Official Draft Public Notice Version June 12, 2020
The findings, determinations, and assertions contained in this document are not final and subject to change following the public comment period.

FACT SHEET AND STATEMENT OF BASIS
CHEVRON PRODUCTS COMPANY
CHEVRON USA, Inc.
RENEWAL PERMIT: DISCHARGE
UPDES PERMIT NUMBER: UT00000175
MAJOR INDUSTRIAL

FACILITY CONTACTS

Person Name:	Mitra Kashanchi	Person Name:	Serena Yau
Position:	Refinery Manager	Position:	Environmental Team Lead
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Facility Name:	Chevron Product Company (A Division of Chevron U.S.A. Inc.)
Facility Address:	685 South Chevron Way North Salt Lake City, UT 84054
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DESCRIPTION OF PERMIT MODIFICATION

The Division of Water Quality received public comments during the public notice period of February 5, 2020 to March 6, 2020. Based on those comments adjustments were made in the Storm Water section of the UPDES Discharge permit. Annual metal sampling was changed to bi-annual sampling. Statements were added to the Memorandum to provided clarification.

Part IV. STORM WATER REQUIREMENTS.

DWQ will regulate and Chevron will manage storm water discharges associated with industrial activity that are not treated and discharged to outfall 1 via a separate storm water permit, as necessary.

PERMIT DURATION

It is recommended that this permit be effective for a duration of five (5) years.

Drafted by
Sarah Leavitt Ward, Discharge
Jennifer Robinson, Pretreatment
Lonnie Shull, Biomonitoring
Lisa Stevens, Storm Water
Sarah Leavitt, Reasonable Potential Analysis
Chris Bittner, Wasteload Analysis
Utah Division of Water Quality, (801) 536-4300

PUBLIC NOTICE

Began: MONTH DAY YEAR
Ended: MONTH DAY YEAR

Comments will be received at: 195 North 1950 West
PO Box 144870
Salt Lake City, UT 84114-4870

The Public Noticed of the draft permit was published on the Division of Water Quality website.

During the public comment period provided under R317-8-6.5, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments will be considered in making the final decision and shall be answered as provided in R317-8-6.12.

ADDENDUM TO FSSOB

During finalization of the Permit certain dates, spelling edits and minor language corrections were completed.

The Storm Water Section was removed from the UPDES Discharge Permit with requirements being met with a Multi Sector General Permit through the DWQ Storm Water section.

Responsiveness Summary

The Division of Water Quality received one public comment during the public notice period of February 5, 2020 to March 6, 2020. The comment was received from Chad Turner from Chevron Products Company, Inc. The response from DWQ is below.

RE: Response to Comments
UDPES Permit No. UT0000175

Chevron Products Company (A Division of Chevron U.S.A. Inc.)

Dear Mr. Turner:

The purpose of this letter is to acknowledge and address comments made in your March 6, 2020 letter to the Division of Water Quality (DWQ) with regards to the proposed Utah Pollution Discharge Elimination System (UPDES) Renewal Permit No. UT0000175 for Chevron Products Company.

Your comments are addressed below in the order presented from your letter followed by the DWQ responses.

Comment I. The Storm Water Requirements Are Without Basis and Should be Removed.

The Draft Permit includes extensive requirements in Section IV for the management of storm water discharges at the Refinery that simply do not fit the on-the-ground realities at the site. These include a requirement to develop a Storm Water Pollution Prevention Plan ("SWPPP") that includes a map of all drainage areas and storm water outfalls and the location of receiving streams or other surface water bodies. The provisions would also require annual site evaluations to determine and reduce pollutant loadings "entering the drainage system" and a plan that includes consideration of practices "to divert, infiltrate, reuse, otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site." Draft Permit at 12 (emphasis added). Implementing these requirements is not practically possible given that any storm water associated with industrial activity is conveyed to the treatment plant, and no untreated industrial storm water is discharged from the site. Given these realities, Chevron believes there is not a valid legal basis for these requirements.

As acknowledged in the Draft Permit and FSSOB, all storm water in the industrial process areas at the Refinery Site is conveyed to a collection system that is then conveyed to the treatment plant along with wastewater and is then treated and discharged to Outfall 001. FSSOB, page 2[1]. There are areas of the Refinery Site that do not convey storm water to the treatment plant, but those areas do not have industrial activities and do not discharge storm water from the Refinery Site. Id ("Storm water outside of the process area is generally retained onsite for infiltration using berms and a wetland located within facility boundaries[]")(emphasis added). In other words, there are no storm water discharges associated with industrial activity as defined in state and federal regulations. Because there is no untreated industrial storm water at the Refinery Site, the inclusion of requirements in the Draft Permit that require Chevron to address storm water discharges to outfalls that do not exist exceeds DWQ's authority under both state and federal law. It also ignores the practical realities of storm water management and the extensive regulation of the Refinery Site by the Division of Waste Management and Radiation Control ("DWMRC"). Each of these concerns is discussed in greater detail below.

