

Construction Modifications

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

House Sponsor: Thomas W. Peterson

LONG TITLE

General Description:

This bill addresses construction site storm water runoff controls.

Highlighted Provisions:

This bill:

- defines terms;
- establishes standards for how the Division of Water Quality:
 - regulates controls for storm water runoff;
 - imposes a fine for violation; and
 - inspects construction sites impacting storm water runoff;
- establishes exceptions for the Department of Transportation;
- establishes penalties for non-compliance; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-5-105, as last amended by Laws of Utah 2024, Chapter 502

19-5-108.3, as enacted by Laws of Utah 2024, Chapter 502

19-5-111, as last amended by Laws of Utah 2012, Chapter 360

19-5-115, as last amended by Laws of Utah 2024, Chapter 158

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

Section 1. Section **19-5-105** is amended to read:

19-5-105 . Rulemaking authority and procedure.

(1)(a) Except as provided in Subsections (2) and (3), no rule that the board makes for the purpose of the state administering a program under the federal Clean Water Act or the federal Safe Drinking Water Act may be more stringent than the corresponding federal regulations.

(b) In making rules, the board may incorporate by reference corresponding federal regulations.

(c) Any rule of the board is subject to Section 63G-3-502.

(2)(a) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if ~~it~~ the board makes a written finding after public comment and hearing and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health and the environment of the state.

(b) ~~[The-]~~ Except as described in Subsection (4), a municipal system authority may not make requirements for permits that are more stringent than corresponding federal regulations for the purpose described in Subsection (1), unless the municipal system authority makes a written finding after public comment and hearing and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health and the environment of the state.

(c) The board ~~[and]~~ or a municipal system ~~[shall include with-]~~ authority that makes a written finding described in Subsection (2)(a) [an opinion] or (2)(b) shall include a finding referring to and evaluating the public health and environmental information and studies contained in the record that [form] forms the basis for the board's or municipal [system's conclusion] system authority's finding described in Subsection (2)(a) or (2)(b).

(3) The board may make rules related to agriculture water more stringent than the corresponding federal regulations if the commission approves the rules being more stringent than the corresponding federal regulations.

(4) The Department of Transportation may make requirements more stringent than corresponding federal regulations when acting under a consent decree related to the administration of the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251, et seq.

Section 2. Section **19-5-108.3** is amended to read:

19-5-108.3 . Construction site storm water runoff control.

(1) As used in this section:

(a)(i) "Applicant" means a person that applies for an authorization to discharge under a construction storm water permit to conduct or propose to conduct a use of land for a construction site.

(ii) "Applicant" includes a person granted an authorization to discharge under a construction storm water permit once the authorization has been granted.

(b) "Application" means a construction storm water permit application.

(c) "Authority" means the Division of Water Quality or a municipal system authority.

~~[(e)]~~ (d) "Best management practice" means the methods, measures, or practices in compliance with ~~[the federal Clean Water Act]~~ 40 C.F.R. Part 450.

~~[(d)]~~ (e) "Construction storm water permit" means a permit required for soil disturbances where the construction activity causes a soil disturbance of:

(i) ~~[-of -]an acre or more[-] ; or~~

(ii) ~~[including -]less than an acre if [it] the application is part of a common plan of development or sale[-, where the disturbance is caused by construction activity.] .~~

~~[(e)]~~ (f) "Electronic site inspection" means geo-located and time-stamped ~~[photos taken, evaluated, and submitted electronically by the applicant to the municipal system.]~~ photographs the applicant takes, evaluates, and submits electronically to the authority.

(g) "Immediate threat" means contaminants are entering a river, a stream, or a lake.

(h) "Imminent threat" means contaminants are anticipated to be discharged into a river, a stream, or a lake within 48 hours.

(i) "Municipal system authority" means the entity that is responsible for the oversight of the municipal system.

~~[(j)]~~~~[(f)]~~ (j) "Municipal system" means a municipal separate storm sewer system described in ~~[the federal Clean Water Act]~~ 40 C.F.R. Sec. 122.26.

