



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**Utah**

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## Nutrient Management Plans

### STATE OF UTAH

#### 1) Utah Code Ann. §§ 19-5-104, 105.5; U.A.C. R317-8-10

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Utah Office of Legislative Research.*

#### 1) Utah Code Ann. §§ 19-5-104, 105.5; U.A.C. R317-8-10

##### **19-5-104. Powers and duties of board.**

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules that:

(a) taking into account Subsection (6):

(i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:

(A) requirements pertaining to applications for loans;

(B) requirements for determination of eligible projects;

(C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;

(D) a priority schedule for awarding loans, in which the board may consider, in addition to water pollution control needs, any financial needs relevant, including per capita cost, in making a determination of priority; and

(E) requirements for determination of the amount of the loan;

(ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;

(iii) set effluent limitations and standards subject to Section 19-5-116;

(iv) implement or effectuate the powers and duties of the board; and

(v) protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;

(b) govern inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for underground injections, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:

(i) injection may result in the presence of any contaminant in underground water that supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and

(ii) the presence of the contaminant may:

(A) result in the public water system not complying with any national primary drinking water standards; or

(B) otherwise adversely affect the health of persons;

(c) govern sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements; and

(d) notwithstanding the provisions of Section 19-4-112, govern design and construction of irrigation systems that:

(i) convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes; and

(ii) are constructed after May 4, 1998.

(2)

(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political subdivisions.

(b) In establishing certification rules under Subsection (2)(a), the board shall:

- (i) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;
- (ii) allow operators until three years after the date of adoption of the rules to obtain initial certification;
- (iii) allow a new operator one year from the date the operator is hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;
- (iv) issue certification upon application and without testing, at a grade level comparable to the grade of current certification to operators who are currently certified under the voluntary certification plan for wastewater works operators as recognized by the board; and
- (v) issue a certification upon application and without testing that is valid only at the treatment works or sewerage system where that operator is currently employed if the operator:
  - (A) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;
  - (B) has been employed at least 10 years in the operation of that treatment works or sewerage system before March 16, 1991; and
  - (C) demonstrates to the board the operator's capability to operate the treatment works or sewerage system at which the operator is currently employed by providing employment history and references as required by the board.

(3) The board shall:

- (a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;
- (b) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;
- (c) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;
- (d) meet the requirements of federal law related to water pollution;

(e) establish and conduct a continuing planning process for control of water pollution, including the specification and implementation of maximum daily loads of pollutants;

(f)

(i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;

(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act;

(g)

(i) review all total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;

(ii) disapprove, approve, or approve with conditions all staff total daily maximum load recommendations; and

(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected; and

(h) to ensure compliance with applicable statutes and regulations:

(i) review a settlement negotiated by the director in accordance with Subsection 19-5-106(2)(k) that requires a civil penalty of \$25,000 or more; and

(ii) approve or disapprove the settlement.

(4) The board may:

(a) order the director to issue, modify, or revoke orders:

(i) prohibiting or abating discharges;

(ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;

(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; or

(iv) requiring compliance with this chapter and with rules made under this chapter;

(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, or interstate agencies, or with affected groups, political subdivisions, or industries to further the purposes of this chapter; or

(c) delegate the authority to issue an operating permit to a local health department.

(5) In performing the duties listed in Subsections (1) through (4), the board shall give priority to pollution that results in a hazard to the public health.

(6) The board shall take into consideration the availability of federal grants:

(a) in determining eligible project costs; and

(b) in establishing priorities pursuant to Subsection (1)(a)(i).

(7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-5-106:

(a) a permit;

(b) a license;

(c) a registration;

(d) a certification; or

(e) another administrative authorization made by the director.

(8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

### **19-5-105.3. Independent peer review of a proposal.**

(1) As used in this section:

(a) “Challenging party” means a person who has or is seeking a permit in accordance with this chapter and chooses to use the independent peer review process described in this section to challenge a proposal.

(b) “Independent peer review” is a review conducted:

(i) in accordance with this section;

(ii) by experts having technical expertise in the proposal being reviewed;  
and

(iii) by individuals who are not:

(A) currently conducting research funded by the division or the challenging party;

(B) employed by an entity that is regulated under this chapter;

(C) a spouse or family member of someone who is employed by the division or the challenging party; or

(D) an active, participatory member of a non-profit organization that advocates positions with the division or the Legislature.

