

Calvin R. Musselman proposes the following substitute bill:

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:

29 **19-5-105 . Rulemaking authority and procedure.**

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

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

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

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

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

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

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

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

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

61 **19-5-108.3 . Construction site storm water runoff control.**

62 (1) As used in this section:

- 63 (a)(i) "Applicant" means a person that applies for a construction storm water permit
 64 to conduct or propose to conduct a use of land for a construction site.
- 65 (ii) "Applicant" includes a permit holder once the permit has been granted.
- 66 (b) "Application" means a construction storm water permit application.
- 67 (c) "Authority" means the Division of Water Quality or a municipal system authority.
- 68 ~~(e)~~ (d) "Best management practice" means the methods, measures, or practices in
 69 compliance with ~~[the federal Clean Water Act]~~ 40 C.F.R. Part 450.
- 70 ~~(f)~~ (e) "Construction storm water permit" means a permit required for soil disturbances
 71 where the construction activity causes a soil disturbance of:
- 72 (i) ~~[-of]~~ an acre or more~~[-]~~ ; or
- 73 (ii) ~~[including]~~ less than an acre if ~~[it]~~ the application is part of a common plan of
 74 development or sale~~[-, where the disturbance is caused by construction activity.]~~ .
- 75 ~~(e)~~ (f) "Electronic site inspection" means geo-located and time-stamped ~~[photos taken,~~
 76 ~~evaluated, and submitted electronically by the applicant to the municipal system.]~~
 77 photographs the applicant takes, evaluates, and submits electronically to the authority.
- 78 (g) "Immediate threat" means contaminants are entering a river, a stream, or a lake.
- 79 (h) "Imminent threat" means contaminants are anticipated to be discharged into a river, a
 80 stream, or a lake within 48 hours.
- 81 (i) "Municipal system authority" means the entity that is responsible for the oversight of
 82 the municipal system.
- 83 ~~(j)~~~~(f)~~ (j) "Municipal system" means a municipal separate storm sewer system described in [
 84 ~~the federal Clean Water Act]~~ 40 C.F.R. Sec. 122.26.
- 85 ~~(g)~~ (k) "Oversight inspection" means a construction site inspection performed by the [
 86 ~~municipal system]~~ authority to [assess] impose compliance with the permit.
- 87 ~~(h)~~ (l) "Permit" means a construction storm water permit.
- 88 ~~(i)~~ (m) "Prevention plan" means the storm water pollution prevention plan described in [
 89 ~~the federal Clean Water Act]~~ 40 C.F.R. Sec. 122.26.
- 90 ~~(j)~~ (n) "Program" means ~~[the]~~ a program described in Subsection ~~[(2)]~~ 19-5-104(3)(a).
- 91 (o)(i) "State transportation project" means a state project on public land to construct,
 92 reconstruct, replace, improve, maintain, or preserve transportation infrastructure.
- 93 (ii) "State transportation project" includes:
- 94 (A) a highway; or
- 95 (B) a public transit facility.
- 96 ~~(k)~~ "Violation" means ~~a failure to implement or maintain preferred best management~~

97 practices.]

98 [(2) This section does not supersede rules or regulations created by the board or division
99 under this chapter.]

100 [(3) No permit, rule, or action by a municipal system for the purpose of administering the
101 program may be more stringent than the minimum requirements of the federal Clean
102 Water Act.]

103 [(4)] (2) [A municipal system] The authority may not [deviate from the federal Clean Water
104 Act] make or enforce a rule, an ordinance, or a policy regarding the municipal system,
105 more stringent than the corresponding federal regulations under the federal Clean Water
106 Act, unless [the deviation is-]expressly permitted by state statute.

107 [(5)] (3)(a) Each [municipal system] authority shall determine the [municipal system's]
108 authority's preferred best management practices.

109 (b) Each [municipal system] authority shall publish the [municipal system's] authority's
110 preferred best management practices on [a website controlled by the municipal system]
111 the authority's website.

112 [(6)] (4) Each [municipal system] authority shall:

113 (a) maintain a list of requirements that make a complete application for a permit; and

114 (b) publish [on a website controlled by the municipal system] the list described in
115 Subsection [(6)(a)] (4)(a) on the authority's website.

116 [(7)] (5) [The list] Except as described in Section 19-5-105, the list of requirements
117 described in Subsection [(6)(a)] (4)(a) may not exceed the [template in the federal Clean
118 Water Act.] application requirements of 40 C.F.R. Part 122, Subpart B.

