Comment Number	Permit Part	Comments on the July 25, 2018 Draft Public Notice Jordan Valley Municipalities UPDES Permit for Discharges from Municipal Separate Storm Sewer Systems (MS4s) UTS000001 and Fact Sheet Statement of Basis	DWQ Response
1	4.0	Storm Water Management Program …"Co-Permittees that were newly designated during the previous Permit term have 5 Years from the date of their submitted NOI to develop, fully implement and enforce their Storm Water Management Program (SWMP).:Millcreek would like to confirm that the State recognizes the city of Millcreek as a newly designated Co-Permittee of the JVM permit and will have 5 years from their submitted NOI to "develop, fully implement and enforce their Storm Water Management Program (SWMP). Millcreek submitted their NOI to the State on August 28th, 2017 and received coverage under the current JVM permit as of December 5, 2017. Would August 28th, 2022 be the date required for Millcreek to fully implement and enforce their SWMP?	Yes.
2	1.3	Could a line be added saying: Local agencies are only require to comply with minimum standards. Additional regulations are not encouraged or enforced by DWQ.	The section does not state that DWQ encourages or will enforce local regulations. DWQ has no additional authority over local regulations.
3	3.2.1	What is the base line? Who sets it, and what research supports the findings?	The baseline is described in Part 3.2
4	3.2.1.2	Is it the expectation of the state to have MS4's conduct research and testing, or is there a base line and standard set by the state? Is funding provided from the EPA or DEQ, or is the MS4 expected to generate revenue to complete these studies? Is the MS4 required to hire a qualified person, meaning education and certification to perform these studies?	There is no expectation of testing. The MS4 is to use their knowledge of the sources in their jurisdiction to develop a list of entities to target for education.
5	3.2.1.3	For the MS4's to identify a sector and elevate their priority level, it needs to be supported by solid research. For example, if industry is made top priority, will there be peer reviewed research documenting their impact compared to other sectors.	Information is available on nutrient sources on DWQ's website: nutrients.utah.gov
6	4.1.2.2	Am I understanding this correctly to say the MS4 is required to find all the funding and then compile a report of expenses to the state? If the state is not contributing and the funding in no way impacts state budgets or resources, is it necessary to require additional expense from MS4's to compile a report?	Reporting on MS4 expenditures allows DWQ to verify that resources are dedicated to the MS4 program. The information provided on the Annual Report needs only be a summary.
7	4.1.3.4	Needs to clearly state enforcement from the director will only be applied when the MS4 fails to meet minimum standards set by the state. Higher city standards are not encouraged, but if they are set and not met it will not trigger action.	The Permit states "failure to meet these requirements" meaning the requirements of the MS4 permit.
8	4.2.1	Would it not be more cost effective to engage in a state-wide campaign? The need for education is not bound by city boundaries nor is there a productive marketing strategy that limits education efforts to people of one city. A state-wide effort could reach across all boundaries and touch all stake holders. Is there any research suggesting different communities have a dramatic different set of education needs?	This requirements is typically fulfilled at the County Storm Water Coalition level.
9	4.2.2	The effort for public involvement needs to include policy making boards, commissions or task forces. The general public needs to have access to decision makers, not just information or advisory opinions that may or may not be implemented. These policy making bodies need to be detailed in the permit with enforcement action attached to MS4's failing to comply.	The Permitee is responsible for determining the public involvement/participation audience within their jurisdiction.
10	4.2.2.3	120 days is far more than is needed to post a document to the web site. This should be done in 30 days. If public notification, education and involvement is truly a goal, speedy notice is paramount. When a city increases a fee, they are able to post that increase on the web site and demand compliance in 24 hours or less. I am sure they have the ability to complete this task in a more reasonable time frame.	The revised Permit allows the MS4 180 days to update their SWMP from the effective date of the permit. The SWMP should be posted to the website as soon as possible when complete.
11	4.2.3.9	This would be better as a state-wide hot line, maned and tracked by DWQ. It is difficult, if not impossible, for a city to effectively communicate this type of information to citizens and entity's that come and go within the city. A singe state wide number and point of contact is the only way to reach all stake holders.	DEQ has a spill reporting Hotline. The MS4 permit requirement is for the MS4 to maintain their own hotline in order to investigate, cease and enforce illicit discharge and spills within their jurisdiction.
12	4.2.4.1	Could the last sentence be removed? The state should set a standard. If that standard applies to an acre or larger, or lots that are part of a common plan, the permit should not address additional requirements on non-conforming lots. This permit is specific in its application. The last sentence reaches beyond the scope of the permit, granting permission to MS4's. Is it the intent of DWQ to grant permission and encourage additional regulation?	DWQ's minimum standard in the MS4 permits is for Construction storm water permit coverage for sites disturbing greater than 1 acre and those part of a common plan of development collectively greater than one acre. DWQ does not regulate additional City requirements that may go beyond the MS4 requirements.
13	4.2.4.3	At the end of first sentence could we strike the word "local"? If local MS4s are going to require storm water compliance above and beyond state requirements, they need to have scientific evidence supporting their requirements. With out proper supporting research, they are adding regulatory burden with no idea of its need or outcome.	Removed.
14	4.2.4.3.1	Could we change the word "meeting" in the first sentence to "review". Is it necessary to have the contractor and a city inspector meet on site? This is a time consuming and expensive meeting. Most contractors can lay out a plan and submit it with photos. If there are questions from either party a live meeting could be scheduled.	DWQ believes pre-construction meetings to be an important means to exchange contact information and convey expectations in advance of commencement of the project. The preconstruction meeting can also be used as a pre-construction inspection in order for the MS4 to check that all BMPs are in place and the SWPPP is finalized prior to land disturbance. However, the meeting does not need to be conducted face-to-face.