(c) “Proposal” means any science-based initiative proposed by the division on or after January 1, 2016, that would financially impact a challenging party and that would:

(i) change water quality standards;

(ii) develop or modify total maximum daily load requirements;

(iii) modify wasteloads or other regulatory requirements for permits; or

(iv) change rules or other regulatory guidance.

(d) “Study” means a written analysis conducted by or otherwise relied upon by the division in support of a proposal.

(e) “Technology based nutrient effluent limits” are maximum nutrient limitations based on the availability of technology to achieve the limitations, rather than on a water quality standard or a total maximum daily load standard.

(2) The director shall initiate an independent peer review when the following conditions are met:

(a) a challenging party challenges in writing a study or the technical or scientific data upon which a proposal is based and requests an independent peer review;

(b) if the independent peer review is related to examining a technology based nutrient effluent limit, the challenging party provides written notice to the division requesting an independent peer review before the technology based nutrient effluent limit is adopted into a permit issued by the division;

(c) if the independent peer review is not related to examining a technology based nutrient effluent limit, the challenging party provides written notice to the division requesting an independent peer review related to a proposal before the proposal has been adopted by the division or the board;

(d) the challenging party agrees to provide the funding to pay for the independent peer review; and

(e) the challenging party would be substantially impacted by the adoption of the proposal.

(3) The director shall ensure that the independent peer review is completed within one year from the date the peer review panel described in Subsection (5) is selected.

(4)

(a) If there is more than one challenging party challenging a study or the technical or scientific data upon which a proposal is based, the challenges will be consolidated into one independent peer review.

(b) If challenges are consolidated into one independent peer review, the challenging parties will be responsible for allocating the costs of the independent peer review among the challenging parties.

(5)

(a) When an independent peer review is conducted, there shall be appointed to a peer review panel a minimum of three independent experts who are mutually agreeable to both the division and the challenging party.

(b) Any additional independent experts appointed to the panel shall be mutually agreeable to both the division and the challenging party.

(c) If an independent peer review panel has not been appointed within 60 days of the day on which the director receives a written request for an independent peer review, a three-person panel shall be selected as follows:

(i) one independent expert selected by the division;

(ii) one independent expert selected by the challenging party or, if more than one challenge has been consolidated as described in Subsection (4),



one independent expert selected and mutually agreed to by the challenging parties; and

(iii) one independent expert mutually agreeable to the independent experts described in Subsections (5)(c)(i) and (ii).

(6)

(a) An independent peer review panel shall conduct its review in general accordance with the guidance contained in the United States Environmental Protection Agency's Peer Review Handbook.

(b) As part of an independent peer review, the independent peer review panel shall allow for written public comment on the proposal being reviewed prior to issuing a written report.

(7) An independent peer review panel shall prepare a final written report that:

(a) includes the findings of each member of the panel;

(b) is supported by the majority of the panel;

(c) includes an analysis of the panel's confidence, certainty, and major data gaps, if any, related to the scientific basis behind the proposal; and

(d) includes one of the following findings:

(i) the proposal is scientifically defensible;

(ii) the proposal is not scientifically defensible; or

(iii) the proposal is scientifically defensible with conditions developed by the panel.

(8) In addition to the requirements described in Subsection (7), if an independent peer review panel is examining a technology based nutrient effluent limit for a specified downstream water body or a series of hydrologically connected water bodies, the panel's written report shall find one of the following:

(a) the technology based nutrient effluent limit is scientifically necessary to protect the designated beneficial uses of the specified downstream water body or the series of hydrologically connected water bodies; or

(b) the technology based nutrient effluent limit is not scientifically necessary to protect the designated beneficial uses of the specified downstream water body or the series of hydrologically connected water bodies.

(9) The findings and any conditions of an independent peer review panel shall be incorporated into a proposal as needed to ensure the scientific accuracy of the proposal.