~~[(g)]~~ (k) "Oversight inspection" means a construction site inspection performed by the ~~[municipal system]~~ authority to [assess] impose compliance with the permit.

~~[(h)]~~ (l) "Permit" means a construction storm water permit.

~~[(i)]~~ (m) "Prevention plan" means the storm water pollution prevention plan described in ~~[the federal Clean Water Act]~~ 40 C.F.R. Sec. 122.26.

~~[(j)]~~ (n) "Program" means ~~[the]~~ a program described in Subsection [(2)] 19-5-104(3)(a).

(o)(i) "State transportation project" means a state project on public land to construct, reconstruct, replace, improve, maintain, or preserve transportation infrastructure.

(ii) "State transportation project" includes:

- 96 (A) a highway; or
97 (B) a public transit facility.
- 98 [(k) "Violation" means a failure to implement or maintain preferred best management
99 practices.]
- 100 [(2) This section does not supersede rules or regulations created by the board or division
101 under this chapter.]
- 102 [(3) No permit, rule, or action by a municipal system for the purpose of administering the
103 program may be more stringent than the minimum requirements of the federal Clean
104 Water Act.]
- 105 [(4)] (2) ~~[A municipal system]~~ The authority may not ~~[deviate from the federal Clean Water~~
106 Act] make or enforce a rule, an ordinance, or a policy regarding the municipal system,
107 more stringent than the corresponding federal regulations under the federal Clean Water
108 Act, unless [the deviation is-]expressly permitted by state statute.
- 109 [(5)] (3)(a) Each ~~[municipal system]~~ authority shall determine the ~~[municipal system's]~~
110 authority's preferred best management practices.
- 111 (b) Each ~~[municipal system]~~ authority shall publish the ~~[municipal system's]~~ authority's
112 preferred best management practices on ~~[a website controlled by the municipal system]~~
113 the authority's website.
- 114 [(6)] (4) Each ~~[municipal system]~~ authority shall:
- 115 (a) maintain a list of requirements that make a complete application for a ~~[permit]~~
116 prevention plan approval; and
- 117 (b) publish ~~[on a website controlled by the municipal system]~~ the list described in
118 Subsection ~~[(6)(a)]~~ (4)(a) on the authority's website.
- 119 [(7)] (5) ~~[The list]~~ Except as described in Section 19-5-105, the list of requirements
120 described in Subsection ~~[(6)(a)]~~ (4)(a) may not exceed the [template in the federal Clean
121 Water Act.] application requirements of 40 C.F.R. Part 122, Subpart B.
- 122 [(8)(a) Each municipal system shall complete the review of the prevention plan within
123 14 business days after the day on which the applicant submits a complete prevention
124 plan.]
- 125 [(b)] (6)(a) To apply for a prevention plan approval with a municipal system authority, an
126 applicant shall submit to the municipal system authority a prevention plan for review.
- 127 (b) A municipal system authority has 14 business days after the day on which an
128 applicant submits a prevention plan to review the prevention plan for compliance
129 with local ordinances, state law, and federal law.

- (c) ~~[Each municipal system]~~ A municipal system authority may request more information, or modification to the prevention plan, if the request:
- (i) ~~[is specific]~~ for more information, lists specifically why the prevention plan is noncompliant; and
- (ii) for modification:
- (A) includes citations to the permit requirements, local ordinances, ~~[or]~~ state law, or federal law that require the modification to the prevention plan; and
- ~~[(iii)]~~ (B) is logged in an index of requested modification.

~~[(e)]~~ (d) ~~[Each municipal system has 14]~~ The municipal system authority has five business days after the day on which the applicant submits the information or modification described in Subsection ~~[(8)(b)]~~ (6)(b) to complete the review of the prevention plan.

(e) Once the review of the prevention plan is complete, the municipal system authority shall notify the applicant, in writing, whether the authorization to discharge is granted.