15	4.2.4.4	Section 4.2.4.4 limits an individual or entity from preparing the swppp and performing the inspection but does not clearly limit an individual from forming a second company using the same principals to perform both functions. There needs to be a bright separation between the two entities. It cannot be two companies owned and operated by the same owners.	The provision is intended to prevent conflict of interest by prohibiting the same entity from preparing the SWPPP for the operator and performing oversight inspections on behalf of the MS4.
16	4.2.4.4.1	Can this section specifically state an electronic inspection including photos, written report and proper auditing complies with the monthly requirement? Use of technology will lessen the burden on all stake holders and increase compliance.	See Permit Part 4.2.4.4.4 for addition of electronic inspection tool option.
17	4.2.4.4.2/ 4.2.4.4.1	There is an opportunity to use technology to complete this task, but it needs to be made available to stake holders	See Permit Part 4.2.4.4.4 for addition of electronic inspection tool option.
18	4.2.4.5	How does one find out what training fills this requirement? Is there some standard or just a requirement of course attendance?	Training can be completed internally or through an external course.
19	4.2.5.1	This section requires BMP selection but seems to give that authority to the MS4. For post construction management to be effective builders and developers need to have at least an equal voice in the selection process. Each has their expertise and motivating factors. The two working as a partnership will produce a better product	Agreed that partnership between developer and MS4 is optimal. See revised Permit Part 4.2.5.1.3.
20	4.2.5.2	There needs to be something in the enforcement section stating MS4's will have action taken against them for not involving builders and developers in BMP selection and state that all available methods can be used.	See revised Permit Part 4.2.5.1.3.
21	4.2.5.3	What level of expertise is used to make this finding? Is the city compliance manager with 8 hours of SWPPP training and an undefined amount of annual continuing education training considered qualified to make the determination?	The permit does not have requirements for "level of expertise."
22	4.2.5.3.4	Is 90th percentile the correct number for our claimant and limited buildable land? What exactly does "infeasible" mean? If enough money is committed this could be accomplished on any project, however, there comes a point where the amount of money required to meet storm water retention makes the project infeasible, how is that amount arrived at? Could we change the last sentence to something other than "technically feasible"? Technically feasible is very different than financially feasible.	See revised Permit Part 4.2.5.1.5 for feasibility discussion which has been broadened from the July 2018 draft.
23	4.2.5.4.2	This needs to state that the "preferred design options" are not the only options available to contractors. If the contractor provides an effective LID the MS4 will be required to accept that option.	Permit Part 4.2.5.4.2 has been removed from the revised permit.
24	4.2.5.5.1	The LID (a swell in an individual yard) is one way to retain water. Is this section saying that private residences will need to have something attached to their deed giving the city a right to enter their property at any time for inspections, and that the city will be required to make those inspections? What will enforcement look like? Is it DEQ's position that if one homeowner makes a change and sells the home before the changes are detected by the MS4 the second homeowner will be responsible?	The MS4 must have in their ordinance or other regulatory mechanism means to inspect post construction BMPs. The requirements for maintenance of the post-construction BMP transfer with the deed. Enforcement will be in accordance with the MS4's escalating enforcement policy.
25	4.2.5.6	How does one find out what training fills this requirement? Is there some standard or just a requirement of course attendance? How is the content and quality controlled? If this is the mechanism for training individuals with the power to make and enforce burdensome regulations, should we not have well defined education requirements?	The permit does not have specific requirements for training. Some aspects of training will be specific to individual Co-Permittees.
26	4.4.3	It would be better if the words "at least" were stricken. The state needs one standard. This permit should not suggest or encourage more stringent requirements.	Permit Part 4.4.3 is not encouraging stricter requirements. Permit Part 4.4 is describing the criteria for an MS4 to share responsibility for implementation with another entity.

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27	4.5.1.2.2	If a city is required to have the expertise on staff to set up the original SWMP why are they not competent to identify and replace or remove ineffective components? This should say "changes adding, subtracting or replacing…"	See updated version of Section 4.5.
28	6.1	Can a city choose to not become permitted?	There are waiver options if a designated MS4 meets the waiver criteria. See https://www3.epa.gov/npdes/pubs/fact2-1.pdf
29	6.2	Are these penalties given to the individual or the municipality? If a city is improperly staffed to complete all required reporting, is a citation issued to the city or a responsible individual? What or who determines the responsible individual?	A "person" under the Act could be an individual or a municipality. The individual or the municipality, or both, could be liable for penalties, depending on the action in question. If permit prohibits a co-Permitee from doing something, they would be the entity subject to the penalty. If the Act generally prohibits something, any individual could be held responsible. Specifically with respect to reporting required by the permit, the municipality would be responsible if it fails to meet its reporting obligations. If an individual fails to meet its reporting obligations, the municipality would be responsible for enforcement over the individual.
30	6.4	I do not know what it says. Would it be possible to clarify?	6.4 provides that this Permit's allowance of storm water discharges is not absolute- if a storm water discharge will cause the Permitee to violate a condition of this permit, the need to halt or reduce storm water discharge activities shall not be a defense for the illicit discharge. The word "otherwise" has been added to the permit language to provide additional clarity.
31	3.2.1	Determining each discrete potential source of nitrogen and/or phosphorus is impracticable if not impossible. Instead, the City requests that DWQ provide guidance enumerating the particular "target sources" for outreach.	The requirements for Co-Permittees to evaluate, identify, target, and provide outreach to nutrient sources is part of Utah's Approach for Addressing Nutrient Pollution. Permit Part 3.2 requires Co-Permittees to identify sources which may be contributing nutrients and prioritize those sources for distribution of educational materials regarding the storm water impacts associated with nutrient pollution, similar to the requirements for Permit Part 4.2.1, but targeting specifically nitrogen and phosphorous.