(10) A proposal reviewed by an independent peer review panel that is found scientifically defensible or scientifically defensible with conditions may be forwarded to the board or to the director for further consideration and action as applicable.

(11) If technology based nutrient effluent limits in a proposal are found by an independent peer review to not be scientifically necessary to protect a specified downstream water body or series of hydrologically connected water bodies, the challenging party shall be granted a variance by the division exempting compliance with the technology based effluent limitation.

### **R317-8-10. Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs).**

#### 10.1 Applicability of R317-8, Rule Compatibility, and Federal Rule Incorporation.

(1) This rule R317-8-10, including the federal regulations incorporated by reference in R317-8-10.1(3), shall be applicable to animal feeding operations and concentrated animal feeding operations in Utah as provided in the rule.

(2) Where any requirements, definitions, or conditions in R317-8-10 conflict with the requirements, definitions, or conditions pertaining to animal feeding operations or concentrated animal feeding operations in other parts of R317-8, the requirements, definitions, and conditions in this R317-8-10 shall govern.

(3) Included in the federal regulations incorporated by reference under R317-8-1.10 are the following federal regulations governing concentrated animal feeding operations, effective as of July 30, 2012, which have been incorporated by reference as specified in R317-8-1.10:

(a) 40 CFR 122.21(i);

(b) 40 CFR 122.23(a), (b)(3), (b)(5), (b)(7), (b)(8), (c), (d)(2), (e) and (h);

(c) 40 CFR 122.28(b)(2);

(d) 40 CFR 122.42(e);

(e) 40 CFR 122.62(a)(17);

(f) 40 CFR 122.63(h);

(g) 40 CFR Part 412.

(4) The following substitutions apply to the federal regulations incorporated by reference:

(a) Substitute "Director of the Division of Water Quality" for all federal regulation references to "Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

(c) Substitute the term "surface waters of the state" for all federal regulation references to "surface water", "waters of the United States", "navigable waters", or "U.S. waters."

## 10.2 Definitions.

"Animal Feeding Operation" (AFO) means a lot or facility (other than aquatic animal production facility) where the following conditions are met:

(a) animals have been, are, or will be stabled, housed, or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period;

(b) crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

(c) two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the storage or disposal of waste.

"Concentrated Animal Feeding Operation" (CAFO) means:

(a) an AFO that is a Large CAFO; or

(b) an AFO that is a Medium CAFO; or

(c) an AFO that is a Small AFO or Medium AFO that is a Designated CAFO.

"Approved Agriculture Environmental Stewardship Program" means a program approved by the Water Quality Board as meeting the substantive standards of this rule and the Utah Water Quality Act, Title 19, Chapter 5.

"Designated CAFO" means an AFO that is designated as a CAFO by the Director according to criteria in 40 CFR 122.23(c) and thereby required to obtain a UPDES permit.

"Discharge" has the same meaning as "Discharge of a Pollutant" in R317-8-1.5 except that, for purposes of this R317-8-10 only, "discharge" shall refer only to the addition of pollutants to surface waters of the state.

"Large CAFO" means an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

- (a) Beef, calves, heifers, and/or veal 1,000 or more
- (b) Cows (milking and dry) 700 or more
- (c) Layers, broilers (wet system) 30,000 or more
- (d) Other than layers (dry system) 125,000 or more
- (e) Layers (dry system) 82,000 or more
- (f) Turkeys 55,000 or more
- (g) Swine (55 pounds or more) 2,500 or more
- (h) Swine (less than 55 pounds) 10,000 or more
- (i) Sheep 10,000 or more
- (j) Horses 500 or more
- (k) Ducks (dry system) 30,000 or more
- (l) Ducks (wet system) 5,000 or more

"Large Weather Event" for purposes of 19-5-105.5(3)(b)(iii) means a single event or a series of precipitation events, including snow, received at an AFO (including a CAFO) during any consecutive thirty day period that:

- (a) occurs in a manner that does not allow an AFO or CAFO to appropriately dewater waste storage, treatment or containment structures; and
- (b) yields precipitation in an amount greater than the total of:

(i) the area's monthly average precipitation for the period of the precipitation event(s); and

(ii)

(A) for a poultry, swine, or veal AFO or CAFO, a 100-year, 24-hour storm event for the area; or

(B) for all other AFOs or CAFOs, a 25-year, 24-hour storm event for the area.