~~[(9) A municipal system shall not impose a fine.]~~

~~[(10) Any violation found by the municipal system may not result in an order to stop construction activity if:]~~

~~[(a) an applicant selects the preferred best management practice for the site conditions;]~~

~~[(b) an applicant implements and properly maintains the best management practices as described in Subsection (5), by the municipal system; and]~~

~~[(c) the violation is a result from a deficiency in the best management practice.]~~

~~[(11)]~~ (7)(a) The ~~[municipal system]~~ authority:

(i) shall notify the applicant, in writing, of a specific violation;

(ii) shall provide the applicant a reasonable time of at least ~~[24 hours]~~ one business day to correct the specific violation; and

(iii) may perform an inspection to verify that the applicant corrects the specific violation~~[is corrected]~~.

(b) If an applicant does not correct the specific violation described in Subsection ~~[(11)(a)(i)]~~ (7)(a)(i) within the ~~[deadline]~~ timeline set under Subsection ~~[(11)(a)(ii)]~~ (7)(a)(ii), the ~~[municipal system]~~ authority:

(i) shall ~~[notify the applicant, in writing]~~ issue a written warning, that the applicant has not corrected the specific violation~~[has not been corrected]~~;

(ii) ~~[may issue a written warning that construction activity may be stopped]~~ may impose a fine if the applicant does not correct the specific violation~~[is not~~

- 164 corrected] within no less than ~~[another 24-hour period]~~ an additional one business
165 day; and
- 166 (iii) may perform an inspection to verify that the applicant corrected the specific
167 violation[is corrected].
- 168 (c) If an applicant does not correct the specific violation [described in-] for which the
169 applicant received notice in accordance with Subsection [(11)(a)(i)-] (7)(a)(i) within
170 the ~~[deadline]~~ timeline set under Subsection ~~[(11)(b), the municipal system]~~ (7)(b), the
171 authority:
- 172 (i) shall notify the applicant, in writing, that the applicant has not corrected the
173 specific violation[has not been corrected]; and
- 174 (ii) may ~~[order the applicant to stop construction activity until the municipal system~~
175 performs an inspection to verify that the violation is corrected or the applicant
176 demonstrates that the violation is corrected through electronic site inspection.]
177 impose an administrative fine for each occurrence as follows:
- 178 (A) \$500 per occurrence for working without an approved storm water permit;
179 (B) \$300 per occurrence for tracking mud on road;
180 (C) \$250 per occurrence for failure to clean up or report spills;
181 (D) \$100 per occurrence for failure to conduct storm water inspections;
182 (E) \$100 per occurrence for failure to maintain storm water records; and
183 (F) \$500 per site, per occurrence, for failure to use general best management
184 practices, as determined by the authority; and
- 185 (iii) may impose the administrative fine:
- 186 (A) for each business day the specific violation continues beginning on the day
187 after the day on which the authority issues the administrative fine; and
188 (B) within 30 days after the day on which the applicant corrects the violation.
- 189 (d) The authority shall:
- 190 (i) impose each fine in writing and clearly document the specific violation in the
191 writing; and
- 192 (ii) deposit collected fines into a restricted account for education and outreach under
193 a program.
- 194 ~~[(d) A municipal system may not impose the process described in this Subsection (11)~~
195 ~~later than 30 days after the day on which the municipal system provides the required~~
196 ~~preceding notice of violation or continuing violation.]~~
- 197 (e) ~~[A municipal system-]~~ Except as provided in Subsection (7)(f), the authority may not

198 issue an order to stop construction activity for a violation if:

199 (i) an applicant selects the preferred best management practice for the site conditions;

200 (ii) an applicant implements and properly uses the preferred best management
201 practices; and

202 (iii) the violation results from a deficiency in the preferred best management practice.

203 (f) The authority may issue an order to stop construction [earlier than described in

204 Subsection (11)(c)(ii)] if the [municipal system] authority has a clearly documented
205 reason articulating an immediate threat to water quality.

206 [(f)] (g) [A municipal system] The authority may recoup the reasonable costs incurred to

207 correct a specific violation the applicant refuses to correct after the enforcement

208 process described in this Subsection [(11)-] (7) has been exhausted if the [municipal

209 system] authority, at the time of clean up, determines [a-] there is an imminent threat of
210 significant harm to water quality or the storm water system[-is imminent].

211 (h) An authority may not impose a fine for any reason except as provided in Subsection

212 (7).

