

Effective 5/13/2014

73-2-25 State engineer enforcement powers.

- (1) For purposes of this section, "initial order" means one of the following issued by the state engineer:
 - (a) a notice of violation; or
 - (b) a cease and desist order.
- (2)
 - (a) Except as provided in Subsection (2)(b), the state engineer may commence an enforcement action under this section if the state engineer finds that a person:
 - (i) is diverting, impounding, or using water for which no water right has been established;
 - (ii) is diverting, impounding, or using water in violation of an existing water right;
 - (iii) violates Section 73-5-4;
 - (iv) violates Section 73-5-9;
 - (v) violates a written distribution order from the state engineer;
 - (vi) violates Section 73-3-29;
 - (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam Safety;
 - (viii) fails to submit a report required by Section 73-3-25; or
 - (ix) engages in well drilling without a license required by Section 73-3-25.
 - (b) The state engineer may not commence an enforcement action against a person under Subsection (2)(a)(i), if the person directly captures, or stores, precipitation on the surface of, or under, a parcel owned or leased by the person, including in a catch basin, storm drain pipe, swell, or pond, if the collection or storage:
 - (i) is consistent with local laws and ordinances;
 - (ii) does not interfere with an existing water right; and
 - (iii) is designed to slow, detain, or retain storm water or protect watersheds from pollution with the intention that the precipitation:
 - (A) absorbs into the ground or is released for discharge; and
 - (B) is not put to beneficial use.
 - (c) To commence an enforcement action under this section, the state engineer shall issue an initial order, which shall include:
 - (i) a description of the violation;
 - (ii) notice of any penalties to which a person may be subject under Section 73-2-26; and
 - (iii) notice that the state engineer may treat each day's violation of the provisions listed in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).
 - (d) The state engineer's issuance and enforcement of an initial order is exempt from Title 63G, Chapter 4, Administrative Procedures Act.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall make rules necessary to enforce an initial order, which shall include:
 - (a) provisions consistent with this section and Section 73-2-26 for enforcement of the initial order if a person to whom an initial order is issued fails to respond to the order or abate the violation;
 - (b) the right to a hearing, upon request by a person against whom an initial order is issued; and
 - (c) provisions for timely issuance of a final order after:
 - (i) the person to whom the initial order is issued fails to respond to the order or abate the violation; or
 - (ii) a hearing held under Subsection (3)(b).
- (4) A person may not intervene in an enforcement action commenced under this section.

- (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the state engineer shall serve a copy of the final order on the person against whom the order is issued by:
 - (a) personal service under Utah Rules of Civil Procedure 5; or
 - (b) certified mail.
- (6)
 - (a) The state engineer's final order may be reviewed by trial de novo by the district court in:
 - (i) Salt Lake County; or
 - (ii) the county where the violation occurred.
 - (b) A person shall file a petition for judicial review of the state engineer's final order issued under this section within 20 days from the day on which the final order was served on that person.
- (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a final order issued under this section.
- (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the state may recover all court costs and a reasonable attorney fee.

Amended by Chapter 369, 2014 General Session