"Medium AFO" means a lot or facility that is an AFO that stables, houses or confines the type and number of animals that fall within any of these ranges:

- (a) Beef, calves, heifers, and/or veal 300-999
- (b) Cows (milking and dry) 200-699
- (c) Layers and/or broilers (wet system) 9,000-29,999
- (d) Other than layers (dry system) 37,500-124,999
- (e) Layers (dry system) 25,000-81,999
- (f) Turkeys 16,500-54,999
- (g) Swine (55 pounds or more) 750-2,499
- (h) Swine (less than 55 pounds) 3,000-9,999
- (i) Sheep 3,000-9,999
- (j) Horses 150-499
- (k) Ducks (dry system) 10,000-29,999
- (l) Ducks (wet system) 1,500-4,999

"Medium CAFO" means an AFO that confines the number of animals to be classified as a Medium AFO, and where the conditions specified in 40 CFR 122.23(b)(6)(ii) are met.

"Reasonable Measures" for purposes of 19-5-105.5(3)(b)(iii) mean the measures described in R317-8-10.9.

"Small AFO" means a lot or facility that is an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

- (a) Beef, calves, heifers, and/or veal 1-299
- (b) Cows (milking and dry) 1-199
- (c) Layers, broilers (wet system) 1-8,999
- (d) Other than layers (dry system) 1-37,499
- (e) Layers (dry system) 1-24,999
- (f) Turkeys 1-16,499
- (g) Swine (55 pounds or more) 1-749
- (h) Swine (less than 55 pounds) 1-2,999
- (i) Sheep 1-2,999
- (j) Horses 1-149
- (k) Ducks (dry system) 1-9,999
- (l) Ducks (wet system) 1-1,499

"Small CAFO" means an AFO that confines the number of animals to be classified as a Small AFO, where the following conditions are met:

- (a)
  - (i) the Small AFO discharges through a man-made ditch, flushing system, or other similar man-made device; or
  - (ii) the Small AFO discharges into surface waters of the state which waters originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined at the operation; and
- (b) the Director has designated the Small AFO as a CAFO according to criteria in 40 CFR 122.23(c).

"Surface Waters of the State" for purposes under R317-8-10 means Waters of the State as defined in R317-8-1(60) that are not ground water, except ground water that has hydrologic connection to surface waters of the state.

"Technical Standards" means the standards that nutrient management plans must meet, as described in R317-8-10.6.

### 10.3 UPDES Permit Requirement and Prohibition on Discharge Without a Permit.

(1) The following animal feeding operations are required to apply for a UPDES permit:

(a) Large CAFOs that discharge;

(b) Medium CAFOs; and

(c) Designated CAFOs.

(2) CAFOs with land application discharges are subject to the requirements provided in 40 CFR 122.23(e) and 40 CFR 122.42(e).

(3) A Small AFO may only be designated as a CAFO if:

(i) Pollutants are discharged from the Small AFO into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants from the Small AFO are discharged directly into surface waters of the state which waters originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(4) No AFO or CAFO shall discharge except as authorized under a current UPDES permit.

### 10.4 Timing of UPDES Permit Application.

(1) An animal feeding operation that has an operational change that results in a requirement to obtain a UPDES CAFO permit shall submit an application no later than 90 days after the time a facility has conditions that require CAFO permit coverage.

(2) No later than 180 days before the expiration of a permit, or as provided by the Director, a permitted CAFO must submit an application to renew its permit in accordance with 40 CFR 122.21(d) unless the CAFO will not discharge upon expiration of the permit.

(3) For facilities in operation prior to April 14, 2003 that have an operational change where the facility becomes a Large CAFO that discharges, or a Medium or

Designated CAFO, must seek to obtain UPDES permit coverage no later than 90 days after the time a facility has conditions that require CAFO permit coverage.

(4) New source CAFOs that require CAFO permit coverage and CAFOs constructed after April 14, 2003 that require CAFO permit coverage must seek to obtain UPDES CAFO permit coverage no later than 180 days prior to the time a facility commences operation with the conditions that require CAFO permit coverage.

