

LOCAL LAW NO. "G" FOR 2014

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK REQUIRING THAT ALBANY COUNTY EMERGENCY MANAGEMENT BE NOTIFIED AFTER THE RELEASE OR THREAT OF RELEASE OF CRUDE OIL TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF ALBANY COUNTY

Introduced: 8/11/14

By Mr. Simpson, Ms. Chapman, Messrs. Clenahan, Mayo, Bullock, Clay, Commisso, Corcoran, Cotrofeld, Ethier, Higgins, Jacobson, Joyce, Mackey, Ms. McKnight, Messrs. Rahm, Ward, Ms. Maffia-Tobler, Messrs. Feeney, Beston, Mss. Kinsch, McLean Lane and Mr. Reilly:

BE IT ENACTED By the County Legislature of the County of Albany, as follows:

Section 1 Legislative Intent:

This Legislature hereby finds and determines that in order to provide adequate safety to the people of Albany County and to the environment, Albany County Emergency Management must receive prompt notification of crude oil spills.

This Legislature hereby finds and determines that Albany County Emergency Management would be the first responders to a crude oil spill and are charged with the task of and has the training to respond to such spills.

This Legislature hereby finds and determines that without prompt notification, Albany County Emergency Management cannot effectively mitigate the devastating impact resulting from an oil spill.

This Legislature hereby finds and determines that response time is critical in protecting the health, safety and welfare of the People of Albany County.

This Legislature finds and determines that a drastic increase of the transportation, storage and transfer of crude oil into Albany County has occurred.

This Legislature finds and determines that this increase in the amount of crude oil also increases the probability of a crude oil spill that could trigger calamitous events inclusive of loss of life absent prompt notification to Albany County Emergency Management.

This Legislature finds and determines that Bakken Crude Oil, the primary oil arriving in Albany County, is extremely volatile and flammable.

This Legislature finds and determines that a significant percentage of the

current transportation methods are antiquated and carry a substantial risk of facilitating an oil spill.

This Legislature finds and determines that unreported oil spills can cause significant health and safety hazards to the People of Albany County and to the environment. This Legislature finds and determines that some people within Albany County have a heightened exposure to negative health and safety risks. If an oil spill were to occur, prompt notification of the oil spill would provide the best method of mitigating the damage to these people.

This Legislature finds and determines that without local notification statutes, operators responsible for oil spills are incentivized to attempt to avoid federal and state sanctions by performing the cleanup themselves. An operator that performs the cleanup does not likely have the people of Albany County and the environment as paramount interests.

This Legislature finds and determines that this statute will provide a strong incentive for operators to disclose the occurrence or threat of an occurrence of an oil spill to Albany County Emergency Management.

This Legislature finds and determines that effective deployment of emergency responders to combat the effects of an oil spill can occur only if the emergency responders are promptly notified of the oil spill.

Therefore, the purpose of this law is to permit the effective deployment of emergency responders to mitigate the damages resulting from an oil spill.

Section 2 Definitions:

- (a) An operator shall mean (i) an owner or manager of a container, transfer facility, or storage facility which is or was used for the storage or transfer of crude oil, (ii) any person in a contractual relationship with an owner or operator who inspects, tests or repairs any portion of a container, transfer facility, or storage facility which is or was used for the storage or transfer of crude oil, (iii) any person in actual or constructive control or possession of the crude oil immediately prior to its release, or (iv) any employee, agent, or representative of subparagraphs (i) through (iii) of this paragraph who has knowledge of a release.
- (b) Crude oil shall mean unrefined petroleum including, but not limited to, Bakken light crude oil and bituminous sands oil.
- (c) Release of crude oil shall mean a spill of crude oil in excess of 5 gallons where the crude oil comes in contact with the ground or a body of water.
- (d) A threat of a release shall mean an abnormal event, unusual circumstances,

accident, or defect that substantially increases the risk of a release of crude oil.

- (e) Storage shall mean the stationary retention of at least 100 gallons of crude oil in a container.
- (f) Transfer shall mean the movement of crude oil through any means from one storage container to another container.
- (g) Notification or Notify Albany County Emergency Management shall mean: calling the Albany County Emergency Management at (518) 487-5400 or, if not possible to contact Albany County Emergency Management, 911.

Section 3 Notification Requirement:

Any operator that knows of a release or threat of a release of crude oil shall notify or cause to be notified Albany County Emergency Management within thirty minutes of the release or threat of release, provided that (1) notification is possible and (2) notification can be provided without substantially impeding cleanup or other emergency measures.

Section 4 Criminal Sanctions:

- (a) Any owner or manager of a container, transfer facility, or storage facility which is or was used for the storage or transfer of crude oil that fails to comply with Section 3 of this Local Law shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both, for each violation. Each one hour period that such violation occurs or continues shall be considered a separate violation.
- (b) If any owner or manager of a container, transfer facility, or storage facility which is or was used for the storage or transfer of crude oil knows of the release or threat of release of crude oil but has an honest, reasonable belief that either (1) notification was not possible or (2) notification could not be provided without substantially impeding cleanup or other emergency measures, then no liability may be imposed until changed circumstances dictate that the belief has become dishonest, unreasonable, or both, at which point, Section 4(a) applies.

