

HB0507S05 compared with HB0507

~~{deleted text}~~ shows text that was in HB0507 but was deleted in HB0507S05.

inserted text shows text that was not in HB0507 but was inserted into HB0507S05.

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Senator Curtis S. Bramble 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}~~ establishes standards regarding how municipality systems:
 - regulate controls for storm water runoff; and
 - inspect construction sites impacting storm water runoff;
- ~~{~~ establishes standards regarding the issuance of a permit; and
- ~~}~~ ▶ establishes penalties for non-compliance{.}; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

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 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 board may incorporate by reference corresponding federal regulations.

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

(2) (a) The board may ~~{not make rules or}~~ make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it 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) The municipal system may not make requirements for permits that are more stringent than corresponding federal regulations for the purpose described in Subsection (1), {only if it} unless the {board} municipal system 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}i~~ [Those findings shall be accompanied by] ~~{}~~ The board and municipal system

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shall include with a written finding described in Subsection ~~(11)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 or municipal system's conclusion.

(3) The 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~~that applies for a ~~prevention plan~~construction storm water permit to conduct or propose to conduct a use of land for a construction site.

(b) "Application" means a ~~prevention plan~~construction storm water permit application.

(c) "Best management practice" means the ~~best management practice described~~methods, measures, or practices in compliance with the federal Clean Water Act.

(d) "Construction storm water permit" means a permit required for soil disturbances of an acre or more, including less than an acre if it is part of a common plan of development or sale, where the disturbance is caused by construction activity.

(e) "Electronic site inspection" means geo-located and time-stamped photos taken, evaluated, and submitted electronically by the applicant to the municipal system.

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

~~(e)g~~ "Oversight inspection" means a construction site inspection performed by the municipal system to assess compliance with the permit.

(h) "Permit" means a construction storm water permit~~for a prevention plan~~.

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

~~(g)j~~ "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~~

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~~—— (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) k "Violation" means a failure to implement or maintain preferred best management practices.~~

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

(3) 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, the board shall, in each rule described in Subsection (3)(a); incorporate by reference the corresponding federal regulations.~~

(4) ~~{ Neither the division nor a }~~ A municipal system may not deviate from the federal Clean ~~{ Water Act or the federal Safe Drinking }~~ Water Act, unless the deviation is expressly permitted by state statute.

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

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

~~—— (b) The division shall publish on a website the best management practice methods for each practices.~~

(b) Each municipal system ~~{~~

~~—— (7) (a) The shall publish the municipal ~~{ system may not modify an application submitted to a municipal system that utilizes the }~~ system's preferred best management ~~{ practice method described on the division website.~~~~

~~—— (b) A practices on a website controlled by the municipal system.~~

(6) Each municipal system shall:

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

(b) publish on a website controlled by the municipal system the list described in

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Subsection (6)(a).

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

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

(b) Each municipal system may request more information, or modification to the prevention plan, 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) Each municipal system has 14 business days after the day on which the applicant submits the ~~application~~:

~~(c) information or modification described in Subsection (8)(b) to complete the review of the prevention plan.~~

(9) A municipal system ~~that fails to select a~~ shall not impose a fine.

(10) Any violation found by the municipal system may not result in an order to stop construction activity if:

(a) an applicant selects the preferred best management practice ~~method 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 \$500 for each prevention plan permit issued and send to the applicable municipal system \$350 of the fee.~~

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

~~(9) (a) Subject to Subsection (10), 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~~

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requirement:

~~— (b) Neither the division nor a municipal system may impose a fine in addition to a fine for the site conditions;~~

(b) an applicant implements and properly maintains the best management practices as described in Subsection (10)5);

~~— (c) A person against whom, by 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) (a) The division or municipality shall:~~

~~— (i) ; and~~

(c) the violation is a result from a deficiency in the best management practice.

(11) (a) The municipal system:

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

(ii) shall provide the applicant a reasonable time of ~~not less than five business days~~ at least 24 hours to ~~cure~~ correct the violation; and

(iii) may perform an inspection to verify that the violation is ~~cured~~ corrected.