(5) A CAFO that is required to obtain an individual permit or that is a Designated CAFO, shall apply for a permit within 60 days of notification of permit requirement by the Director, unless otherwise determined by the Director.

#### 10.5 UPDES CAFO Permit Application Requirements.

In order to apply for a UPDES CAFO permit, an AFO or CAFO shall submit to the Director an application containing the information specified in 40 CFR 122.21(i). Application forms may be obtained from the Division of Water Quality. If the applicant is seeking coverage under a general permit, it shall submit a notice of intent and nutrient management plan to the Director, along with any information required under the general permit. If the Director has not issued a general permit for which the AFO or CAFO is eligible, the owner or operator must submit an application, including a nutrient management plan, for an individual permit to the Director.

#### 10.6 Technical Standards.

(1) The requirements of the Utah Natural Resources Conservation Service (Utah NRCS) Practice Standard 590, Nutrient Management, dated January 2013, are hereby incorporated by reference as the Technical Standards, for purposes of this rule and 40 CFR 412.4(c)(2). Implementation of these standards at a facility requires evaluation on a field-specific basis.

#### 10.7 Nutrient Management Plans.

(1) An AFO or CAFO with a UPDES permit, and as provided in R317-8-10.9, shall have a facility-specific nutrient management plan (NMP). On a field-specific basis, NMPs for permitted facilities shall comply with the requirements and standards specified in:

(a) R317-8-10;

(b) Applicable federal regulations incorporated by reference in R317-8-1.10 and also specified in R317-8-10.1;



(c) The requirements of 40 CFR 122.42(e)(1)(i) through (viii) and the practices and protocols that are required to be identified in those provisions;

(d) Technical Standards in R317-8-10.6; and

(e) nutrient management plan requirements in the UPDES permit.

(2) An NMP for permitted facilities shall be approved by an NRCS certified planner.

#### 10.8 Requirement to Comply with a Permit.

In addition to the requirements of this rule, a UPDES CAFO Permittee shall comply with all permit requirements.

#### 10.9 Reasonable Measures for Large Weather Events.

(1) As provided in 19-5-105.5(3)(b)(iii), no penalty shall apply with respect to an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures to prevent an agriculture discharge.

(2) An AFO or CAFO will be considered to have taken reasonable measures, for purposes of 19-5-105.5(3)(b)(iii), if it has obtained and is in compliance with a UPDES CAFO permit.

(3) A CAFO that is not required to obtain a UPDES permit and that has experienced an agriculture discharge from its land application areas resulting from a large weather event, will be considered to have taken reasonable measures if:

(a) It has obtained and is in compliance with a site-specific NMP that implements Technical Standards and the requirements of 40 CFR 122.42(e)(1)(vi) through (viii), and the practices and protocols identified under those provisions;

(b) It has kept records adequate to demonstrate that it has met the requirements in paragraph (3), and has provided copies of those records to the Director upon request; and

(c) It has provided one-time notification to the Division that it has implemented reasonable measures under this part 10.9.

(4) An AFO that is not a CAFO will be considered to have taken reasonable measures if it has obtained and is in compliance with a permit by rule. An AFO will be permitted by rule if:

(a)

(i) It has obtained and is in compliance with a site-specific NMP that implements Technical Standards and the requirements of 40 CFR 122.42(e)(1)(i) through (viii), and the practices and protocols identified under those provisions; or

(ii) It has received and is in compliance with the requirements of a Certificate of Environmental Stewardship under an Approved Agriculture Environmental Stewardship Program; and

(b) It keeps records adequate to demonstrate that it has met the requirements in this paragraph (4) and has, upon request, made those records available for review by the Director or the Director's representative; and

(c)

(i) For a facility permitted by rule under 10.9(4)(a)(i), the facility has provided to the Director a notice of intent to be covered by this permit by rule provision and has confirmed that it is meeting the requirements of paragraphs (4)(a) and (b); or

(ii) For a facility permitted by rule under 10.9(4)(a)(ii), the facility has provided to the Director a copy of the Certificate of Environmental Stewardship issued by the Utah Conservation Commission.