

**CONSTRUCTION AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Calvin R. Musselman**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses construction site storm water runoff controls.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ authorizes the Division of Water Quality to implement and enforce a program to reduce pollutants from construction sites impacting storm water runoff;
- ▶ establishes standards regarding the issuance of a permit; and
- ▶ establishes penalties for non-compliance.

**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 2011, Chapter 155

ENACTS:

**19-5-108.3**, Utah Code Annotated 1953

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



28 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  
31 the purpose of the state administering a program under the federal Clean Water Act or the  
32 federal Safe Drinking Water Act may be more stringent than the corresponding federal  
33 regulations [~~which~~] that address the same circumstances.

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

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

41 (b) [~~Those findings shall be accompanied by~~] The board shall include with a written  
42 finding described in Subsection (1) an opinion referring to and evaluating the public health and  
43 environmental information and studies contained in the record [~~which~~] that form the basis for  
44 the board's conclusion.

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

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

48 **19-5-108.3. Construction site storm water runoff control.**

49 (1) As used in this section:

50 (a) "Applicant" means a person who applies for a prevention plan permit to conduct or  
51 propose to conduct a use of land for a construction site.

52 (b) "Application" means a prevention plan permit application.

53 (c) "Best management practice" means the best management practice described in the  
54 federal Clean Water Act.

55 (d) "Municipal system" means a municipal separate storm water system described in  
56 the federal Clean Water Act.

57 (e) "Permit" means a permit for a prevention plan.

58 (f) "Prevention plan" means the storm water pollution prevention plan described in the

59 federal Clean Water Act.

60 (g) "Program" means the program described in Subsection (2).

61 (2) (a) The division shall, in accordance with the requirements of this section,

62 implement and enforce a program to reduce pollutants in storm water runoff from a

63 construction site with a land disturbance of:

64 (i) greater than or equal to one acre; or

65 (ii) less than one acre, if the construction site is part of a larger common plan of  
66 development or sale that collectively disturbs land greater than or equal to one acre.

67 (b) Subsection (2)(a) applies to both public and private projects.

68 (c) A person may not begin or continue work on a construction site described in  
69 Subsection (2)(a) without first obtaining a permit in accordance with this section.

70 (3) (a) No permit, rule made, or action taken by the division or a municipal system for  
71 the purpose of administering the program may be more stringent than the federal Clean Water  
72 Act or the federal Safe Drinking Water Act.

73 (b) In making rules, the board shall, in each rule described in Subsection (3)(a),  
74 incorporate by reference the corresponding federal regulations.

75 (4) Neither the division nor a municipal system may deviate from the federal Clean  
76 Water Act or the federal Safe Drinking Water Act, unless the deviation is expressly permitted  
77 by state statute.

78 (5) The division shall adopt a standard operating procedures document that include  
79 processes to obtain compliance with the prevention plan.

80 (6) (a) Each municipal system shall determine the municipal system's preferred best  
81 management practice method and submit that method to the division.

82 (b) The division shall publish on a website the best management practice methods for  
83 each municipal system.

84 (7) (a) The municipal system may not modify an application submitted to a municipal  
85 system that utilizes the preferred best management practice method described on the division  
86 website.

87 (b) A municipal system shall issue a permit to the applicant within three business days  
88 after the day on which the applicant submits the application.

89 (c) A municipal system that fails to select a preferred best management practice

90 method under Subsection (6):

91 (i) may not change an application; and

92 (ii) shall issue the permit within three business days after the day on which the  
93 applicant submits the application.

94 (d) If the municipal system does not issue a permit within three business days after the  
95 day on which the applicant submits the application, the permit is automatically issued.

96 (8) (a) The division shall collect a fee of \$500 for each prevention plan permit issued  
97 and send to the applicable municipal system \$350 of the fee.

98 (b) A municipal system may not collect a fee from the applicant for the application.

99 (9) (a) Subject to Subsection (10), the division or a municipal system may impose a  
100 fine against a person who violates this section, a rule made under this section, or a permit  
101 requirement.

102 (b) Neither the division nor a municipal system may impose a fine in addition to a fine  
103 described in Subsection (10).

104 (c) A person against whom the division or a municipal system imposes a fine under  
105 Subsection (9)(a) shall pay the fine to the division.

106 (d) The division shall deposit a fine collected under Subsection (9)(c) into the General  
107 Fund as a dedicated credit to be used to educate applicants or potential applicants regarding the  
108 requirements of this section.

109 (10) (a) The division or municipality shall:

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

111 (ii) provide the applicant a reasonable time of not less than five business days to cure  
112 the violation; and

113 (iii) perform an inspection to verify that the violation is cured.