32	4.2.6.6.6	The City asks that DWQ recognizes the practical problems in its consideration of how feasible it maybe for a Permittee to haul all materials it removes from storm water conveyances.	In accordance with revised Permit Part 4.2.6.6.3 Co-Permittees must dispose of liquid and solid material removed from the storm drain system in accordance to Federal, State and Local regulations.
33	4.2.5.3.4	The 90% storm event is not clearly defined in the Permit. The Fact Sheet Statement of Basis provides useful information that should be included within the permit itself.	Guidance for calculating storm events can be found in DWQ's https://deq.utah.gov/water-quality/low-impact-development. Maintaining guidance outside of the permit keeps the permit clear and concise.
34	4.2.5.3.4	What is there is not reliable precipitation data near the municipality? A municipality adjacent to the mountains will receive different precipitation than one that is not.	The MS4 should utilize the closest available and representative weather station with sufficient history.
35	4.2.5.3.4	How is lack of good representative data addressed? How often should it be updated?	The MS4 should utilize the closest available and representative weather station with sufficient history.
36	4.2.5.3.4	Will the infeasibility waiver of the 90% retention requirement requirements will be at the discretion of the overseeing municipality? We are the most familiar with our local topography, landscape, and soil conditions, and are most suited to determining feasibility.	See revised Permit Part 4.2.5.1.5 for feasibility criteria and documentation requirements.
37	4.2.4.4.1.	The acronym for Certified Professional in Erosion and Sediment Control should be CPESC in Section 4.2.4.4.1.	Correction made.
38	1.2.2.2	Non-Stormwater Discharges – Listed is "Individual residential car washing." This is a contradiction to section 4.2.1.2 which encourages education and outreach to stop car washing. Car washing introduces detergents, sediments, oils, and other harmful pollutants so it should not be an allowable discharge. Even though individual car washing is small on a larger scale it can be harmful. Also, this opens the door for others to think that car washing that enters the storm drain is not big deal, and doesn't cause water quality concerns.	Wash water associated with individual residential car washing is an allowable discharge. Wash water associated with commercial car washing or car washing at greater than an individual scale is not permitted. Education can still be targeted toward "car washing" which could describe the pollutants associated with car washing as well as what is and is not allowed under the MS4 permit.
39	4.2.4.4	"An individual or entity who prepares a SWPPP for a construction project may not perform the construction site inspections required of Part 4.2.4.4.1 and 4.2.4.4.3 on behalf of the Co-Permittee." We agree that there is an appearance of a possible conflict of interest in these cases. If a company is run in such a way that different individuals or sections of the company are setup to do these inspections then there would not be a conflict of interest. If there is any breach or conflict in this case then that would fall under business ethics and not the storm water permit. There are other mechanisms to go after business ethics then putting that in the permit so that it hurts honest businesses. The goal is clean water and if an MS4 wants to use an entity to help them comply with the permit and achieve clean water then they should be allowed to do so. There are several companies throughout the state that do work for both the MS4 and for construction contractors. If this rule is put into place it has the potential to harm these businesses.	The provision is intended to prevent conflict of interest by prohibiting the same entity from preparing the SWPPP for the operator and performing oversight inspections on behalf of the MS4.
40	4.2.5.5.3	"Inspections and any necessary maintenance must be conducted annually by either the Co-Permittee or through a maintenance agreement, the property owner/operator." a. We would urge that the language be changed from "annually" to "as required by the control or specified in the control/BMP specification," or similar language. The reason we suggest this is many control/BMP specifications require semi-annual or more frequent inspections and maintenance. This is so the control works properly to protect water quality. There are numerous storm water controls here in Utah that require inspections more frequently than once per year. b. Here is an example from the Contech CDS system specification about inspections. These systems have been and are being installed in Utah.: i. "Inspection is the key to effective maintenance and is easily performed. Pollutant transport and deposition may vary from year to year and regular inspections will help ensure that the system is cleaned out at the appropriate time. At a minimum, inspections should be performed twice per year (e.g. spring and fall) however more frequent inspections may be necessary in climates where winter sanding operations may lead to rapid accumulations, or in equipment washdown areas. Installations should also be inspected more frequently where excessive amounts of trash are expected."	Revised Permit Part 4.2.5.2.5 has been changed to "maintenance must be conducted at least every other year or as required to maintain functionality of the control."
41	1.2.1.1	The MSD operates "unincorporated" areas of Salt Lake County. Please see attached MSD Organizational chart for reference.	Noted.
42	1.2.1.1	Salt Lake County Flood Control owns parts of specific storm sewer pipes but county owned pipes have no county operated land area associated with them. The sections of pipe owned usually meet pipes owned by other municipalities who regulate the land areas under their own phase 2 permits. See attached Countywide facility map. https://slco.org/uploadedFiles/depot/publicWorks/fFloodControl/WaQSPFloodFacMap.pdf	Noted.
43	1.2.1.2.2	The Greater Salt Lake Municipal Services District (GSLMSD) would like to be considered a "new" permittee so it has a chance to implement its new SWMP and MCM's responsibly and update ordinances as required. The GSLMSD is a new political jurisdiction and as such, requires time to familiarize members with the rules and regulations of this permit. These rules and regulations may create the need for a fee to help subsidize the cost of implementation. Having the 5 year implementation time frame to meet milestones allows providers time to ascertain costs and create considerate justifications to the new political subdivision with transparency and clarity for members.	Agreed.