119 [(8)(a) Each municipal system shall complete the review of the prevention plan within
120 14 business days after the day on which the applicant submits a complete prevention
121 plan.]

122 [(b)] (6)(a) To apply for a permit with a municipal system authority, an applicant shall
123 submit to the municipal system authority a prevention plan for review.

124 (b) A municipal system authority has 14 business days after the day on which an
125 applicant submits a prevention plan to review the prevention plan for compliance
126 with local ordinances, state law, and federal law.

127 (c) [Each municipal system] A municipal system authority may request more
128 information, or modification to the prevention plan, if the request:

129 (i) [is specific] for more information, lists specifically why the prevention plan is
130 noncompliant; and

- 131 (ii) for modification:
- 132 (A) includes citations to the permit requirements, local ordinances, ~~[or]~~ state law,
- 133 or federal law that require the modification to the prevention plan; and
- 134 [(iii)] (B) is logged in an index of requested modification.
- 135 ~~[(e)] (d) [Each municipal system has 14] The municipal system authority has five~~
- 136 business days after the day on which the applicant submits the information or
- 137 modification described in Subsection ~~[(8)(b)] (6)(b) to complete the review of the~~
- 138 prevention plan.
- 139 (e) Once the review of the prevention plan is complete, the municipal system authority
- 140 shall notify the applicant, in writing, whether the permit is granted.
- 141 ~~[(9) A municipal system shall not impose a fine.]~~
- 142 ~~[(10) Any violation found by the municipal system may not result in an order to stop~~
- 143 ~~construction activity if:]~~
- 144 ~~[(a) an applicant selects the preferred best management practice for the site conditions;]~~
- 145 ~~[(b) an applicant implements and properly maintains the best management practices as~~
- 146 ~~described in Subsection (5), by the municipal system; and]~~
- 147 ~~[(c) the violation is a result from a deficiency in the best management practice.]~~
- 148 ~~[(11)] (7)(a) The [municipal system] authority:~~
- 149 (i) shall notify the applicant, in writing, of a specific violation;
- 150 (ii) shall provide the applicant a reasonable time of at least ~~[24 hours]~~ one business day
- 151 to correct the specific violation; and
- 152 (iii) may perform an inspection to verify that the applicant corrects the specific
- 153 violation~~[is corrected].~~
- 154 (b) If an applicant does not correct the specific violation described in Subsection [~~(11)(a)(i)] (7)(a)(i)~~
- 155 within the [deadline] timeline set under Subsection ~~[(11)(a)(ii)]~~
- 156 (7)(a)(ii), the [municipal system] authority:
- 157 (i) shall ~~[notify the applicant, in writing]~~ issue a written warning, that the applicant
- 158 has not corrected the specific violation~~[has not been corrected];~~
- 159 (ii) ~~[may issue a written warning that construction activity may be stopped]~~ may
- 160 impose a fine if the applicant does not correct the specific violation~~[is not~~
- 161 ~~corrected] within no less than [another 24-hour period] an additional one business~~
- 162 day; and
- 163 (iii) may perform an inspection to verify that the applicant corrected the specific
- 164 violation~~[is corrected].~~

- 165 (c) If an applicant does not correct the specific violation [~~described in~~] for which the
 166 applicant received notice in accordance with Subsection [(11)(a)(i)] (7)(a)(i) within
 167 the [deadline] timeline set under Subsection [(11)(b), the municipal system] (7)(b), the
 168 authority:
- 169 (i) shall notify the applicant, in writing, that the applicant has not corrected the
 170 specific violation[~~has not been corrected~~]; and
- 171 (ii) may [~~order the applicant to stop construction activity until the municipal system~~
 172 ~~performs an inspection to verify that the violation is corrected or the applicant~~
 173 ~~demonstrates that the violation is corrected through electronic site inspection.~~]
 174 impose an administrative fine for each occurrence as follows:
- 175 (A) \$500 per occurrence for working without an approved storm water permit;
 176 (B) \$300 per occurrence for tracking mud on road;
 177 (C) \$250 per occurrence for failure to clean up or report spills;
 178 (D) \$100 per occurrence for failure to conduct storm water inspections;
 179 (E) \$100 per occurrence for failure to maintain storm water records; and
 180 (F) \$500 per site, per occurrence, for failure to use general best management
 181 practices, as determined by the authority; and
- 182 (iii) shall impose the administrative fine:
- 183 (A) for each business day the specific violation continues beginning on the day
 184 after the day on which the authority issues the administrative fine; and
 185 (B) within 30 days after the day on which the applicant corrects the violation.
- 186 (d) The authority shall:
- 187 (i) impose each fine in writing and clearly document the specific violation in the
 188 writing; and
- 189 (ii) deposit collected fines into a restricted account for education and outreach under
 190 a program.
- 191 [~~(d) A municipal system may not impose the process described in this Subsection (11)~~
 192 ~~later than 30 days after the day on which the municipal system provides the required~~
 193 ~~preceding notice of violation or continuing violation.]~~
- 194 (e) [~~A municipal system~~] Except as provided in Subsection (7)(f), the authority may not
 195 issue an order to stop construction activity for a violation if:
- 196 (i) an applicant selects the preferred best management practice for the site conditions;
 197 (ii) an applicant implements and properly uses the preferred best management
 198 practices; and

