

# UTAH

## *Enforceable Provisions Applicable to Nonpoint Source Water Pollution*

### DISCHARGE PROHIBITIONS

#### Water Pollution Control Law

The Utah water pollution control law includes a general provision that may be enforced against nonpoint water pollution or placement of wastes that is likely to cause water pollution.

- It is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational or other beneficial uses of water.<sup>1</sup>
- The same provision of the Code also makes it unlawful to place any waste in a location where there is probable cause to believe that it will cause water pollution.<sup>2</sup>

Violations of these prohibitions are treated as a public nuisance. Moreover, when the Water Quality Board determines there are reasonable grounds to believe that a violation has been committed, it may give written notice with an order to appear before the board.<sup>3</sup> The board also may seek injunctive relief in a civil action.<sup>4</sup> Violators are subject to a civil penalty not to exceed \$10,000; and a violation committed willfully or with gross negligence is subject to a fine not to exceed \$25,000.<sup>5</sup>

#### Other Discharge Limitations

- Nuisance is defined as "any item, thing, manner, condition whatsoever that is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome."<sup>6</sup> The county attorney, the city attorney, or the attorney general is empowered to institute an action to abate a public nuisance, and a person who creates a nuisance is guilty of a class B misdemeanor.<sup>7</sup>

There is an exemption for agricultural operations that are consistent with sound agricultural practices, which are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on public health and safety. Agricultural operations undertaken in conformity with federal, state, and local laws, regulations and zoning ordinances are presumed to be operating within sound agricultural practices.<sup>8</sup> "Agricultural operations" are defined as "any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products."<sup>9</sup>

- In addition to regulating nuisance, municipalities are authorized to enact ordinances "preventing pollution or contamination of the streams or watercourses from which the inhabitants of cities derive their water supply, in whole or in part, for domestic and culinary purposes."<sup>10</sup> Presumably these ordinances are enforced under the municipality's inherent police powers.

## **Fish/Fisheries Laws**

- The Utah fish and wildlife code makes it "unlawful for any person to pollute any waters deemed necessary by the Wildlife Board for wildlife purposes or any waters containing protected aquatic wildlife and stoneflies, mayflies, dragonflies and damselflies, water bugs, caddis flies, spongilla flies, and crustaceans."<sup>11</sup> Each day of pollution is a separate violation, and violations are treated as class B misdemeanors.<sup>12</sup> However, a person who violates the statute with intentional, knowing or reckless conduct and thereby injures or destroys protected wildlife is guilty of "wanton destruction of protected wildlife."<sup>13</sup> This violation is a third degree felony if the aggregate value of the protected wildlife is more than \$500, a class A misdemeanor if the value is more than \$250 but less than \$500, and a class B misdemeanor if the value is less than \$250.<sup>14</sup>

## **OPERATIONAL REQUIREMENTS**

### **Forestry Requirements**

State forestry laws do not appear to contain enforceable provisions relating to nonpoint source discharges.

### **Agriculture Requirements**

- Soil conservation districts may be organized by petition of 25 or more land occupiers.<sup>15</sup> Each district is a political subdivision and has the authority to "devise and implement measures for the prevention of soil erosion, floodwater and sediment damages, nonpoint water pollution...."<sup>16</sup> Each district also is authorized to make recommendations governing land use within the district, including provisions requiring the observance of particular methods of cultivation, requiring specific crop programs and tillage practices, prohibiting the tillage and cultivation of highly erosive areas where erosion may not be adequately controlled if cultivated, and requiring the construction of terraces, terrace outlets, check dams, dikes, ponds, and other structures.<sup>17</sup> It appears that these "recommendations" may be made enforceable as ordinances, since the same statute also grants the district court jurisdiction to decide all cases and controversies involving construction, application, or enforcement of land use ordinances within the district.<sup>18</sup>

- A person is guilty of a Class B misdemeanor if he: "1) constructs or maintains a corral, sheep pen, goat pen, stable, pigpen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well or spring of water used for domestic purposes; 2) deposits, piles, unloads, or leaves any manure heap, offensive rubbish, or the carcass of any dead animal where the waste or drainage will flow directly into the waters; 3) dips or washes sheep in any stream or in such close proximity to a stream used by inhabitants for domestic purposes as to make the waters impure or unwholesome; 4) constructs a yard for shearing or dipping sheep within 12 miles of a city where the refuse would naturally find its way into any stream used by the inhabitants; 5) establishes and maintains any corral, camp, or bedding place for the purpose of herding, holding or keeping any cattle, horses, sheep, goats, or hogs within seven miles of any city or town, where the

refuse or filth from it will naturally find its way into any stream of water used by the inhabitants for domestic purposes."<sup>19</sup>