44	2.3	See previous comment. The GSLMSD is prepared to meet the requirements of section 2.0.	Noted.
45	4.0	GSLMSD believes it should be considered a newly designated co-permittee.	Agreed.
46	4.2.6.6.6	Does this section consider to the practice of open channel dredging? If so, do the BMP's listed here apply? Dredging often produces thousands of cubic yards of material that must be de-watered for transport.	If the open channel is part of the co-permittee's storm water conveyance system, then yes, dredged material is subject to the BMPs in Permit Part 4.2.6.6.3 of the revised permit.
47	4.3	Countywide Flood Control facilities and county owned facilities are the only physical structures and land Salt Lake County owns and operates. Unless an individual county facility is considered "High Risk Runoff" facility this section needs language to modify the "requirement" language.	As a Phase I MS4, Salt Lake County is required to implement an inspection and oversight plan for Industrial and High Risk runoff within it's jurisdiction. If there is no Industrial or High Risk runoff in Salt Lake County's jurisdiction, the conditions of Permit Part 4.3 do not apply. This has been added to Permit Part 4.e
48	5.2	Countywide Flood Control facilities and county owned facilities are the only physical structures and land Salt Lake County owns and operates. There is no practical way for Salt Lake County to sample stormwater moving through pipes that drain areas covered by other municipalities in this permit. This section requires language that identifies that fact.	Permit Part 5.2.2 states "If the Phase I Co-Permittee does not have jurisdiction over facilities that will meet the purpose of the objectives outlined above, Wet Weather Monitoring will not be required."

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49	3.2	Are these changes something that Utah DWQ initiated, or is it mandated by EPA as part of the State's permit requirement?	Addressing nutrient pollutions is a nationwide and Utah initiative. See nutrients.utah.gov
50	3.2	Regarding the nitrogen and phosphorus changes, what are the benchmarks used? How were they determined? What stakeholders where involved to develop the benchmarks?	There are no benchmarks for nutrient reduction in the Utah MS4 permits at this time.
51	3.2	Why is nutrient reduction necessary? The answer is obvious to many of us, but we will have to explain to residents who may not be versed in the reasoning behind this.	Excess nitrogen and phosphorus, or nutrient pollution, can result in serious water quality problems. Nutrient pollution impairs drinking water, endangers aquatic life, and threatens recreational uses. Nutrient pollution can also pose risks to human and animal health and damage to the economy.
52	3.2	What studies have been done to verify that this is important enough to codify into a permit?	See the "studies" tab at nutrients.utah.gov
53	3.2	What is the economic cost versus environmental benefit of the regulation?	See Economic Evaluation here: https://deq.utah.gov/water-quality/economic-evaluation-statewide-nutrient-criteria-development-nutrients-in-utahs-waters
54	3.2	Do the current permit requirements already implement the appropriate BMPs to sufficiently reduce nitrogen and phosphorus levels?	Yes, some permit requirements address nutrient pollution. The intent of the new section is bring further attention within the MS4 to these pollutants.
55	3.2	What is the source(s) of the "significant increases of nitrogen and phosphorus in recent years?"	Sources include pet waste, storm water runoff, agriculture, fertilizer, failing septic systems, waste water treatment plants, and natural sources.
56	3.2	Which of "Utah's streams, lakes and rivers" are having water quality problems?	See the 2016 Utah 303d list here: https://deq.utah.gov/legacy/programs/water-quality/monitoring-reporting/assessment/2016-integrated-report.htm
57	3.2	Are any of these water bodies impaired as a result of the "significant increases in nitrogen and phosphorus?"	Yes. See Impaired water list here: https://deq.utah.gov/legacy/programs/water-quality/monitoring-reporting/assessment/2016-integrated-report.htm
58	3.2	Will the planned reduction of phosphorus emissions from wastewater treatment plants address the phosphorus loading issue already?	The Jordan River TMDL will consider all nutrient sources including WWTPs.
59	3.2	Is the State DWQ requiring unfunded mandates of the MS4 to "determine contributing and potentially contributing sources of nutrients discharged."	The permit requires the co-permittee to determine and target sources that are contributing to, or have the potential to contribute, nitrogen and phosphorus to the waters receiving MS4 discharge with educational information regarding nutrient pollution.
60	3.2	How are MS4s to determine these "potentially contributing sources"?	By evaluating potential residential, industrial, agricultural, or commercial within the MS4's jurisdiction.
61	3.2	How does "distributing educational materials or equivalent outreach" solve the problem?	By educating the members of the jurisdiction on the water quality issues associated with N and P.
62	3.2	Are these issues Municipality specific, i.e., is the permit painting with too broad a brush instead of addressing the issues through existing streams, rivers, and lakes regulation?	The MS4 must determine and target sources that are contributing to, or have the potential to contribute, nitrogen and phosphorus to the waters receiving MS4 discharge.
63	NA	Is DWQ willing to assist in WLA assessments? Coalition trainings, funding, etc.?	WLAs will be included in the permit once the Jordan River TMDLs are complete. MS4s will be involved as such allocations are developed.
64	4.2.5.3.4	With a 90th percentile requirement, how would a city of 120,000 implement a monitoring plan? What are other US cities doing to document compliance?	Monitoring is not a requirement of Part 4.2.5.3.4. Documentation of infeasibility is required. Guidance is described in Part 4.2.5.1.5 of the revised permit.
65	NA	With completion of the Jordan River TMDL, will cities be required to monitor their 303(d) listed waters for WQMP compliance? If so, will there be assistance available, training, funding, etc.?	At this time, Phase II MS4s are not required to monitor.
