

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

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;
- ▶ establishes penalties for non-compliance; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

19-5-105, as last amended by Laws of Utah 2011, Chapter 155

ENACTS:



26 19-5-108.3, Utah Code Annotated 1953



27
28 *Be it enacted by the Legislature of the state of Utah:*

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

30 **19-5-105. Rulemaking authority and procedure.**

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

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

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

42 (b) [~~Those findings shall be accompanied by~~] The board shall include with a written
43 finding described in Subsection (2)(a) an opinion referring to and evaluating the public health
44 and environmental information and studies contained in the record [~~which~~] that form the basis
45 for the board's conclusion.

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

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

49 **19-5-108.3. Construction site storm water runoff control.**

50 (1) As used in this section:

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

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

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

56 (d) "Electronic site inspection" means geo-located and time-stamped photos taken and

57 submitted electronically by the applicant to the division or the municipal system.

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

60 (f) "Oversight inspection" means a construction site inspection performed by the
61 division or municipal system to assess compliance with the permit.

62 (g) "Permit" means a permit for a prevention plan.

63 (h) "Prevention plan" means the storm water pollution prevention plan described in the
64 federal Clean Water Act.

65 (i) "Program" means the program described in Subsection (2).

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

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

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

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

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

76 (b) In making rules or permit requirements, the executive director, director, or board
77 shall 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) (a) The division and each municipal system shall determine the division's or the
82 municipal system's preferred best management practice methods.

83 (b) The division and each municipal system shall publish the division's or the
84 municipal system's preferred best management practice methods on a website controlled by the
85 division or the municipal system.

86 (6) The division and each municipal system shall:

87 (a) maintain a list of requirements that make a complete application for a prevention

88 plan permit; and

89 (b) publish on a website controlled by the division or the municipal system the list
90 described in Subsection (6)(a).

91 (7) The list described in Subsection (6)(a) may not exceed the template in the federal
92 Clean Water Act.

93 (8) (a) The division and each municipal system shall complete the review of the
94 prevention plan permit within 14 business days after the day on which the applicant submits a
95 complete prevention plan permit.

96 (b) The division or municipal system may request more information, or modification to
97 the prevention plan permit, if the request:

98 (i) is specific;

99 (ii) includes citations to local ordinances, or state or federal law that require the
100 modification to the prevention plan; and

101 (iii) is logged in an index of requested modification.

102 (c) The division or municipal system has 14 business days after the day on which the
103 applicant submits the information or modification described in Subsection (8)(b) to complete
104 the review of the prevention plan permit.

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

107 (10) Any violation found by the division or the municipality shall not result in a
108 penalty if:

109 (a) an applicant has implemented and properly maintained the best management
110 practices as described in Subsection (5), by the division or by the municipality; and

111 (b) the violation is a result of a deficiency in the best management practice.

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

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

114 (ii) shall provide the applicant a reasonable time of at least 24 hours to cure the
115 violation; and

116 (iii) may perform an inspection to verify that the violation is cured, or the applicant
117 demonstrates that the violation is cured through electronic site inspection.

118 (b) If the violation described in Subsection (11)(a)(i) is not cured within the deadline

119 set under Subsection (11)(a)(ii), the division or municipality:

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

121 (ii) may issue a written warning that construction activity may be stopped if the
122 violation is not cured within no less than another 24 hour period; and

123 (iii) may perform an inspection to verify that the violation is cured, or the applicant
124 demonstrates that the violation is cured through electronic site inspection.

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

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

128 (ii) may order the applicant to stop construction activity until the division or
129 municipality performs an inspection to verify that the violation is cured, or the applicant
130 demonstrates that the violation is cured through electronic site inspection.

131 (d) The division or a municipal system may not impose a penalty described in this
132 Subsection (11) later than 30 days after the day on which the division or municipal system
133 provides the preceding notice of violation or continuing violation required.

134 (e) The division or a municipal system may not issue an order to stop construction
135 earlier than the occasion described in Subsection (11)(c)(ii) unless the division or municipality
136 has a clearly documented reason articulating an immediate threat to public safety.

137 (f) The division or municipal system may recoup the costs incurred to cure a violation
138 the applicant refuses to cure after the enforcement process has been exhausted if the division or
139 municipal system, at the time of clean up, determines a significant harm to the storm water
140 system is imminent.

141 (12) (a) The division and the municipal system shall develop a checklist for a
142 pre-construction prevention plan review that is consistent with the federal Clean Water Act.

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

145 (c) The division or a municipal system may conduct a pre-construction site inspection
146 in person or using an electronic site inspection tool.

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

149 (14) An oversight inspection shall be conducted by the division or the municipal

150 system through electronic site inspection.

151 (15) The division or the municipality may require an on-site construction site
152 inspection if the division or municipality has a documented reason for justifying an on-site
153 construction site inspection.

154 (16) The division shall:

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

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

160 **Section 3. Effective date.**

161 This bill takes effect on January 1, 2025.