- 199 (iii) the violation results from a deficiency in the preferred best management practice.
- 200 (f) The authority may issue an order to stop construction [earlier than described in
- 201 Subsection (11)(e)(ii)] if the [municipal system] authority has a clearly documented
- 202 reason articulating an immediate threat to water quality.
- 203 [(f)] (g) [A municipal system] The authority may recoup the reasonable costs incurred to
- 204 correct a specific violation the applicant refuses to correct after the enforcement
- 205 process described in this Subsection [(11)] (7) has been exhausted if the [municipal
- 206 system] authority, at the time of clean up, determines [a] there is an imminent threat of
- 207 significant harm to water quality or the storm water system[is imminent].
- 208 (h) A authority may not impose a fine for any reason except as provided in Subsection
- 209 (7).
- 210 (8)(a) Subsections (3) through (7) do not apply to the Department of Transportation.
- 211 (b) The Department of Transportation may implement financial disincentives as part of a
- 212 project contract or specifications.
- 213 (c) The Department of Transportation may use financial disincentives under this
- 214 Subsection (8) to offset the cost of a state transportation project.
- 215 [(12)] (9)(a) [A municipal system] The authority shall develop a checklist for a
- 216 pre-construction prevention plan review that is consistent with the [federal Clean
- 217 Water Act] current EPA Construction General Permit.
- 218 (b) The applicant, or an applicant's designee, shall participate in the pre-construction site
- 219 inspections.
- 220 (c) [A municipal system] The authority may conduct a pre-construction site inspection in
- 221 person or using an electronic site inspection tool.
- 222 [(13)] (10)(a) The authority that owns the municipal system that accepts runoff from the
- 223 construction site shall inspect the construction site.
- 224 (b) Each [municipal system] authority shall develop, publish, and implement standard
- 225 operating procedures, forms, or similar types of documents for construction site
- 226 inspections.
- 227 (c) The applicant shall allow construction site inspections by the authority.
- 228 [(14)] (11)(a) [A municipal system] Except as provided in Subsection (12), the authority
- 229 shall conduct an oversight inspection through an electronic site inspection.
- 230 (b) Photographs submitted for electronic site inspection shall:
- 231 (i) include meta data verifying the date, time, and GPS location corresponding to the
- 232 construction site; and

- 233 (ii) be of sufficient resolution and clarity to assess compliance with general best
 234 management practices.
- 235 (c) An applicant may opt out of the electronic site inspection and instead elect an on-site
 236 inspection.
- 237 ~~[(15)]~~ (12) ~~[A municipal system]~~ The authority may conduct an on-site inspection if the [
 238 ~~municipal system]~~ authority:
- 239 (a) has a documented reason for justifying an on-site oversight inspection[-] , which may
 240 include:
- 241 (i) alterations of electronic photographs;
 242 (ii) failure to submit an electronic site inspection at the appropriate time; or
 243 (iii) the construction site is within one-half mile of a river, a stream, or a lake; or
- 244 (b) is inspecting a state transportation project.
- 245 (13) Only the authority that owns the municipal system that accepts runoff from the
 246 construction site may require post-construction maintenance agreements.
- 247 ~~[(16) Each municipal system shall:]~~
- 248 ~~[(a) develop and publish a procedure for the applicant to notify the municipal system~~
 249 ~~that the applicant has completed active construction and is prepared for the municipal~~
 250 ~~system to conduct verification of final stabilization; and]~~
- 251 ~~[(b) provide a copy of the procedure described in Subsection (16)(a) to the applicant~~
 252 ~~when the municipal system issues the permit.]~~
- 253 Section 3. Section **19-5-111** is amended to read:
- 254 **19-5-111 . Notice of violations -- Hearings.**
- 255 (1) Whenever the director determines there are reasonable grounds to believe that there has
 256 been a violation of this chapter or any order of the director or the board, the director may
 257 give written notice to the alleged violator specifying the provisions that have been
 258 violated and the facts that constitute the violation.
- 259 (2) The notice shall require that the matters complained of be corrected.
- 260 (3) ~~[The]~~ Except as provided in Subsection (4), the notice may order the alleged violator to
 261 appear before an administrative law judge as provided by Section 19-1-301 at a time and
 262 place specified in the notice and answer the charges.
- 263 (4) A person that receives a notice may request an informal adjudicative proceeding to
 264 contest a notice or fine imposed in accordance with Subsection 19-5-108.3(7)(c),
 265 Section 63G-4-203, and procedural rules the department makes in accordance with Title
 266 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