66	various	The Draft Permit Does Not Fully Incorporate the Operative Legal Standard and is More Stringent than Federal and State Law. The Fact Sheet Acknowledges MEP as the Legal Standard, but the Draft Permit Does Not Incorporate It and Imposes Provisions that Undermine That Standard. The federal Clean Water Act ("CWA") requires that all municipal separate storm sewer ("MS4") permits include requirements to (1) "effectively prohibit" nonstormwater discharges into the MS4; and (2) require controls to reduce the discharge of pollutants to the maximum extent practicable. EPA's MS4 permitting regulations for small cities, which were promulgated in 1999 ("Phase II Regulations"), incorporate the maximum extent practicable ("MEP") standard as the goal of stormwater measures required in an MS4 permit. Utah's regulations pertaining to Phase II cities mirror the language of the federal regulations and incorporate identical language regarding the application of the MEP standard under the Clean Water Act and Utah Water Quality Act. The MEP standard requires municipalities to develop and adopt stormwater management programs with extensive measures aimed at reducing pollutants in their stoimwater discharges, but recognizes that cities do not have absolute control over sources and activities within their boundaries. EPA has explained that the intent of the MEP standard is to provide "flexibility [for MS4s] to optimize reductions in storm water pollutants" considering factors such as "receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan."' Because MEP is the operative legal standard adopted by both EPA and the State of Utah for MS4 programs, local MS4 permits should also incorporate this standard as the primary permit condition. Accordingly, permits issued by other western jurisdictions clearly incorporate MEP as the standard for permit compliance. The Statement of Basis for the Draft Permit acknowledges MEP as the operative legal standard "that establishes the level of pollutant reductions that operators of regulated MS4s must achieve through implementation of BMP's included in their SWMPs." The Draft Permit also includes a definition of MEP, citing the Clean Water Act. However, the balance of the Draft Permit is devoid of any provision effectively setting forth MEP as the standard for compliance. Indeed, the DWQ has removed the only reference to MEP from the 2013 permit in the Draft Permit and has included conflicting provisions that impose absolute liability on co-permittees for discharges from the MS4. In so doing, the Draft Permit runs afoul of Section 19-5-105(1) of the Utah Code, which prohibits the DWQ from implementing a rule that is more stringent than a corresponding federal rule without first proceeding through notice-and-comment rulemaking. The Draft Permit contains limitations on coverage and prohibited discharges that undermine the MEP standard and create potential liability for co-permittees notwithstanding their implementation of SWMPs that otherwise meet the requirements of the permit. For instance, Permit Section 1.4 provides absolutely that the Draft Permit does not authorize "[d]ischarges that are mixed with sources of non-storm water unless such non-stormwater discharges are in compliance with a separate UPDES Permit[.]" It further provides that it does not authorize storm water discharges associated with industrial activity and construction activity, or "discharges that cause or contribute to instream exceedances of water quality standards[.]" While coverage under an MS4 permit does not negate the need for the discharger to obtain appropriate permit coverage for their activities within the City, any responsibility the City has for those discharges is covered by the other extensive requirements of the Draft Permit. The City should not be held strictly responsible for third-party discharges that are conveyed through its MS4 notwithstanding its own compliance with the other terms of the Draft Permit. This is inconsistent with the MEP standard.	See addition of Maximum Extent Practicable throughout the Permit. Specifically, "MEP" is noted as the operative standard in parts 4.1.1, 4.2, and in the definitions section of the Permit. Also see clarification added to part 4.2.3.6.2 that the Permit does not impose strict liability on Co-Permittees.
67	4.2.3.6	Likewise, Section 4.2.3.6 further provides that discharges to the MS4 are prohibited and any such discharges violate this Permit and remain in violation until they are eliminated." Again, neither the Clean Water Act nor the Utah Water Quality Act or their associated regulations irnpose absolute liability on municipalities notwithstanding their compliance with the MEP standard through implementation of effective stormwater management programs. Co-permittees are required to prohibit illicit discharges within their boundaries and to take enforcement action for any violations, but the Draft Permit should not impose strict liability on co-permittees notwithstanding such efforts.	See clarification added to part 4.2.3.6.2 that the Permit does not impose strict liability on Co-Permitees.
68	5.1	Finally, the Draft Permit includes a very broad narrative standard at Section 5.1 that makes virtually any discharge not composed entirely of clean water a permit violation. The Phase II regulations do not require that MS4 permits contain narrative standards, and storm water permits for other jurisdictions do not include them. Including a narrative standard leaves the City without any protection for its MS4 discharge under the permit and creates the potential for exposure to third parties under the CWA citizen suit provision notwithstanding compliance with all other permit requirements and reducing the discharge of pollutants to the MEP.	The narrative standard comes directly from Utah Administrative Code Rule R317-2-7.2 and has only been changed in the Permit from "unlawful and a violation of these rules for any person" to "unlawful and a violation of this permit for the Co-Permittee." Thus, it does not impose any liability or obligations on Co-Permittees that did not already exist by virtue of the Water Quality Rules.

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69	various	The City requests that the DWQ amend the Draft Permit to incorporate MEP as the operative standard for permit compliance and the overarching requirement for copermittees' storrnwater management programs. The above-referenced provisions regarding permit coverage that conflict with the MEP standard should be removed from the Draft Peiinit and/or qualified to reflect that standard. The City specifically recommends clarifying that MEP is the operative legal standard by adding the following—or substantially similar—language to Section 4.1 : A co-permittee shall develop, implement, and enforce a SWMP designed to reduce the discharge of pollutants from an MS4 to the maximum extent practicable to protect water quality. The SWMP shall include management practices; control techniques; system, design, and engineering methods; and other provisions that the Director determines appropriate for the control of pollutants. A co-permittee shall protect water quality by ensuring, to the maximum extent practicable, that no discharge will cause or contribute to an exceedance of any applicable water quality standard. Likewise, to clarify and emphasize that the six minimum control measures are designed to achieve the MEP standard, the sentence on page 15, Section 4.2 of the Draft Permit introducing the six minimum control measures should be revised to read, "To achieve pollutant reductions to the maximum extent practicable, co-permittees shall include the following six minimum control measures in the SWMP."	See addition of Maximum Extent Practicable throughout the Permit. Specifically, "MEP" is noted as the operative standard in parts 4.1.1, 4.2, and in the definitions section of the Permit.
