

WATER QUALITY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bill Wright

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies and enacts provisions of the Water Quality Act.

Highlighted Provisions:

This bill:

▶ authorizes the Water Quality Board to make rules relating to agriculture water that are more stringent than federal regulations if the Conservation Commission

approves;

▶ requires board and commission cooperation in making rules related to agriculture water; and

▶ establishes provisions relating to damages resulting from an agriculture discharge.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-5-102, as last amended by Laws of Utah 2001, Chapter 274

19-5-105, as renumbered and amended by Laws of Utah 1991, Chapter 112

ENACTS:

19-5-105.5, Utah Code Annotated 1953



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

Section 1. Section **19-5-102** is amended to read:

19-5-102. Definitions.

As used in this chapter:

(1) "Agriculture discharge":

(a) means the release of agriculture water from the property of a farm, ranch, or feed lot that:

(i) impairs a surface body of water, including a stream, lake, pond, marshland, watercourse, waterway, river, ditch, and other water conveyance system of the state that is for the state's beneficial use or classification;

(ii) harms public health;

(iii) causes significant harm to wildlife or the environment;

(iv) pollutes the ground water of the state; or

(v) constitutes a significant nuisance on urban or developed land; and

(b) does not include:

(i) runoff or return flows onto land that is not part of a body of water; or

(ii) a release into a normally dry water conveyance to an active body of water, unless the release reaches the water of a lake, pond, stream, marshland, river, or other active body of water.

(2) "Agriculture water":

(a) means water used by a farmer, rancher, or feed lot for the production of food, fiber, or fuel; and

(b) does not include water used by an agriculture processing facility.

~~[(1)]~~ (3) "Board" means the Water Quality Board created in Section 19-1-106.

~~[(2)]~~ (4) "Commission" means the Conservation Commission created in Section 4-18-4.

~~[(3)]~~ (5) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

~~[(4)]~~ (6) "Discharge" means the addition of any pollutant to any waters of the state.

~~[(5)]~~ (7) "Discharge permit" means a permit issued to a person who:

(a) discharges or whose activities would probably result in a discharge of pollutants

59 into the waters of the state; or

60 (b) generates or manages sewage sludge.

61 [~~(5)~~] (8) "Disposal system" means a system for disposing of wastes, and includes
62 sewerage systems and treatment works.

63 [~~(6)~~] (9) "Effluent limitations" means any restrictions, requirements, or prohibitions,
64 including schedules of compliance established under this chapter which apply to discharges.

65 [~~(7)~~] (10) "Executive secretary" means the executive secretary of the board.

66 [~~(8)~~] (11) "Point source":

67 (a) means any discernible, confined, and discrete conveyance, including but not limited
68 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
69 concentrated animal feeding operation, or vessel or other floating craft, from which pollutants
70 are or may be discharged; and

71 (b) does not include return flows from irrigated agriculture.

72 [~~(9)~~] (12) "Pollution" means any man-made or man-induced alteration of the chemical,
73 physical, biological, or radiological integrity of any waters of the state, unless the alteration is
74 necessary for the public health and safety.

75 [~~(10)~~] (13) "Publicly owned treatment works" means any facility for the treatment of
76 pollutants owned by the state, its political subdivisions, or other public entity.

77 [~~(11)~~] (14) "Schedule of compliance" means a schedule of remedial measures,
78 including an enforceable sequence of actions or operations leading to compliance with this
79 chapter.

80 [~~(12)~~] (15) "Sewage sludge" means any solid, semisolid, or liquid residue removed
81 during the treatment of municipal wastewater or domestic sewage.

82 [~~(13)~~] (16) "Sewerage system" means pipelines or conduits, pumping stations, and all
83 other constructions, devices, appurtenances, and facilities used for collecting or conducting
84 wastes to a point of ultimate disposal.

85 [~~(14)~~] (17) "Treatment works" means any plant, disposal field, lagoon, dam, pumping
86 station, incinerator, or other works used for the purpose of treating, stabilizing, or holding
87 wastes.

88 [~~(15)~~] (18) "Underground injection" means the subsurface emplacement of fluids by
89 well injection.

90 ~~[(16)]~~ (19) "Underground wastewater disposal system" means a system for disposing of
91 domestic wastewater discharges as defined by the board and the executive director.

92 ~~[(17)]~~ (20) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator
93 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,
94 radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and
95 industrial, municipal, and agricultural waste discharged into water.

96 ~~[(18)]~~ (21) "Waters of the state":

97 (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs,
98 irrigation systems, drainage systems, and all other bodies or accumulations of water, surface
99 and underground, natural or artificial, public or private, which are contained within, flow
100 through, or border upon this state or any portion of the state; and

101 (b) does not include bodies of water confined to and retained within the limits of
102 private property, and which do not develop into or constitute a nuisance, a public health hazard,
103 or a menace to fish or wildlife.

104 Section 2. Section **19-5-105** is amended to read:

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

106 (1) Except as provided in ~~[Subsection]~~ Subsections (2) and (3), no rule ~~[which]~~ that the
107 board makes for the purpose of the state administering a program under the federal Clean
108 Water Act or the federal Safe Drinking Water Act may be more stringent than the
109 corresponding federal regulations which address the same circumstances. In making rules, the
110 board may incorporate by reference corresponding federal regulations.

111 (2) The board may make rules more stringent than corresponding federal regulations
112 for the purpose described in Subsection (1), only if it makes a written finding after public
113 comment and hearing and based on evidence in the record that the corresponding federal
114 regulations are not adequate to protect public health and the environment of the state. Those
115 findings shall be accompanied by an opinion referring to and evaluating the public health and
116 environmental information and studies contained in the record which form the basis for the
117 board's conclusion.

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

120 Section 3. Section **19-5-105.5** is enacted to read:

121 19-5-105.5. Agriculture water.

122 (1) (a) The board shall draft any rules relating to agriculture water in cooperation with
123 the commission.

124 (b) The commission shall advise the board before the board may propose rules relating
125 to agriculture water.

126 (2) A program or rule adopted by the board for agriculture production or irrigation
127 water, not including water for an agriculture processing facility, shall:

128 (a) be consistent with the federal Clean Water Act; and

129 (b) if possible, be developed in a voluntary cooperative program with the agriculture
130 producer associations and the commission.

131 (3) (a) A person responsible for an agriculture discharge shall mitigate the resulting
132 damage in a reasonable manner, as approved by the executive secretary after consulting with
133 the commission chair.

134 (b) A penalty imposed on an agriculture discharge shall be proportionate to the
135 seriousness of the resulting damage, as determined jointly by the executive secretary and
136 commission chair.

137 (c) The executive secretary, after consulting with the commission chair, may classify
138 an agriculture discharge as a discharge.

139 (d) An agriculture producer may not be held liable for an agriculture discharge
140 resulting from a large weather event if the agriculture producer has taken reasonable measures
141 to prevent an agriculture discharge.

142 (4) Under this section, the Division of Water Quality:

143 (a) may address only an agriculture discharge; and

144 (b) may not take any action against an agriculture producer based on a claim of a
145 potential for an agriculture discharge.

Legislative Review Note
as of 2-17-11 6:16 PM

Office of Legislative Research and General Counsel