213 (8)(a) Subsections (3) through (7) do not apply to the Department of Transportation.

214 (b) The Department of Transportation may implement financial disincentives as part of a
215 project contract or specifications.

216 (c) The Department of Transportation may use financial disincentives under this

217 Subsection (8) to offset the cost of a state transportation project.

218 [(12)] (9)(a) [A municipal system-] The authority shall develop a checklist for a

219 pre-construction prevention plan review that is consistent with the [federal Clean

220 Water Act] current EPA Construction General Permit.

221 (b) The applicant, or an applicant's designee, shall participate in the pre-construction site
222 inspections.

223 (c) [A municipal system-] The authority may conduct a pre-construction site inspection in
224 person or using an electronic site inspection tool.

225 [(13)] (10)(a) The authority that owns the municipal system that accepts runoff from the

226 construction site shall inspect the construction site.

227 (b) Each [municipal system] authority shall develop, publish, and implement standard
228 operating procedures, forms, or similar types of documents for construction site
229 inspections.

230 (c) The applicant shall allow construction site inspections by the authority.

231 [(14)] (11)(a) [A municipal system-] Except as provided in Subsection (12), the authority

shall conduct an oversight inspection through an electronic site inspection.

(b) Photographs submitted for electronic site inspection shall:

(i) include meta data verifying the date, time, and GPS location corresponding to the construction site; and

(ii) be of sufficient resolution and clarity to assess compliance with general best management practices.

(c) An applicant may opt out of the electronic site inspection and instead elect an on-site inspection.

~~[(15)]~~ (12) ~~[A municipal system]~~ The authority may conduct an on-site inspection if the [
municipal system] authority:

(a) has a documented reason for justifying an on-site oversight inspection[-], which may include:

(i) alterations of electronic photographs;

(ii) failure to submit an electronic site inspection at the appropriate time; or

(iii) the construction site is within one-half mile of a river, a stream, or a lake;

(b) is inspecting a state transportation project; or

(c) is inspecting a military project.

(13) Only the authority that owns the municipal system that accepts runoff from the construction site may require post-construction maintenance agreements.

~~[(16) Each municipal system shall:]~~

~~[(a) develop and publish a procedure for the applicant to notify the municipal system that the applicant has completed active construction and is prepared for the municipal system to conduct verification of final stabilization; and]~~

~~[(b) provide a copy of the procedure described in Subsection (16)(a) to the applicant when the municipal system issues the permit.]~~

Section 3. Section **19-5-111** is amended to read:

19-5-111 . Notice of violations -- Hearings.

(1) Whenever the director determines there are reasonable grounds to believe that there has been a violation of this chapter or any order of the director or the board, the director may give written notice to the alleged violator specifying the provisions that have been violated and the facts that constitute the violation.

(2) The notice shall require that the matters complained of be corrected.

(3) ~~[The]~~ Except as provided in Subsection (4), the notice may order the alleged violator to appear before an administrative law judge as provided by Section 19-1-301 at a time and

place specified in the notice and answer the charges.

- (4) A person that receives a notice may request an informal adjudicative proceeding to contest a notice or fine imposed in accordance with Subsection 19-5-108.3(7)(c), Section 63G-4-203, and procedural rules the department makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 4. Section **19-5-115** is amended to read:

19-5-115 . Violations -- Penalties -- Civil actions by director -- Ordinances and rules of political subdivisions -- Acts of individuals.

- (1) As used in this section:

(a) "Criminal negligence" means the same as that term is defined in Section 76-2-103.

(b) "Knowingly" means the same as that term is defined in Section 76-2-103.

(c)(i) "Organization" means a legal entity, other than a government, established or organized for any purpose~~[-and]~~ .

(ii) "Organization" includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

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

(e) "Willfully" means the same as that term is defined in Section 76-2-103.

- (2)(a) A person ~~[who]~~ that violates this chapter, or any permit, rule, or order adopted under this chapter, ~~[upon a showing that the violation occurred,]~~ is subject in a civil proceeding to a civil penalty not to exceed \$10,000 per day of violation.
- (b) The department shall retain the revenue from an administrative fine under Subsection 19-5-108.3(7) as a dedicated credit for the purposes of outreach and education to applicants.
- (c) The division may issue an order to stop construction in accordance with Subsection 19-5-108.3(7).