70	4.2.5	The Draft Permit's Post-Construction Measures Require Notice and Comment Rulemaking and Are More Stringent than Federal Law. Certain terms of the Draft Permit also go well beyond the current substantive requirements of both the CWA and the Utah Water Quality Act and their associated regulations. The Phase II Regulations (and analogous Utah regulations contained in R317-8-3.9) outline the substantive post-construction requirements that may be included in the City's permit. The post-construction Phase II regulations require the permit "to identify the minimum elements and require the development, implementation, and enforcement of a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4." The Phase II regulations further authorize the following structural and nonstructural BMPs addressing post-construction development: • Structural BMPs: storage practices, such as wet ponds and extended-detention outlet structures; filtration practices, such as grassed swales, sand filters, and filter strips; infiltration practices, such as infiltration basins and infiltration trenches; and implementation practices, such as pre-construction review of BMP designs; inspections during construction to verify that BMPs are built as designed; post-construction inspection and BMP rnaintenance; and penalty provisions for noncompliance with design, construction, or operation and maintenance. • Non-structural BMPs: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian lands, maintain and increase open space, provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water-quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious area. The Draft Permit includes some of these authorized BMPs, but it also now specifically requires that by "September 1, 2019, the prograrn, shall include a process which requires the evaluation of an LID approach for new development or redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale." If the developer cannot use an LID approach, "the Co-Perrnittee must document an explanation of the reasons preventing this approach and the rationale for the chosen alternative controls on a case by case basis for each project." By contrast, the 2013 permit only required the co-perrnittees to encourage developers to implement, and the City to evaluate, an LID approach.' Nowhere is such a requirement regarding LID mandated by the Phase II (or analogous Utah) regulations. Co-permittees are likely to face significant push back from the development comrnunity in attempting to irnplement this requirement and even legal challenges to their authority to do so.	Rulemaking is not required because the Draft Permit's post-construction measures do not unconditionally require a particular course of action, and thus are not generally applicable, nor do the post construction measures represent a change in existing law. The three post-construction measures identified by the comment, the LID approach, the Existing Construction Retrofit Plan requirement, and the 90th Percentile Retention Standard all represent a recommended course of action towards achieving the existing federal MEP standard, but all allow the permittee flexibility in achieving the MEP pollution reduction based on site-specific conditions. Additionally, language has been added to the Permit which allows for deviation from the retention standards where meeting them is infeasible. The Permit is more specific, but not more stringent than federal law. It is necessary for the permit to be more specific than the federal Clean Air Act because local permits must account for site-specific concerns that are too variable to be addressed by national laws. Additionally, States are responsible for deciding the terms of their permits because federal law fails to do so. All state issued MS4 Permits are, by necessity, more specific than the federal Clean Water Act. DWQ has determined that the LID approach represents the structural BMP best suited to achieve pollution reduction to the maximum extent practicable given the conditions in the permit area. Requiring permittees to analyze the LID approach serves as a level starting point to guide entities in the permit area towards achieving the MEP pollution reductions. In other words, the LID approach represents DEQ's efforts to inform permittees how to best achieve MEP by requiring an analysis of a specific BMP that DEQ has determined is effective, rather than an imposition of a more stringent standard.
71	4.2.5	Second, the Draft Perrnit requires the City to "develop a plan to retrofit existing developed sites that are adversely impacting water quality." The retrofit plan rnust (1) emphasize controls that infiltrate, evapotranspire, or harvest and use stormwater discharges; and (2) include a ranking of control measures to determine those best suited for retrofitting and those that could later be considered for retrofitting. EPA recently deferred a rulemaking that was expected to address retrofits in favor of providing incentives, technical assistance, and tools to municipalities instead of a regulatory rnandate. Retrofit requirements for existing development are not authorized by the Phase II (or analogous Utah) regulations, and DWQ has made no effort to revise its regulations via notice-and-comment rulemaking to impose such requirernents. Moreover, irnplementing retrofits is fraught with potential legal challenges for the co-permittees and requires significant resources. Accordingly, the retrofit requirement should be removed from the Draft Permit.	Comment has been addressed through stakeholder collaboration via the Utah League of Cities and Towns Land Use Task Force and the Permit has been amended accordingly.