~~(b) If an applicant does not correct the violation described in Subsection (10)11)(a) is not cured, (i) within the deadline set under Subsection (10)11)(a)(ii), the division or municipality shall;~~ municipal system:

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

~~— (ii) provide the applicant a reasonable time of no less than three additional business days to cure the violation;~~ corrected;

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

(iii) may perform an inspection to verify that the violation is ~~cured~~ corrected.

~~(c) If an applicant does not correct the violation described in Subsection (10)11)(a) is not cured, (i) within the deadline set under Subsection (10)11)(b)(ii), the division or municipality shall;~~ municipal system:

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

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~~— (ii) fine the applicant up to \$300;~~

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

~~— (iv) perform an inspection to verify that the violation is cured.~~

~~— (d) If the violation described in Subsection (10)(a) is not cured within the deadline set under Subsection (10)(c)(iii), the division or municipality shall:~~

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

~~— (ii) fine the applicant up to \$500;~~

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

~~— (iv) perform an inspection to verify that the violation is cured.~~

~~— (e) If the violation described in Subsection (10)(a) is not cured within the deadline set under Subsection (10)(d)(iii), the division or municipality shall:~~

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

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

~~— (iii) }corrected; and~~

(ii) may order the applicant to stop construction activity until ~~an inspection performed by the division or municipality verifies~~ the municipal system performs an inspection to verify that the violation is corrected or the applicant demonstrates that the violation is ~~cured~~ corrected through electronic site inspection.

(~~ff~~d) ~~The division or a~~ A municipal system may not impose ~~a fine~~ the process described in this Subsection (~~10~~11) later than 30 days after the day on which the ~~division or~~ municipal system provides the required preceding notice of violation or continuing violation ~~required~~.

(~~g~~e) ~~The division or a municipality~~ A municipal system may issue an order to stop construction earlier than ~~the occasion~~ described in Subsection (~~10~~11)(~~fe~~c)(~~iiii~~ii) if ~~necessary for public safety or for another good cause.~~

~~— (11) The division~~ the municipal system has a clearly documented reason articulating an immediate threat to water quality.

(f) A municipal system may recoup the costs incurred to correct a violation the applicant refuses to correct after the enforcement process described in this Subsection (11) has

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been exhausted if the municipal system, at the time of clean up, determines a significant harm to water quality or the storm water system is imminent.

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

~~{(12) (a) Before construction, the applicant may request the division or the applicable municipal system to conduct a pre-construction prevention plan meeting that may include:~~

- ~~—— (i) a review of the site design;~~
- ~~—— (ii) a review of the planned operations at the construction site;~~
- ~~—— (iii) a review of the planned best management practices during the construction phase;~~
- ~~—— (iv) a review of the planned best management practices to be used to manage runoff created after development; and~~

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

~~—— (b) (i) The division shall establish documented standard operating procedures for a monthly construction site inspection that:~~

~~—— (A) identify the persons from the division or a municipal system who are responsible to conduct the site inspections; and~~

~~—— (B) require an inspection, no more often than monthly, unless the division or municipal system has clearly documented reasons justifying why a specific construction site requires additional inspections.~~

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

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

~~{(c) (i) 13) {The division} Each municipal system shall {establish documented} develop, publish, and implement standard operating procedures { for a weekly}, forms, or similar types of documents for construction site {inspection that:~~

~~—— (A) identify the persons from the division or a municipal system who are responsible to conduct the site inspections; and~~

~~—— (B) require an inspection, no more often than weekly, unless the division or municipal system has clearly documented reasons justifying why a specific construction site requires additional inspections.~~

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

~~(iii) The division or a} inspections.~~

(14) A municipal system shall conduct ~~{a site}~~ an oversight inspection ~~{using}~~ through an electronic site inspection ~~{ tool, unless the division has clearly documented a reason justifying why a specific construction site requires}~~.

(15) A municipal system may conduct an on-site inspection if the municipal system has a documented reason for justifying an on-site oversight inspection.

~~{13}~~ 16) ~~{The division}~~ Each municipal system 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 ~~{ }~~ ~~{13}~~ 16)(a) to the applicant when the ~~{ division or a }~~ municipal system issues the permit.

~~{~~ ~~(14) (a) The division shall maintain records of all projects described in Subsection (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 (14)(b) shall maintain the records described in Subsection (14)(b) for three years after the construction is completed.~~

~~(15) 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.