

1 **WASTE WATER AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David L. Thomas**

5

6 **LONG TITLE**

7 **General Description:**

8 This bill modifies provisions related to the treatment and use of sewage effluent.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ defines a public water supply agency for purposes related to the use of sewage
12 effluent that has been collected and treated by a publicly owned treatment works;
13 ▶ provides that a public water supply agency may use sewage effluent;
14 ▶ provides limited conditions under which a publicly owned treatment works may use
15 sewage effluent supplied under a public water supply agency's water rights;
16 ▶ provides that under certain circumstances the state engineer must approve a change
17 application to effect the use of sewage effluent before the effluent is used;
18 ▶ provides an application procedure for a sewage effluent use or change in the point
19 of discharge; and
20 ▶ makes technical corrections.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **73-3c-1**, as enacted by Chapter 39, Laws of Utah 1995



- 28 **73-3c-2**, as enacted by Chapter 39, Laws of Utah 1995
- 29 **73-3c-3**, as enacted by Chapter 39, Laws of Utah 1995
- 30 **73-3c-4**, as enacted by Chapter 39, Laws of Utah 1995
- 31 **73-3c-7**, as enacted by Chapter 39, Laws of Utah 1995
- 32 **73-3c-8**, as enacted by Chapter 39, Laws of Utah 1995

33 ENACTS:

- 34 **73-3c-9**, Utah Code Annotated 1953

35 REPEALS:

- 36 **73-3c-6**, as enacted by Chapter 39, Laws of Utah 1995



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

39 Section 1. Section **73-3c-1** is amended to read:

40 **73-3c-1. Definitions.**

41 As used in this chapter:

- 42 (1) "DEQ" means the Department of Environmental Quality.
- 43 (2) "POTW" means a publicly owned treatment works as defined by Section 19-5-102.
- 44 ~~[(3) "Regional POTW" means a publicly-owned treatment works that serves more than~~
- 45 ~~one governmental entity.]~~

46 (3) "Public water supply agency" means a municipality, water conservancy district,
47 water special service district, or other water supply agency of the state or a political subdivision
48 of the state, which supplies municipal water to the public under valid Utah water rights.

49 (4) "Sewage effluent" means the ~~[product]~~ water resulting from the treatment of
50 sewage and other pollutants by a POTW pursuant to discharge limitations set under the Clean
51 Water Act of 1977, 33 U.S.C. Sec. 1251 et seq. and Title 19, Chapter 5, Water Quality Act.

52 (5) "Water right" means:

- 53 (a) a right to use water evidenced by any means identified in Section 73-1-10;
- 54 (b) a right to use water under an approved application:
 - 55 (i) to appropriate;
 - 56 (ii) for a change of use; or
 - 57 (iii) for the exchange of water; or
- 58 (c) a contract authorizing the use of water from a water wholesaler or other water

59 supplier having a valid water right under Utah law.

60 Section 2. Section **73-3c-2** is amended to read:

61 **73-3c-2. Public water supply agency may use sewage effluent in a manner**
62 **consistent with its water rights -- Change application to be filed for uses inconsistent with**
63 **water rights.**

64 (1) [~~Any municipality or other governmental entity owning and operating a POTW that~~
65 ~~treats sewage and other pollutants contained in water]~~ A public water supply agency may use
66 that portion of the sewage effluent that has been collected and treated by a POTW from water
67 supplied under the [governmental entity's] public water supply agency's water rights and may
68 apply the resulting sewage effluent to a beneficial use consistent with, and without enlargement
69 of, those water rights.

70 (2) The [~~governmental entity must]~~ public water supply agency shall file a change
71 application with the state engineer if it proposes to use sewage effluent:

72 (a) outside the defined place of use or for purposes other than those authorized in the
73 underlying water rights; or

74 (b) in a manner otherwise inconsistent with the underlying water rights.

75 Section 3. Section **73-3c-3** is amended to read:

76 **73-3c-3. Conditions under which a POTW may use sewage effluent -- Change**
77 **application to be filed for uses inconsistent with water rights.**

78 (1) [~~(a) Any municipality or other governmental entity served by a regional]~~ Except as
79 provided in Subsection (3), the owner of a POTW that treats sewage and other pollutants
80 contained in water collected from water supplied under [the governmental entity's water rights
81 may contract with the person responsible for administration of the regional POTW to act as its
82 agent for the purpose of using sewage effluent discharged from the regional POTW] a public
83 water supply agency's water rights may use that portion of the sewage effluent from water
84 supplied under the public agency's water rights and may apply the resulting sewage effluent to a
85 beneficial use consistent with, and without enlargement of, those water rights only if:

86 (a) a public water supply agency is not using or planning to use the sewage effluent;

87 (b) the POTW owner obtains written approval from the public water supply agency that
88 owns the underlying water rights; and

89 (c) if the use by the POTW owner otherwise complies with law.