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

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

- (ii) violates Section 19-5-113;
- (iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or
- (iv) manages sewage sludge in violation of this chapter or rules adopted under this chapter.

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

- (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);
- (ii) violates Section 19-5-113;
- (iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or
- (iv) manages sewage sludge in violation of this chapter or rules adopted under this chapter.

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

- (a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under this chapter; or
- (b) falsifies, tampers with, or knowingly renders inaccurate a monitoring device or method required to be maintained under this chapter.

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

- (i) knowingly violates this chapter, or any permit, rule, or order adopted under this chapter; and
- (ii) knows at that time that the person is placing another person in imminent danger of death or serious bodily injury.

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

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

- (A) the defendant's conduct placed another person in imminent danger of death or

- 334 serious bodily injury; and
- 335 (B) the defendant was aware of or believed that there was an imminent danger of
- 336 death or serious bodily injury to another person.
- 337 (ii) Knowledge possessed by a person other than the defendant may not be attributed
- 338 to the defendant.
- 339 (iii) Circumstantial evidence may be used to prove that the defendant possessed
- 340 actual knowledge, including evidence that the defendant took affirmative steps to
- 341 be shielded from receiving relevant information.
- 342 (d)(i) It is an affirmative defense to prosecution under this Subsection (5) that the
- 343 conduct charged was consented to by the person endangered and that the danger
- 344 and conduct charged were reasonably foreseeable hazards of:
- 345 (A) an occupation, a business, or a profession; or
- 346 (B) medical treatment or medical or scientific experimentation conducted by
- 347 professionally approved methods and the other person was aware of the risks
- 348 involved before giving consent.
- 349 (ii) The defendant has the burden of proof to establish an affirmative defense under
- 350 this Subsection (5)(d) and shall prove that defense by a preponderance of the
- 351 evidence.
- 352 (6) For purposes of Subsections (3) through (5), a single operational upset that leads to
- 353 simultaneous violations of more than one pollutant parameter shall be treated as a single
- 354 violation.
- 355 (7)(a) The director may bring a civil action for appropriate relief, including a permanent
- 356 or temporary injunction, for any violation or threatened violation for which the
- 357 director is authorized to issue a compliance order under Section 19-5-111.
- 358 (b) Notwithstanding Title ~~[78A, Chapter 3a, Venue for Civil Actions]~~ 78B, Chapter 3a,
- 359 Venue for Civil Actions, the director shall bring a civil action in the district court
- 360 where the violation or threatened violation occurs if the director brings the action in a
- 361 district court.
- 362 (8)(a) The attorney general is the legal advisor for the board and the director and shall
- 363 defend the board or director in an action or proceeding brought against the board or
- 364 director.
- 365 (b) The county attorney or district attorney, as appropriate under Section 17-18a-202 or
- 366 17-18a-203, in the county in which a cause of action arises, shall bring an action,
- 367 civil or criminal, requested by the director, to abate a condition that exists in violation

of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the director issued under this chapter.

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

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

(10) A political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11)(a) Except as provided in ~~[Subsection]~~ Subsections 19-5-108.3(7)(d) and 19-5-115

(11)(b) and (c), the department shall deposit penalties ~~[assessed]~~ imposed and collected under the authority of this section ~~[shall be deposited]~~ into the General Fund.

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

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

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

(12)(a) For purposes of this section or an ordinance or rule enacted by a political subdivision under Subsection (10), an act performed by an individual wholly within the scope of the individual's employment with an organization, is attributed to the organization.

(b) Notwithstanding the other provisions of this section, an action may not be brought against an individual acting wholly within the scope of the individual's employment with an organization if the action is brought under:

(i) this section;

(ii) an ordinance or rule issued by a political subdivision under Subsection (10); or

(iii) any local law or ordinance governing discharge.

Section 5. **Effective Date.**

This bill takes effect on May 7, 2025.