

HB0507S03 compared with HB0507S02

~~text~~ shows text that was in HB0507S02 but was deleted in HB0507S03.

text shows text that was not in HB0507S02 but was inserted into HB0507S03.

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

Money Appropriated in this Bill:

None

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Other Special Clauses:

~~{ None }~~ 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:

19-5-108.3, Utah Code Annotated 1953

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 (~~{ } 2~~)(a) 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:

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(a) "Applicant" means a person ~~who~~that 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~~time-stamped photos taken and submitted electronically by the applicant to the division ~~which are uploaded onto a website controlled by~~or the ~~division~~municipal system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(6) (a) Each and each municipal system shall determine the division's or the municipal system's preferred best management practice methods.~~

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

~~(b) 6) The division shall and each municipal system shall:~~

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

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

~~(7) (a) The or the municipal system may not modify an application submitted to a municipal system that utilizes the preferred best management practice methods described on the division website.~~

~~(b) A the list described in Subsection (6)(a).~~

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

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

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

(i) is specific;

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

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

(c) The division or municipal system has 14 business days after the day on which the

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applicant submits the ~~application~~:

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

~~(i) may not change an application; and~~

~~(ii) shall issue the permit within three business days after the day on which the applicant submits the application:~~

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

~~(8) (a) The division shall collect a fee of up to \$500 for each ~~information or modification described in Subsection (8)(b) to complete the review of the~~ prevention plan permit ~~issued and send to the applicable municipal system up to \$350 of the fee:~~~~

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

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

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

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

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

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

~~(a) an applicant has ~~employed a~~ ~~implemented and properly maintained the~~ best management ~~practice submitted to~~ ~~practices as described in Subsection (5), by the division or by the municipality~~ ~~if~~; ~~and~~~~

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

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

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

~~(ii) ~~may~~ ~~shall~~ provide the applicant a reasonable time of ~~not less than five business~~~~

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~~days~~ at least 24 hours to cure the violation; and

(iii) may perform an inspection to verify that the violation is cured, or the applicant ~~{may demonstrate}~~ demonstrates that the violation is cured through electronic site inspection.

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

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

(ii) may ~~{fine the applicant up to \$300}~~;

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

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

(iii) may perform an inspection to verify that the violation is cured, or the applicant ~~{may demonstrate}~~ demonstrates that the violation is cured through electronic site inspection.

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

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

(ii) may ~~{fine}~~ order the applicant ~~{up to \$500}~~;

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

~~— (iv) may perform}~~ to stop construction activity until the division or municipality performs an inspection to verify that the violation is cured, or the applicant ~~{may demonstrate}~~ demonstrates that the violation is cured through electronic site inspection. ~~{~~

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

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

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

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

~~{e}d~~ The division or a municipal system may not impose a ~~{fine}~~ penalty described in this Subsection (11) later than 30 days after the day on which the division or municipal system

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provides the preceding notice of violation or continuing violation required.

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

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

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

~~{a}b~~ The applicant, or ~~{a designee of the applicant}~~an applicant's designee, shall participate in the pre-construction site inspections.

~~{b}c~~ The division or a municipal system may conduct a pre-construction site inspection in person or using an electronic site inspection tool.

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

(14) ~~{Construction site inspections}~~An oversight inspection shall be conducted by the ~~{applicant or designee utilizing an electronic inspection tool}~~

~~——(15) Notwithstanding Subsection (14), the division or}~~division or the municipal system through electronic site inspection.

(15) The division or the municipality may require an on-site construction site inspection if the division or municipality has a ~~{clearly}~~ documented reason for justifying an on-site construction site inspection.

(16) The division shall:

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

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

~~{——(17) (a) The division shall maintain records of all projects described in Subsection~~

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~~(2)(a):~~

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

~~—— (i) site plan reviews;~~

~~—— (ii) the prevention plan; and~~

~~—— (iii) records of inspections and enforcement actions including:~~

~~—— (A) verbal warnings;~~

~~—— (B) stop work orders;~~

~~—— (C) warning letters;~~

~~—— (D) notices of violation; and~~

~~—— (E) other enforcement actions.~~

~~—— (c) An applicant described in Subsection (17)(b) shall maintain the records described in Subsection (17)(b) for three years after the construction is completed.~~

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

‡ Section 3. **Effective date.**

This bill takes effect on ~~{May}~~ **January** 1, ~~{2024}~~ **2025**.