A. DWQ Provides No Basis for Applying Storm Water Requirements in the FSSOB.

Under Utah law, a statement of basis "shall briefly describe the derivation of the conditions of the draft permit and the reasons for them[.]" UAC R3 1 7-8-6.3(6). Similarly, the fact sheet must include "[a] brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions[.]" UAC R3 1 7-8-6.4(2)(c). The FSSOB fails to satisfy these requirements with respect to the Draft Permit's storm water provisions.

[1] "Storm water is conveyed from process areas and containment areas through the facility collection systems to a central lift station, where it is combined [sic] with other process wastewater in the surge tanks. When present, storm water from the contained and process areas is treated and then discharged through Outfall 001."

The FSSOB acknowledges the addition of the storm water requirements as a change since the prior permit but does not provide a legal basis for their inclusion. See FSSOB at 3. The storm water discussion in the FSSOB is limited to noting that "[t]he storm water requirements are based on the UPDES Multi-Sector General Permit [(MSGP)] for Storm Water Discharges Associated with Industrial Activity," and summarizing the elements of the SWPPP. FSSOB at 8. But the FSSOB makes no mention of the regulatory basis for applying the MSGP requirements to the Refinery Site nor does it provide a rationale for making the change from the prior permit. A general citation to the MSGP is not a satisfactory reference to a statutory or regulatory provision supporting provisions in an individual UPDES permit. Chevron acknowledges that the prior version of the permit included language indicating that coverage under the MSGP was required for any storm water discharges associated with the industrial activities that are not conveyed to the treatment plant - but there are no such discharges at the Site.

B. There is No Untreated Storm Water Associated with Industrial Activity at the Chevron Site.

DWQ does not have a legal basis for its application of the Section IV Draft Permit requirements for storm water in part because all of Chevron's storm water associated with industrial activity is treated such that no untreated storm water[2] leaves the Refinery Site. All industrial storm water at the Refinery is conveyed to the wastewater treatment plant, where it is comingled with Refinery wastewater and discharged after treatment through Outfall 001. For all other areas of the Refinery outside of the industrial process areas, storm water is retained onsite and does not discharge to an outfall at all. Accordingly, there is no storm water discharge from the site as contemplated in the Draft Permit provisions.

Storm water discharge associated with industrial activity is defined as "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." UAC R3 l 7-8-3.9(6)(c)(emphasis added)[3]. Storm water associated with industrial activity explicitly "excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas." Draft Permit at 32 (emphasis added); see also UAC R317-8-3.9(6)(c); 40 CFR § 122.26(b)(l4).

All industrial areas at the Refinery Site convey storm water from those areas to the wastewater treatment plant. Storm water that falls outside of those areas-including in large areas of onsite wetlands-does not meet the definition of industrial storm water and is therefore not covered by the MSGP. These areas include the administration building, associated parking lots and roads, open space and wetland areas, and waste management units (regulated by DWMRC, as outlined below). Chevron's permit application materials included a map distinguishing the industrial process areas where storm water is conveyed to the treatment plant from designated non-industrial areas[4]. Berms at the Refinery Site separate these non-industrial areas from the process areas. These non-industrial areas are not subject to the MSGP or the proposed storm water requirements in the Draft Permit.

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[2] "Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage. 40 C.F.R. § 122.26(b)(l3)(emphasis added).

[3] This definition also appears in both the state and federal MSGP, as well as the federal regulations. See Utah MSGP at 34; Federal MSGP at A-8; 40 CFR § 122.26(b)(l4).

[4] Figure 2 submitted with the application included some notes indicating possible discharges to wetlands in areas 4 and 5.

C. The NPDES Program Covers Discharges to Surface Waters.

The UPDES storm water permit program is a federally delegated program under the National Pollutant Discharge Elimination System ("NPDES") permit program. The NPDES program allows the Administrator to issue permits for discharges of pollutants to navigable waters from point sources. 33 U.S.C. §§ 1342(a)(l); 1362(12)(A). Federal regulations clarify that the NPDES Program "requires permits for the discharge of 'pollutants' from any 'point source' into 'waters of the United States.'" 40 CFR § 122.l(b)(a). Under the NPDES permit program, a state can apply "to administer its own permit program for discharges into navigable waters within its jurisdiction." 33 U.S.C. § 1342(b).

