

**Representative Calvin R. Musselman** proposes the following substitute bill:

**CONSTRUCTION AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Calvin R. Musselman**

Senate Sponsor: Curtis S. Bramble

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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:*

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 executive director, director, or 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 [~~which~~] that address the same circumstances.

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

(2) (a) The executive director, director, or board may not make rules or requirements for permits that are more stringent than corresponding federal regulations for the purpose described in Subsection (1), [~~only if it~~] unless 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) [~~Those findings shall be accompanied by~~] The board shall include with a written finding described in Subsection (1) an opinion referring to and evaluating the public health and environmental information and studies contained in the record [~~which~~] that form the basis for the board's conclusion.

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

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

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

(1) As used in this section:

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

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

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

(d) "Electronic site inspection" means geo-located and time stamped photos taken and submitted electronically by the applicant to the division which are uploaded onto a website

57 controlled by the division.

58 (e) "Municipal system" means a municipal separate storm water system described in  
59 the federal Clean Water Act.

60 (f) "Permit" means a permit for a prevention plan.

61 (g) "Prevention plan" means the storm water pollution prevention plan described in the  
62 federal Clean Water Act.

63 (h) "Program" means the program described in Subsection (2).

64 (2) (a) The division shall, in accordance with the requirements of this section,  
65 implement and enforce a program to reduce pollutants in storm water runoff from a  
66 construction site with a land disturbance of:

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

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

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

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

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

76 (b) In making rules, the executive director, director, or board shall, in each rule  
77 described in Subsection (3)(a), incorporate by reference the corresponding federal regulations.

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

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

83 (6) (a) Each municipal system shall determine the municipal system's preferred best  
84 management practice methods and submit those methods to the division.

85 (b) The division shall publish on a website controlled by the division the best  
86 management practice methods for each municipal system.

87 (7) (a) The municipal system may not modify an application submitted to a municipal

88 system that utilizes the preferred best management practice methods described on the division  
89 website.

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

92 (c) A municipal system that fails to select preferred best management methods under  
93 Subsection (6):

94 (i) may not change an application; and

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

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

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

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

102 (9) (a) Subject to Subsection (11), the division or a municipal system may impose a  
103 fine against a person who violates this section, a rule made under this section, or a permit  
104 requirement.

105 (b) Neither the division nor a municipal system may impose a fine in addition to a fine  
106 described in Subsection (11).

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

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

112 (10) Any violation found by the division or the municipality shall not result in a fine or  
113 penalty if an applicant has employed a best management practice submitted to the division by  
114 the municipality if the violation is a result of a deficiency in the best management practice.

115 (11) (a) The division or municipality:

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

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

119 (iii) may perform an inspection to verify that the violation is cured, or the applicant  
120 may demonstrate that the violation is cured through electronic site inspection.

121 (b) If the violation described in Subsection (11)(a) is not cured within the deadline set  
122 under Subsection (11)(a)(ii), the division or municipality:

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

124 (ii) may fine the applicant up to \$300;

125 (iii) may provide the applicant a reasonable time of not less than three additional  
126 business days to cure the violation; and

127 (iv) may perform an inspection to verify that the violation is cured, or the applicant  
128 may demonstrate that the violation is cured through electronic site inspection.

129 (c) If the violation described in Subsection (11)(a) is not cured within the deadline set  
130 under Subsection (11)(b)(iii), the division or municipality:

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

132 (ii) may fine the applicant up to \$500;

133 (iii) may provide the applicant a reasonable time of not less than three additional  
134 business days to cure the violation; and

135 (iv) may perform an inspection to verify that the violation is cured, or the applicant  
136 may demonstrate that the violation is cured through electronic site inspection.

137 (d) If the violation described in Subsection (11)(a) is not cured within the deadline set  
138 under Subsection (11)(c)(iii), the division or municipality shall:

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

140 (ii) may fine the applicant up to \$1000; and

141 (iii) may order the applicant to stop construction activity until an inspection performed  
142 by the division or municipality verifies the violation is cured, or the applicant uses electronic  
143 site inspection to verify to the division that the violation is cured.

144 (e) The division or a municipal system may not impose a fine described in this  
145 Subsection (11) later than 30 days after the day on which the division or municipal system  
146 provides the preceding notice of violation or continuing violation required.

147 (f) The division or a municipality may not issue an order to stop construction earlier  
148 than the occasion described in Subsection (11)(d)(iii) unless the division or municipality has a  
149 clearly documented reason articulating an immediate threat to public safety.

150 (12) The division shall develop a checklist for a pre-construction prevention plan  
151 review that is consistent with the federal Clean Water Act.

152 (a) The applicant or a designee of the applicant shall participate in the pre-construction  
153 site inspections.

154 (b) The division or a municipal system may conduct a pre-construction site inspection  
155 in person or using an electronic site inspection tool.

156 (13) The division shall develop, publish, and implement standard operating procedures,  
157 forms, or similar types of documents for construction site inspections.

158 (14) Construction site inspections shall be conducted by the applicant or designee  
159 utilizing an electronic inspection tool.

160 (15) Notwithstanding Subsection (14), the division or municipality may require an  
161 on-site construction site inspection if the division or municipality has a clearly documented  
162 reason for justifying an on-site construction site inspection.

163 (16) The division shall:

164 (a) develop and publish a procedure for the applicant to notify the division or  
165 municipal system that the applicant has completed active construction and is prepared for the  
166 division or the municipal system may conduct verification of final stabilization; and

167 (b) provide a copy of the procedure described in Subsection (16)(a) to the applicant  
168 when the division or a municipal system issues the permit.

169 (17) (a) The division shall maintain records of all projects described in Subsection  
170 (2)(a).

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

172 (i) site plan reviews;

173 (ii) the prevention plan; and

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

175 (A) verbal warnings;

176 (B) stop work orders;

177 (C) warning letters;

178 (D) notices of violation; and

179 (E) other enforcement actions.

180 (c) An applicant described in Subsection (17)(b) shall maintain the records described in

181 Subsection (17)(b) for three years after the construction is completed.

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

184 Section 3. **Effective date.**

185 This bill takes effect on May 1, 2024.