- The county legislative body may promulgate regulations to prevent the destruction or obstruction of channels, storm sewers, and drains that serve as natural channels for the carrying away and the safe disposal of natural storm and flood waters.<sup>20</sup> It may also provide by ordinance for the protection and use of flood channels and present flood plains on rivers, streams, and canals located within the county.<sup>21</sup> All laws and sanitary regulations against pollution of water in natural streams, canals and lakes shall be enforced by the county executives in their respective counties, or by the state, through the attorney general and in cooperation with the state board of health, state fish and game commission and the several county legislative bodies.<sup>22</sup>

- The Utah Department of Agriculture is authorized to adopt any rule consistent with federal regulations under FIFRA, including rules relating to the sale, distribution, use, and disposition of pesticides as deemed necessary to prevent damage and to protect public health.<sup>23</sup> The department shall serve notice of violation on alleged violators of the rules, and may order corrective action.<sup>24</sup> Any violator of an order issued under the title is subject to a penalty not to exceed \$5000 in a civil proceeding, and in a criminal proceeding may be found guilty of a class B misdemeanor.<sup>25</sup>

## **Development and Other Earth-Disturbing Activities**

- The Division of Parks and Recreation has the authority to regulate and control types of development along rivers and streams, designated by the Division, within their present flood plains.<sup>26</sup> "The division may not permit construction of any structures, subdivisions, or other developments on or along rivers or streams, or within their present flood plains, which are in violation of any ordinances of any political subdivision having jurisdiction in that area but may in respect to this development impose requirements in excess of and in addition to those provided in those ordinances."<sup>27</sup> The more restrictive of the requirements are applicable.<sup>28</sup> Any person who violates regulations adopted pursuant to this provision is guilty of a class B misdemeanor.<sup>29</sup>

No other specific operating requirements are set forth, other than those that may be found in urban stormwater programs under the federal Clean Water Act or that may be authorized by general land use regulation such as zoning.

### **Endnotes**

<sup>1</sup> Utah Code Ann. § 19-5-107.

<sup>2</sup> Utah Code Ann. § 19-5-107.

<sup>3</sup> Utah Code Ann. § 19-5-111.

<sup>4</sup> Utah Code Ann. § 19-5-115. The state engineer is separately authorized to bring suit in courts of competent jurisdiction to prevent waste, loss or pollution of the waters of the state. See Utah Code Ann. § 73-2-1.

<sup>5</sup> Utah Code Ann. § 19-5-115.

<sup>6</sup> Utah Code Ann. § 76-10-801.

<sup>7</sup> Utah Code Ann. §§ 76-10-806, -804.

8. Utah Code Ann. § 78-38-7.
9. Utah Code Ann. § 78-38-8.
10. Utah Code Ann. § 10-8-15.
11. Utah Code Ann. § 23-15-6.
12. Utah Code Ann. §§ 23-15-6, 23-13-11.
13. Utah Code Ann. § 23-20-4.
14. Utah Code Ann. § 23-20-4.
15. Utah Code Ann. § 17A-3-801.
16. Utah Code Ann. § 17A-3-805.
17. Utah Code Ann. § 17A-3-806.
18. Utah Code Ann. § 17A-3-807.
19. Utah Code Ann. § 76-10-802.
20. Utah Code Ann. § 17-8-5.
21. Utah Code Ann. § 17-8-5.5.
22. Utah Code Ann. § 17-8-5.
23. Utah Code Ann. § 4-14-6.
24. Utah Code Ann. § 4-2-12.
25. Utah Code Ann. § 4-2-15. A subsequent criminal violation within two years is a class A misdemeanor.
26. Utah Code Ann. § 63-11-17.5.
27. Utah Code Ann. § 63-11-17.5(3).
28. Utah Code Ann. § 63-11-17.5(3).
29. Utah Code Ann. § 63-11-17.3.