Chevron understands that DWQ' s basis for applying the industrial storm water provisions in the Draft Permit - despite there being no industrial storm water that isn't treated before leaving the Site - may be a concern about storm water discharges to groundwater. However, under the NPDES permit program, DWQ has no authority to impose restrictions on storm water discharges to groundwater through a UPDES permit. Groundwater, which is clearly not a "navigable water," is not considered a water of the United States. See 40 CFR § 122.2.

Groundwater is not regulated under the NPDES permit program or the UPDES program. Indeed, Utah's own regulations exempt discharges that are not regulated under NPDES from UPDES permitting requirements. See UAC R3 l 7-8-2.1(2)(i) (stating that "[d]ischarges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act" do not require a permit under UPDES.). Because discharge of storm water into groundwater is not regulated under NPDES, it is also excluded from the requirements of UPDES under UAC R3 l 7-8-2.1(2). Accordingly, by expanding the scope of the Draft Permit to apply to groundwater, DWQ would be acting outside of its delegated authority and contrary to federal law. Although Chevron acknowledges the state's ability to regulate certain discharges of pollutants to groundwater and to protect groundwater quality, the UPDES program is not the program under which to do so and there is no regulatory purpose to do so through the Draft Permit.

D. The Definition of "Waters of the State" Does Not Apply to Waterbodies Entirely Within Chevron's Property Boundaries.

DWQ has asserted in our discussions that its jurisdiction over "waters of the state" is broader than its delegated jurisdiction in the federal Clean Water Act NPDES Program. However, as previously stated, there are no untreated discharges of industrial storm water at the Refinery. Furthermore, with the exception of the No11hwest Oil Drain (to which the regulated outfall discharges), no other surface water at the Refinery Site meets the definition of "water of the State." This would therefore not provide a legal basis for imposition of the storm water requirements of the Draft Permit.

The scope of jurisdiction under the Utah Water Quality Act is both broader and narrower than that of the Clean Water Act. Although the definition of "waters of the state" does indeed include "all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial," it expressly does not include "bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife[.]" Utah Code Ann.§ 19-5-102 (emphasis added). Other than the Northwest Oil Drain, any surface waters at the Refinery Site are confined and retained within the limits of Chevron's private property, and Chevron has done extensive groundwater monitoring (as indicated below) to confirm that pollutants do not leave the site

through groundwater. Accordingly, these water bodies do not constitute a "water of the state" and state law does not provide an independent legal basis for the storm water requirements in the Draft Permit.

E. Storm Water Retention and Infiltration Necessarily Require Discharges to Groundwater and Implementation of the Draft Permit Requirements is Practically Impossible at the Refinery Site.

DWQ's apparent position that it can regulate discharges of storm water to groundwater is inconsistent with other provisions of the Draft Permit, conflicts with the very definition of storm water and is contrary to common storm water management practices. The Draft Permit expressly acknowledges that "traditional storm water management practices" include infiltration and retention. See Draft Permit at 12-13. These common storm water management practices necessarily result in potential "discharges" of storm water to groundwater, creating conflict and confusion with DWQ' s attempt to regulate storm water under the UPDES program for the sake of protecting groundwater. We also note that the Draft Permit prohibits "non-storm water discharges to waters of the State"[5], which is inconsistent with other sections of the Draft Permit that allow non-storm water discharges. This inconsistency fm1her demonstrates that DWQ has no basis for the storm water requirements in the Draft Permit.

Additionally, it would be impossible for Chevron to implement the SWPPP and other monitoring requirements as included in the Draft Permit given the practical realities at the Site. There are no storm water outfalls to be identified, there are no industrial "pollutant sources" to be identified outside the treated areas, and there are no measures or controls to be implemented given the nature of activities in these areas. Implementing a monitoring program with quarterly visual inspections of storm water discharges is also not possible in these areas. For these reasons, the wholesale inclusion of standard industrial storm water requirements in the Draft Permit is also practically infeasible.

F. Groundwater at the Chevron Site is Heavily Regulated by the Utah Division of Waste Management and Radiation Control and Under Continuous Monitoring Through That Program.

In addition to there not being discharges of untreated industrial storm water at the Refinery Site for DWQ to regulate, the Utah Division of Waste Management and Radiation Control ("DWMRC) has regulated groundwater at the Refinery Site since approximately 1984. Pursuant to a 1991 agreement, Chevron has conducted on-site environmental investigations, corrective action and closure of historical waste units. Since that time, Chevron has conducted regular environmental monitoring pursuant to Post Closure Permit, EPA# UTD092029768 (reissued September 21, 2017) including an ongoing comprehensive groundwater monitoring plan throughout the facility[6].

