



Agency Comment Responses on the December 21, 2019 Draft Public Notice Jordan Valley Municipalities UPDES Permit for Discharges from Municipal Separate Storm Sewer Systems (MS4s) UTS000001 and Fact Sheet Statement of Basis

Comment Number	Commentor	Permit Part	Comment	DWQ Response
1	Craig Fairbaugh, Contech	4.2.5.1.2	Suggested re-wording to stress importance of maintenance over life cycle of the project. 'This objective must be accomplished by the use of practices that are designed, constructed, and maintained for the life cycle of the project, to infiltrate, evapotranspire and/or harvest and reuse rainwater.'	Change was not made. Maintenance is discussed in Permit Part 4.2.5.2.
2	Craig Fairbaugh, Contech	4.2.5.1.2	Consider replacing the requirement that a 10% increase in impervious surface in redevelopment projects will manage rainfall on-site to "Where redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must prevent the off-site discharge of the precipitation from all rainfall events less than or equal to the 80th percentile rainfall event."	The retention standard criteria was developed through collaboration between the DWQ, Utah League of Cities and Towns, Utah Home Builder's Association and the Utah City Engineers Association. The addition of separate retention criteria for redevelopment was intended to address the challenges and space constraints associated with redevelopment, particularly in a built-out, urban environment. All parties involved in the development process agreed to the redevelopment criteria. Therefore a change will not be made at this time.
3	Craig Fairbaugh, Contech	4.2.5.1.3	Strongly recommend amending the DWQ LID manual Appendix C fact sheets to only include practices which infiltrate, evapotranspire, or harvest stormwater per section 4.2.5.1.2. If not amended, Appendix C allows for practices which do not meet 4.2.5.1.2., and the permit intent will not be met. BMPs that provide treatment only, with partial or no infiltration, should be clearly identified as considerations for alternative compliance only, not LID.	Agreed. This will be noted in the LID manual when updated.
4	Craig Fairbaugh, Contech	4.2.5.1.3	Appendix C must be amended to meet the permit intent of LID BMPs which infiltrate, evapotranspire, or harvest stormwater on site.	Agreed. This will be noted in the LID manual when updated.
5	Craig Fairbaugh, Contech	4.2.5.1.3	Wording should be changed to state "If a Co-Permittee has not adopted specific LID practices from Appendix C, any LID approach that meets 4.2.5.1.2. and is feasible may be used to meet this requirement."	Change has been made.
6	Craig Fairbaugh, Contech	4.2.5.1.5	More guidance is needed for acceptable alternative design criteria that reduce pollutants to MEP and suggest adding the following numeric treatment standard when LID is infeasible- "Alternative design criteria practices must remove 80% TSS from the 80th percentile storm event, or the portion of the 80th percentile storm event which cannot be infiltrated, evapotranspired, or harvested."	The retention standard criteria was developed through collaboration between the DWQ, Utah League of Cities and Towns, Utah Home Builder's Association and the Utah City Engineers Association. A treatment standard for situations when retention is infeasible may be considered in the future through a similarly collaborative process..
7	Craig Fairbaugh, Contech	4.2.5.1.5	Suggest replacing reference to "excessive costs, or others" with 'other technical reasons.' Reducing runoff volume from 90th to 80th percentile allows for more economical options to achieve permit compliance rendering "excessive costs" unnecessary and open to interpretation. Permit language for infeasibility should be clear and defined.	Feasibility determinations related to excessive costs will be dependent on the site, city, and other parameters of the project. These determinations will be made by the Co-permittee on a case-by-case basis.
8	Craig Fairbaugh, Contech	4.2.5.2	Suggest adding 'however no changes will be allowed which contradict the permit.' at the end of sentence requiring an appeals process. An appeals process shall be at the discretion of the Co-permittee and there should not be a pathway for project sites to not comply with the Co-Permittee's ordinance, and thus permit.	Operators are required to meet the requirements of the Construction General Permit (CGP). The appeals process is intended to grant the operator recourse if they believe a violation of the CGP was incorrectly identified by the MS4 inspector.