72	4.2.5	Finally, the Draft Permit requires the City to require developers to manage essentially all rainfall onsite. The Draft Permit provides that by "September 1, 2019, new development or redevelopment projects . . must manage rainfall on-site, and prevent the off-site discharge of the precipitation from all rainfall events less than or equal to the 90th percentile rainfall event," without regard to water quality impacts. To support this requirement, "[e]ach Co-Permittee must develop and define specific hydrologic method or methods for calculating runoff volumes and flow rates to ensure consistent sizing of structural BMPs in their jurisdiction and to facilitate plan review." The applicable regulations do not authorize the DWQ to require the City to impose such a rigorous requirement on private-property owners to maintain all rainfall at or below a 90th percentile rain event onsite. Moreover, the DWQ has not provided any clear guidance to co-permittees on how to implement the proposed 90th-percentile requirement in the Draft Permit. Without adequate legal support and guidance for implementation, compliance with the requirement will not be achievable. While the DWQ has authority to interpret the Phase II (and analogous Utah) regulations, substantive legal additions to those regulations must be implemented by amending the rules through notice-and-comment rulemaking. "To be sure, a legislative rule is not created simply because an agency supplies crisper and more detailed lines than the authority being interpreted." However, when an agency "creates a new legal norm based on the agency's own authority to engage in supplementary lawmaking . . . the agency creates a legislative rule" requiring notice and comment rulemaking. . 'To be sure, a legislative rule is not created simply because an agency supplies crisper and more detailed lines than the authority being interpreted." However, when an agency "creates a new legal norm based on the agency's own authority to engage in supplementary lawmaking . . . the agency creates a legislative rule" requiring notice and comment rulemaking. The Draft Permit imposes new substantive requirements that do not have an external legal basis in statute or in an existing lawfully promulgated legislative rule. Further, an agency may not circumvent the notice-and-comment requirements by "labeling a substantive legal addition to a rule a mere interpretation." The DWQ appears to rely on aspirational EPA guidance recommending additional post-construction control measures that are not currently set forth in the regulations. But the DWQ may not rely on guidance as a substitute for either statutory authority or rules adopted pursuant to notice-and-comment rulemaking. Courts have repeatedly held that agency guidance is not binding and may not be used to impose additional regulatory requirements in the absence of notice-and- comment rulemaking. The DWQ could implement regulations authorizing the use of control measures such as the LID, retrofit, and rainfall-control measures discussed above that go further than the applicable federal regulations, but under Utah law it cannot do so absent notice-and-comment rulemaking. Notably, Section 19-5-105 of the Utah Water Quality Act prohibits the DWQ from promulgating any rule that is more stringent than the corresponding federal rule: "[N]o rule that the board makes for the purpose of the state administering a program under the federal Clean Water Act . . . may be more stringent than the corresponding federal regulations." The DWQ cannot promulgate a rule more stringent than the corresponding federal rule unless the board "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." Here, the Draft Permit runs afoul of this statutory requirement by imposing prescriptive post-construction terms that are not only more stringent than the corresponding federal requirements, but also more stringent than existing Utah regulations. Such requirements cannot be imposed without amending the DWQ's own regulations and making the required finding under the Utah Water Quality Act. Accordingly, the DWQ should remove these provisions from the Draft Permit until it has met the requirements of state law. The City requests that all conditions and requirements that are not required by either the state or federal Phase II Regulations be removed from the Draft Permit. If the DWQ intends to adopt such prescriptive requirements, it must do so through a rulemaking subject to public notice and comment and by making the required finding under section 19-5-105 of the Utah Code.	Comment has been addressed through stakeholder collaboration via the Utah League of Cities and Towns Land Use Task Force. This 80th percentile storm water retention standard represents a local specification of the federal MEP requirement. Because EPA determined that a nationwide retention standard was not practical, more than half of the states have implemented a numeric retention standard. Additionally, the EPA's audit of Utah's program determined that the existing post-construction storm water management requirements were insufficient to meet the MEP standard absent a numeric design standard. DEQ's analysis of a potential standard determined that retention of the 80th percentil storm was the point after which stormwater retention efforts are likely to experience diminishing returns, making a higher retention standard too costly to be considered practicable within the MEP framework. Also, like the other post-construction measures identified by the comment, the Permit allows for a case-by-case analysis of whether the standard is feasible, and if the entity can document that MEP in a given instance is less than 80th percentile storm, the entity can implement lesser retention according to site constraints.

Comment Number	Permit Part	Comments on the July 25, 2018 Draft Public Notice Jordan Valley Municipalities UPDES Permit for Discharges from Municipal Separate Storm Sewer Systems (MS4s) UTS000001 and Fact Sheet Statement of Basis	DWQ Response
73	3.2	The Nutrient Requirements Are Unclear in Advance of a Final Jordan River TMDL. Section 3.2 of the Draft Permit requires that each co-permittee's management program "specifically address the reduction of water quality impacts associated with nitrogen and phosphorous in discharges from the MS4." It further provides that coperrnittees may meet the requirement through a contribution to a collaborative program to evaluate, identify, target and provide outreach that addresses nitrogen and phosphorous sources state-wide or in a specific watershed. The reduction provisions would require the City to determine and target discharging sources, to prioritize which targeted sources are likely to obtain a reduction in nitrogen and phosphorous through education, and to distribute educational materials (or equivalent outreach) to the prioritized targeted sources. The DWQ, in coordination with the co-permittees and other affected parties, has been working on developing a TMDL since 2010 to address impairment in the Jordan River, including from nutrient issues. The first phase of the TMDL was completed in 2013, but the DWQ recently delayed completion of the next phase pending development of a water quality model, and it currently projects completion by 2020. The TMDL is expected to prescribe measures similar to those being called for by Section 3.2 of the Draft Permit. Although the City is not generally opposed to implementing such measures, the proposed provision is unclear as to what is being prescribed, and it is further unclear why contributing to a state-wide program should be an option for compliance with the provision. The City requests that the DWQ provide further guidance on what measures would meet the permit requirement given that the TMDL has not yet been finalized. The Draft Permit also does not include any phase-in timeframe for compliance, requiring the City to update its SWMP immediately upon the perrnit taking legal effect. The Draft Permit should be amended to clearly allow the City a minimum of 180 days to update the City's SWMP to implement Section 3.2.	The requirements for Co-Permittees to evaluate, identify, target, and provide outreach to nutrient sources is part of Utah's Approach for Addressing Nutrient Pollution. DWQ expects the Phase II Jordan River TMDL for Dissolved Oxygen to be complete in 2020 and the E. coli TMDL to be complete in 2021, with implementation, including waste load allocations for Co-Permittees, to follow. Permit Part 3.2 requires Co-Permittees to identify sources which may be contributing nutrients and prioritize those sources for distribution of educational materials regarding the storm water impacts associated with nutrient pollution, similar to the requirements for Permit Part 4.2.1, but targeting specifically nitrogen and phosphorous. An updated SWMP is required within 180 days per Permit Part 2.3.2.