268 **19-5-115 . Violations -- Penalties -- Civil actions by director -- Ordinances and**
 269 **rules of political subdivisions -- Acts of individuals.**

270 (1) As used in this section:

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

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

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

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

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

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

283 (2)(a) A person ~~[who]~~ that violates this chapter, or any permit, rule, or order adopted
 284 under this chapter, ~~[upon a showing that the violation occurred,]~~ is subject in a civil
 285 proceeding to a civil penalty not to exceed \$10,000 per day of violation.

286 (b) The department shall retain the revenue from an administrative fine under Subsection
 287 19-5-108.3(7) as a dedicated credit for the purposes of outreach and education to
 288 applicants.

289 (c) The division may issue an order to stop construction in accordance with Subsection
 290 19-5-108.3(7).

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

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

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

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

299 (iv) manages sewage sludge in violation of this chapter or rules adopted under this
 300 chapter.

- 301 (b) A person is guilty of a third degree felony~~[-and is]~~ , subject to imprisonment under
302 Section 76-3-203, and subject to a fine not to exceed \$50,000 per day of violation~~[~~
303 ~~who]~~ , if the person knowingly:
- 304 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
305 condition or limitation included in a permit issued under Subsection 19-5-107(3);
- 306 (ii) violates Section 19-5-113;
- 307 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
308 treatment works; or
- 309 (iv) manages sewage sludge in violation of this chapter or rules adopted under this
310 chapter.
- 311 (4) A person is guilty of a third degree felony~~[-and]~~ , subject to imprisonment under Section
312 76-3-203, and ~~[shall be punished by]~~ subject to a fine not exceeding \$10,000 per day of
313 violation~~[-if that person]~~ , if the person knowingly:
- 314 (a) makes a false material statement, representation, or certification in any application,
315 record, report, plan, or other document filed or required to be maintained under this
316 chapter, or by any permit, rule, or order issued under this chapter; or
- 317 (b) falsifies, tampers with, or knowingly renders inaccurate a monitoring device or
318 method required to be maintained under this chapter.
- 319 (5)(a) A person is guilty of a second degree felony~~[-and, upon conviction, is]~~ , subject to
320 imprisonment under Section 76-3-203, and subject to a fine of not more than
321 \$250,000 if ~~[that]~~ the person:
- 322 (i) knowingly violates this chapter, or any permit, rule, or order adopted under this
323 chapter; and
- 324 (ii) knows at that time that the person is placing another person in imminent danger
325 of death or serious bodily injury.
- 326 (b) If a person is an organization, the organization shall, upon conviction of violating
327 Subsection (5)(a), be subject to a fine of not more than \$1,000,000.
- 328 (c)(i) A defendant who is an individual is considered to have acted knowingly if:
- 329 (A) the defendant's conduct placed another person in imminent danger of death or
330 serious bodily injury; and
- 331 (B) the defendant was aware of or believed that there was an imminent danger of
332 death or serious bodily injury to another person.
- 333 (ii) Knowledge possessed by a person other than the defendant may not be attributed
334 to the defendant.

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

369 pending administrative or judicial review, the director may initiate an action for and be
370 entitled to injunctive relief to prevent any further or continued violation of the order.

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

373 (11)(a) Except as provided in [~~Subsection~~] Subsections 19-5-108.3(7)(d) and 19-5-115
374 (11)(b) and (c), the department shall deposit penalties [assessed] imposed and
375 collected under the authority of this section [~~shall be deposited~~] into the General
376 Fund.

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

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

- 382 (i) define qualifying environmental enforcement activities; and
383 (ii) define qualifying extraordinary expenses.

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

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

- 391 (i) this section;
392 (ii) an ordinance or rule issued by a political subdivision under Subsection (10); or
393 (iii) any local law or ordinance governing discharge.

394 **Section 5. Effective Date.**

395 This bill takes effect on May 7, 2025.