any
396 person engaged in intrastate pipeline transportation to the extent those records and properties
397 are relevant to determining whether the person is acting in compliance with this chapter or
398 rules under this chapter.

399 Section 17. Section **54-13-8** is amended to read:

400 **54-13-8. Violation of chapter -- Penalty.**

401 (1) Any person engaged in intrastate pipeline transportation who is determined by the
402 commission, after notice and an opportunity for a hearing, to have violated any provision of
403 this chapter or any rule or order issued under this chapter, is liable for a civil penalty of not
404 more than [~~\$10,000~~] \$100,000 for each violation for each day the violation persists.

405 (2) The maximum civil penalty assessed under this section may not exceed [~~\$500,000~~]
406 \$1,000,000 for any related series of violations.

407 (3) The amount of the penalty shall be assessed by the commission by written notice.

408 (4) In determining the amount of the penalty, the commission shall consider:

409 (a) the nature, circumstances, and gravity of the violation; and

410 (b) with respect to the person found to have committed the violation:

411 (i) the degree of culpability;

412 (ii) any history of prior violations;

413 (iii) the effect on the person's ability to continue to do business;

414 (iv) any good faith in attempting to achieve compliance;

415 (v) the person's ability to pay the penalty; and

416 (vi) any other matter, as justice may require.

417 (5) (a) A civil penalty assessed under this section may be recovered in an action
418 brought by the attorney general on behalf of the state in the appropriate district court, or before
419 referral to the attorney general, it may be compromised by the commission.

420 (b) The amount of the penalty, when finally determined, or agreed upon in
421 compromise, may be deducted from any sum owed by the state to the person charged.

422 (6) Any penalty collected under this section shall be deposited in the General Fund.

Legislative Review Note
as of 2-21-14 1:25 PM

Office of Legislative Research and General Counsel