Section 5 Civil Sanctions:

- (a) Any operator (with the exception of those persons defined in Section 2, subsection (iii & iv) of this Law) that fails to comply with Section 3 of this Local Law shall be punished by a fine up to twenty thousand dollars for each violation. With respect to those persons defined in Section 2,

subsection (iv) of this Law that fail to comply with Section 3 herein, the employer of such persons shall be punished by a fine up to twenty thousand dollars for each violation. Each hour period that such violation occurs or continues shall be considered a separate violation.

- (b) The Albany County Attorney's Office, on behalf of the County of Albany, shall have the exclusive power to enforce subsections Section 5(a). The Albany County Attorney's Office shall issue notification of the conduct that provides for the grounds the fine in Section 5(a) and provide the opportunity to be heard prior to the enforcement and imposition of the any fine. The County Attorney shall use any lawful means to enforce and to collect the fine imposed pursuant to this Section.

Section 6 Posting Requirements:

- (a) Any operator that stores, heats, or transfers crude oil in the County of Albany shall post and maintain a sufficient number of signs at any storage, heating, or transfer facility, stating:

Any person who is aware or becomes aware of a release of crude oil or a threat of release of crude must immediately and without any delay call the Albany County Emergency Management at (518) 487-5400 or if not possible to contact Albany County Emergency Management, 911.

- (b) The Albany County Emergency Management shall promulgate the rules and regulations for the size, prominence, and numerosity of the signs required in Section (a).

Section 7 Criminal Sanctions:

Any owner or manager of a container, transfer facility, or storage facility which is or was used for the storage or transfer of crude oil that fails to comply with Section 6(a) of this Local Law shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both, for each violation of Section 6(a) of this Local Law. Each sign that is required but not posted or not in compliance shall constitute a separate violation of Section (a).

Section 8 Civil Sanctions:

- (a) Any operator (with the exception of those persons defined in Section 2, subsection (iv) of this Law) that fails to comply with Section 6(a) of this Local Law shall be liable for a fine up to five thousand dollars for each violation. With respect to those persons defined in Section 2, subsection (iv) of this Law that fail to comply with Section 6(a) herein, the employer of such persons shall be punished by a fine up to five thousand dollars for each violation.

Each sign that is required but not posted or not in compliance shall constitute a separate violation of Section 6(a).

- (b) Any operator (with the exception of those persons defined in Section 2, subsection (iii & iv) of this Law) that intentionally or knowingly fails to comply with Section 6(a) shall be punished by a fine of not more than ten thousand dollars for each violation. With respect to those persons defined in Section 2, subsection (iv) of this Law that intentionally or knowingly fail to comply with Section 6(a) herein, the employer of such persons shall be punished by a fine up to ten thousand dollars for each violation. Each sign that is required but not posted or not in compliance shall constitute a separate violation of Section 6(a).
- (c) The Albany County Attorney's Office, on behalf of the County of Albany, shall have the exclusive power to enforce subsections Section 8(a) and Section 8(b). The Albany County Attorney's Office shall issue notification of the conduct that provides for the grounds the fine in Section 8(a) and Section 8(b) and provide the opportunity to be heard prior to the enforcement and imposition of the any fine. The County Attorney shall use any lawful means to enforce and to collect the fine imposed pursuant to this Section.

Section 9 Preemption:

- (a) Nothing in this Section shall be construed to limit, deny, or abridge in any manner any criminal or civil liability resulting from federal, state, or other local law.
- (b) Nothing in this Section shall affect any federal, state, or other local law or the authority of the federal government, any state government, or the local government to adopt or enforce any federal, state, or local law.

Section 10 Severance:

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Section 11 Effective Date:

This Law shall become effective 60 days after its filing with the Secretary of State.

Referred to Law Committee. 8/11/14

Favorable recommendation – Law Committee. 9/28/15

On roll call vote the following voted in favor: Ms. Benedict, Messrs. Beston, Bullock, Ms. Busch, Mr. Carman, Ms. Chapman, Messrs. Clay, Clenahan, Clouse, Commisso, Ms. Connolly, Messrs. Corcoran, Cotrofeld, Crouse, Dawson, Domalewicz, Ethier, Feeney, Higgins, Hogan, Jacobson, Joyce, Ms. Lockart, Mr. Mackey, Ms. Maffia-Tobler, Mr. Mayo, Mss. McKnight, McLean Lane, Messrs. Mendick, Morse, Nichols, O'Brien, Rahm, Reilly, Simpson, Stevens, Tunny and Ward – 38

Those opposed: - 0.

Local Law was adopted. 10/13/15