114 (b) If the violation described in Subsection (10)(a) is not cured within the deadline set  
115 under Subsection (10)(a)(ii), the division or municipality shall:

116 (i) notify the applicant, in writing, that the violation has not been cured;

117 (ii) provide the applicant a reasonable time of no less than three additional business  
118 days to cure the violation; and

119 (iii) perform an inspection to verify that the violation is cured.

120 (c) If the violation described in Subsection (10)(a) is not cured within the deadline set

- 121 under Subsection (10)(b)(ii), the division or municipality shall:
- 122 (i) notify the applicant, in writing, that the violation has not been cured;
- 123 (ii) fine the applicant up to \$300;
- 124 (iii) provide the applicant a reasonable time of not less than three additional business
- 125 days to cure the violation; and
- 126 (iv) perform an inspection to verify that the violation is cured.
- 127 (d) If the violation described in Subsection (10)(a) is not cured within the deadline set
- 128 under Subsection (10)(c)(iii), the division or municipality shall:
- 129 (i) notify the applicant, in writing, that the violation has not been cured;
- 130 (ii) fine the applicant up to \$500;
- 131 (iii) provide the applicant a reasonable time of not less than three additional business
- 132 days to cure the violation; and
- 133 (iv) perform an inspection to verify that the violation is cured.
- 134 (e) If the violation described in Subsection (10)(a) is not cured within the deadline set
- 135 under Subsection (10)(d)(iii), the division or municipality shall:
- 136 (i) notify the applicant, in writing, that the violation has not been cured;
- 137 (ii) fine the applicant up to \$1000; and
- 138 (iii) order the applicant to stop construction activity until an inspection performed by
- 139 the division or municipality verifies that the violation is cured.
- 140 (f) The division or a municipal system may not impose a fine described in this
- 141 Subsection (10) later than 30 days after the day on which the division or municipal system
- 142 provides the preceding notice of violation or continuing violation required.
- 143 (g) The division or a municipality may issue an order to stop construction earlier than
- 144 the occasion described in Subsection (10)(e)(iii) if necessary for public safety or for another
- 145 good cause.
- 146 (11) The division shall develop a checklist for a pre-construction prevention plan
- 147 review that is consistent with the federal Clean Water Act.
- 148 (12) (a) Before construction, the applicant may request the division or the applicable
- 149 municipal system to conduct a pre-construction prevention plan meeting that may include:
- 150 (i) a review of the site design;
- 151 (ii) a review of the planned operations at the construction site;

152 (iii) a review of the planned best management practices during the construction phase;

153 (iv) a review of the planned best management practices to be used to manage runoff

154 created after development; and

155 (v) a preconstruction meeting site inspection, using an electronic site inspection tool.

156 (b) (i) The division shall establish documented standard operating procedures for a

157 monthly construction site inspection that:

158 (A) identify the persons from the division or a municipal system who are responsible to

159 conduct the site inspections; and

160 (B) require an inspection, no more often than monthly, unless the division or municipal

161 system has clearly documented reasons justifying why a specific construction site requires

162 additional inspections.

163 (ii) The applicant or a designee of the applicant shall participate in the site inspections.

164 (iii) The division or a municipal system may conduct a site inspection in person or

165 using an electronic site inspection tool.

166 (c) (i) The division shall establish documented standard operating procedures for a

167 weekly construction site inspection that:

168 (A) identify the persons from the division or a municipal system who are responsible to

169 conduct the site inspections; and

170 (B) require an inspection, no more often than weekly, unless the division or municipal

171 system has clearly documented reasons justifying why a specific construction site requires

172 additional inspections.

173 (ii) The applicant or a designee of the applicant shall participate in the site inspections.

174 (iii) The division or a municipal system shall conduct a site inspection using an

175 electronic site inspection tool, unless the division has clearly documented a reason justifying

176 why a specific construction site requires an on-site inspection.

177 (13) The division shall:

178 (a) develop a procedure for the applicant to notify the division or municipal system that

179 the applicant has completed active construction and is prepared for the division or the

180 municipal system may conduct verification of final stabilization; and

181 (b) provide a copy of the procedure described in Subsection (13)(a) to the applicant

182 when the division or a municipal system issues the permit.

183 (14) (a) The division shall maintain records of all projects described in Subsection  
184 (2)(a).

185 (b) An applicant that receives a prevention plan permit shall keep records that include:

186 (i) site plan reviews;

187 (ii) the prevention plan; and

188 (iii) records of inspections and enforcement actions including:

189 (A) verbal warnings;

190 (B) stop work orders;

191 (C) warning letters;

192 (D) notices of violation; and

193 (E) other enforcement actions.

194 (c) An applicant described in Subsection (14)(b) shall maintain the records described in  
195 Subsection (14)(b) for three years after the construction is completed.

196 (15) Within the Great Salt Lake drainage basin, neither the division nor a municipal  
197 system may impose or enforce post construction runoff controls.

198 **Section 3. Effective date.**

199 This bill takes effect on May 1, 2024.