90 ~~[(b) The sewage effluent may be applied to a beneficial use consistent with, and~~
91 ~~without enlargement of, the governmental entity's water rights referred to in Subsection (a).]~~

92 (2) ~~[The person administering the regional POTW, as agent for an individual~~
93 ~~municipality or other governmental entity served by it, must] If a public water supply agency~~
94 ~~which owns the underlying water rights grants written approval to the POTW owner, the public~~
95 ~~water supply agency shall~~ file a change application with the state engineer if ~~[the person~~
96 ~~administering]~~ the POTW owner proposes to use sewage effluent:

97 (a) outside the defined place of use or for purposes other than those authorized in the
98 underlying water rights; or

99 (b) in a manner otherwise inconsistent with the underlying water rights.

100 (3) A POTW owner may use sewage effluent if:

101 (a) the use is on property owned by the POTW owner;

102 (b) the use is part of the water treatment process; and

103 (c) the POTW owner receives an approved application from the state engineer under
104 Section 73-3c-7.

105 (4) Except as provided in this section:

106 (a) no POTW owner or operator owns sewage effluent or the water component of
107 sewage prior to treatment; and

108 (b) a POTW owner or operator has no right to use sewage effluent or the water
109 component of sewage prior to treatment.

110 Section 4. Section **73-3c-4** is amended to read:

111 **73-3c-4. Consideration of a change application to effect the use of sewage**
112 **effluent.**

113 ~~[Any]~~ (1) A change application filed to effect the use of sewage effluent shall be
114 considered and [approved] acted on in accordance with [Section 73-3-3] Title 73, Chapter 3,
115 Appropriation, and the related provisions of Title 63, Chapter 46b, Administrative Procedures
116 Act.

117 (2) If a change application is required to be filed under this chapter, the state engineer
118 must approve the change application before the sewage effluent is used.

119 Section 5. Section **73-3c-7** is amended to read:

120 **73-3c-7. Change of point of discharge of sewage effluent.**

- 121 (1) The point of discharge of sewage effluent from a POTW may be changed, if:
- 122 (a) the change in point of discharge is required for treatment purposes as a matter of
- 123 public health, safety, or welfare under DEQ rules and the POTW's discharge permit; and
- 124 (b) (i) the sewage effluent is discharged into waters of the state and not applied to a
- 125 beneficial use; or
- 126 (ii) the sewage effluent is applied to a beneficial use consistent with, and without
- 127 enlargement of, the underlying water rights as provided in Subsection 73-3c-2(1) or 73-3c-3(1).
- 128 (2) If a change in the point of discharge is to be made in conjunction with a proposed
- 129 use of sewage effluent that is specified in Subsection 73-3c-2(2) or 73-3c-3(2), a change
- 130 application must be filed and approved as provided in those subsections.

131 Section 6. Section **73-3c-8** is amended to read:

132 **73-3c-8. Application for a sewage effluent use or change in point of discharge --**
 133 **State engineer to make rules.**

134 (1) ~~(a) [Any person]~~ An entity intending to apply sewage effluent to a beneficial use

135 pursuant to Subsection 73-3c-2(1) ~~[or], 73-3c-3(1), or 73-3c-3(3),~~ or change the point of

136 discharge of sewage effluent pursuant to Subsection 73-3c-7(1) shall ~~[notify]~~ make application

137 to the state engineer ~~[of the use]~~ describing the proposed use of sewage effluent or change in

138 point of discharge as provided by rules of the state engineer.

139 (b) If sewage effluent is to be applied to a beneficial use under Subsection 73-3c-2(1)

140 or 73-3c-3(1), the public water supply agency shall file the application with the state engineer.

141 (2) The applicant shall pay a filing fee to the state engineer in the amount set by rule.

142 ~~[(2)]~~ (3) (a) The state engineer shall publish notice of the ~~[notification]~~ application in a

143 newspaper of general circulation in the county where downstream water users may be affected

144 by the use or change in point of discharge.

145 (b) ~~[The notification]~~ Notice of the application:

146 (i) shall be published once a week for two successive weeks; and

147 (ii) may be published in more than one newspaper.

148 (c) (i) An interested person may file a protest within 20 days after the notice is

149 published.

150 (ii) The state engineer may hold a hearing.

151 (d) After reviewing and investigating the application, the state engineer shall issue a

152 decision that states whether the application is approved or rejected, and, if approved, the
153 conditions of approval.

154 (e) A person may seek judicial review of the state engineer's decision as provided for in
155 Section 73-3-14.

156 Section 7. Section **73-3c-9** is enacted to read:

157 **73-3c-9. Ownership interest or water rights in sewage effluent.**

158 Nothing in this chapter shall be construed to establish an ownership interest or water
159 right in sewage effluent, the water component of sewage prior to treatment, or any other
160 sewage water, except as provided in this chapter, and Title 73, Chapter 3, Appropriation.

161 Section 8. **Repealer.**

162 This bill repeals:

163 Section **73-3c-6, Sewage inflow that consists of unappropriated water --**
164 **Application to appropriate may be made.**

Legislative Review Note
as of 1-28-04 9:45 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

Provisions of this bill require the state engineer to establish a filing fee for change applications. This would be a regulatory fee deposited in the General Fund. It is estimated the fee would generate \$3,800 per year, which would be appropriated to the Division of Water to cover costs of investigating and advertising the application.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$3,800	\$3,800	\$3,800	\$3,800
TOTAL	\$3,800	\$3,800	\$3,800	\$3,800

Individual and Business Impact

Publicly owned treatment works may be negatively impacted by limitations under which they may use wastewater effluent.