Chevron's objection to the storm water requirements in the Draft Permit is not an attempt to avoid regulation, but Chevron believes such regulation is duplicative and unnecessary, particularly in light of DWMRC' s extensive regulation of the Site and its oversight and approval of the

[5] "Non-storm water discharges to waters of the State, which are not, [sic] authorized by a UPDES permit are unlawful, and must be terminated." Section IV(C)(l)(c)(7)(c). "Non-storm water discharges" is not defined elsewhere in the Permit, nor is the term is qualified by reference to industrial activity," which creates confusion as to what is covered by the Permit and what is not. Given that other sections of the Permit allow non-storm water discharges, this language needs to be amended to reflect the specific provisions of this individual permit.

[6] See https://deg.utah.gov/businesses-facilities/chevron-products-post-closure-permit for permit details, monitoring program requirements. and determinations regarding groundwater migration.

groundwater monitoring and modeling program.

G. *The Example Permits for Other Facilities Provided by DWQ Are Not Analogous to the Refinery and Do Not Support DWQ's Position.*

During our discussions, DWQ also indicated that inclusion of the Section IV requirements in the Draft Permit was appropriate because it was consistent with DWQ's inclusion of such requirements in UPDES Permits for other facilities that do not have discrete storm water outfalls. The examples provided were Swift Beef Company, UPDES No. UT0000281 and Payson City Wastewater Treatment Facility, UPDES No. UT0020427. Neither of these facilities are refineries, or even analogous industrial facilities. Based on review of their permits, it also does not appear that either have collection systems for industrial storm water that convey and treat it along with wastewater. Beyond the terms of these permits, we are unable to determine what DWQ's legal basis for applying the storm water requirements was. Moreover, we are not aware of any formal policy or regulation specifically supporting their application, and the mere fact that DWQ has taken a position that has not been challenged by other permittees does not provide a basis for DWQ' s position in Chevron's Draft Permit. Chevron cannot accept permit conditions that are neither necessary nor legally suppo11ed, as doing so would imply that we consent to their inclusion and could also establish a precedent that, among other things, prevents future changes to the Permit.

DWQ Response to Request for Remedy Comments:

DWQ has reviewed the comments regarding the Multi Sector General Permit (MSGP) stormwater requirements in the UPDES Discharge Permit. DWQ will gather more information through a site inspection and determine the stormwater permitting requirements. The MSGP stormwater requirements will be removed from the UPDES Discharge Permit and be replaced with the below statement.

> *DWQ will regulate and Chevron will manage storm water discharges associated with industrial activity that are not treated and discharged to outfall 1 via a separate storm water permit, as necessary.*

Comment II. Additional Requested Revisions to the FSSOB.

- Page 2, paragraph 2: Change sentence to read, "Storm water is conveyed from process areas and containment areas through the facility collection systems to a central lift station, where it is combined with other process wastewater in the surge tanks."
- Page 3, "Description of Discharge" Punctuation – Change "Hydrostatic test water from storage tanks and pipelines, when necessary, testing water is stored onsite ponds for evaporation[]" to "Hydrostatic test water from storage tanks and pipelines. When necessary, testing water is stored in onsite for evaporation."
- Page 6, Reasonable Potential Analysis – As noted elsewhere in the FSSOB, reasonable potential analysis and anti-degradation analysis were indeed performed for the Permit but the language in the second sentence suggests otherwise. Change paragraph to read as follows:

  > "Since January 1, 2016 DWQ has conducted reasonable potential analysis (RP) on all new and renewal applications received after the date. Annual metal sampling will be required. Less than 10 data points may affect the reasonable potential outcomes which may require additional monitoring in the future."

DWQ Response to Request for Remedy Comments:

DWQ will make the requested verbiage changes to Page 2, paragraph 2 for storm water and Page 3 for hydrostatic test water. To complete a run for reasonable potential, more than 10 data points per parameter are needed. Only one data set per parameter was received with the permit application, therefore there was limited metal data available to run a reasonable potential analysis. The reasonable potential statement will read as follows:

> *Limitations on total suspended solids (TSS), biochemical oxygen demand (BOD5), and pH are based on current Utah Secondary Treatment Standards, UAC R317-1-3.2. For additional limitations and monitoring requirements and justifications, please see Memorandum entitled Antidegradation Review for the Chevron Products Company date May 15, 2020. (Attachment 2)*
>
> *Beginning on January 1, 2016, DWQ has conducted reasonable potential analysis (RP) on all new and renewal applications received after that date.*
>
> *Chevron's UPDES pervious permit was issued January 1, 2015 and therefore was not required to monitor for all metal parameters. For this permit cycle, Chevron will be required to perform, at a minimum, bi-annual metal sampling.*

DWQ-2020-012796