74	4.0	The Timeframes for Submittals Are Impracticable and Do Not Allow for the City's Required Approval Process. Section 4.0 of the Draft Permit provides that 141 requirements contained in this renewal permit are effective immediately unless an alternative timeframe is indicated." This section acknowledges that co-permittees will need to update their SWMPs to reflect the new provisions but provides no timeframe for which to implement these updates. For instance, as indicated above, the Draft Permit would require the City to address the reduction of water quality impacts associated with nitrogen and phosphorus in discharges from the MS4 as part of its SWMP immediately, which is not possible.33 Section 4.0 of the Draft Permit should be amended to provide a 180-day timeframe for co-permittees to update their SWMPs to implement any new permit requirements.	The timeframe has been changed to 180 days.
75		The Timeframes for Training New Hires Are Vague and Impracticable. The Draft Permit would require the City "to ensure that all new hires are trained immediately upon hire and annually thereafter, at a minimum," in the IDDE program. It would also impose the immediate training requirement on all new hires "whose primary job duties are related to implementing the construction storm water program, including permitting, SWPPP review, construction site inspections, and enforcement." The term "immediately" is not defined in the Draft Permit. The Draft Permit should be amended to provide a 60-day timeframe to allow co-perrnittees time to effectively train new personnel.	The Revised Draft permit training requirements have been modified to provide a 60-day timeframe.
76	4.1.3.3	The New Requirement for the SWMP to Document Roles and Responsibilities Must Provide for An Implementation Timefrarne. The Draft Permit contains a new requirement in Section 4.1.3.3 for co-permittees to modify their SWMPs to "clearly identify the roles and responsibilities of all offices, departments, divisions, or sub-sections" and to include any necessary agreements, contracts, or memoranda of understanding between said entities. Because this provision may necessitate drafting and implementing agreements, the Permit should provide a 180 day timeframe for implementation.	The timeframe has been changed to 180 days.
77	4.2.4.1.3	The Draft Permit Requires the Co-Permittees to Ensure Continued Coverage Under UDEQ's Construction Permits. The Draft Permit includes new language requiring co-permittees to "ensure" that construction sites "obtain and rnaintain coverage under the UPDES Storm Water General Permits for Construction Activities" for the duration of the project. Although the City can impose a requirement on construction-site operators to obtain coverage, it is overly burdensome to require the City to ensure that that coverage is obtained and maintained. Responsibility for implementing that permit program lies with the DWQ	This requirement has been edited in the revised permit.
78	FS p. 3, ¶ 1	There is a reference to clarifying that emergency firefighting activity is an allowable discharge, but this language was already included in the 2013 permit.	Noted.
79	FS p. 3, Public Education and Outreach	The Fact Sheet indicates that audiences have been changed to remove the reference to "businesses," but this change is not reflected in Section 4.2.1 of the Draft Permit.	Change has been made to permit.
80	4.2.2.3	This provision requires co-permittees to post the latest version of the SWMP document on their websites within 120 days of the effective date of the Perrnit. It should be arnended to clearly reflect a 180-day implementation timefrarne, consistent with the City's requested changes to Section 4.0.	Change made.
81	4.2.4.3.2	The phrase "sensitivity of receiving waterbodies" is vague and could be interpreted a number of ways. If this is a required factor that must be considered, it should be defined in the Draft Permit so co-permittees can ensure they are applying it consistently.	Sensitive waters refers to high quality waters and Impaired waters. This has been clarified.
82	4.2.4.4	This provision now prohibits an individual or entity who prepares a SWPPP for a construction project to perform construction-site inspections. It's unclear what the objective of this change is and whether there have been problems in the past that make this change necessary. There are very few stormwater consultants with appropriate expertise available in the Salt Lake Valley. This restriction would further narrow the available field of qualified assistance.	The provision is intended to prevent conflict of interest by prohibiting the same entity from preparing the SWPPP for the operator and performing oversight inspections on behalf of the MS4.
83	4.2.3.3.4	This new section requires co-permittees to conduct annual inspections of priority areas. However, this permit condition should be removed as redundant. Other inspection requirements—including dry-weather screening, outfall inspections, IDDE tracing and elimination, and additional training requirements will achieve the same purpose as the annual inspection of priority areas proposed in this section. Accordingly, this section of the Draft Permit should be removed.	Priority area inspections are separate and broader than IDDE and dry weather screening outfall inspections because they may include other areas of an MS4's jurisdiction that have potential for storm water pollution. Priority are inspections have been retained in the revised permit.
84	4.2.5.3.3	In addition to the concerns regarding LID requirements raised above, UDEQ has removed the language "where practicable" from this section, rnaking this an absolute requirement. This deletion is not required by the Phase II regulations and is inconsistent with the MEP standard.	The retrofit requirement has been moved to Part 4.2.5.5 and has been revised for clarity.
85	4.2.6.6.4	The Draft Permit replaces the term "surface waters" with Waters of the State, which significantly broadens the scope of the provision. Does this mean that a discharge to the ground would be a violation of the permit?	Yes, groundwater is a Water of the State per Permit Part 7.46.
86	7.23	The defined term "Indian Country" is not used anywhere in the permit and should be removed.	Definition removed.