9	Craig Fairbaugh, Contech	4.2.5.2.2	Recommend adding 'A numeric pollutant removal benchmark' to requirement for "pollutant removal expected from selected BMPs". Numeric benchmarks aids in achieving MEP, permit compliance, alternative compliance, design and plan review.	Benchmarks are not required. Pollutant removal efficiency for various BMPs is documented through nationally recognized databases, and in the literature, including Utah's LID manual.
10	Robert Thompson, Salt Lake County	1.2.1.1	The language used in this section is inconsistent with 1.2.1.2.1, 1.5.8 and the NOI submitted by Salt Lake County (previously accepted by DWQ). It also contradicts numerous correspondences with DWQ personnel and determination from EPA and DOJ which all stated Unincorporated Salt Lake County is to be administered by the Greater Salt Lake Municipal Services District (MSD). Please provide an explanation for the change here.	1.2.1.2.1 states that the permit covers Salt Lake County facilities outside of the unincorporated areas of Salt Lake County that are not owned by the MSD. This would include, for example, the County Fleet Management located in Midvale. Part 1.5.8 refers to a Phase I MS4 requirement for Industrial and High Risk Runoff, which is not a requirement for Phase II permittee MSD.
11	Robert Thompson, Salt Lake County	1.2.1.2.1	What jurisdiction is this referring to, need to clarify.	Part 1.2.1.2.1 refers to Salt Lake County owned facilities outside unincorporated Salt Lake County that are not owned or operated by the MSD. If there are none for these facilities, this Part does not apply.
12	Robert Thompson, Salt Lake County	1.4	Hydrostatic de-watering UPDES permits should have to give notice to the MS4 in which they operate. Local resources are frequently used to trace these sources as IDDE incidents or illegal connections.	This comment would need to be made for Permit UTG070000 General Permit for Construction Dewatering and/or Hydrostatic Testing.
13	Robert Thompson, Salt Lake County	1.4.6	Not clear what "consistent with the TMDL" really means. Can the Division provide insight into this?	Section 1.4.6 states that discharges must be consistent with EPA-approved waste loads if applicable (at the time of NOI submittal). Currently, the Permit does not include EPA-approved TMDL waste load allocation however it could in the future.
14	Robert Thompson, Salt Lake County	1.6.3	Should this be Plan or Program?	It should be "Plan." Change has been made.
15	Robert Thompson, Salt Lake County	2.3.2.3	The overall WQ concerns seems a vague request. Are guidance documents available for this item?	Part 2.3.2.3 asks the permittee to document the water quality reasons for updates/revisions made to the SWMP.
16	Robert Thompson, Salt Lake County	2.3.2.9	'specific details' phrase is vague. Can the Division offer insight on how to approach this?	The SWMP must describe thoroughly how the permittee plans to meet the requirements of each MCM. Specific details may include for example, SOPs, forms, flow charts, maps, schedules, contacts, agreements, etc.
17	Robert Thompson, Salt Lake County	3.1.2	Are there any fact sheets or guidance on how to do this?	See the following EPA documents: <i>Total Maximum Daily Loads to Stormwater Permits Draft Handbook</i> , 2008 <a href="https://www.epa.gov/sites/production/files/2015-11/documents/tmdl-sw_permits11172008.pdf">https://www.epa.gov/sites/production/files/2015-11/documents/tmdl-sw_permits11172008.pdf</a> , <i>Incorporating Green Infrastructure Concepts into Total Maximum Daily Loads</i> , 2007, <a href="https://www.epa.gov/tmdl/incorporating-green-infrastructure-tmdls">https://www.epa.gov/tmdl/incorporating-green-infrastructure-tmdls</a> , <i>Total Maximum Daily Loads and National Pollutant Discharge Elimination System Storm Water Permits for Impaired Water Bodies: A Summary of State Practices</i> , 2007, <a href="https://www.epa.gov/tmdl/total-maximum-daily-loads-and-national-pollutant-discharge-elimination-system-storm-water">https://www.epa.gov/tmdl/total-maximum-daily-loads-and-national-pollutant-discharge-elimination-system-storm-water</a>
18	Robert Thompson, Salt Lake County	4.1.2.2	Does the Division have a preferred \$/person amount that designates "Resources Necessary" to comply?	No, DWQ does not designate a dollar amount. The resources required to comply will vary for each MS4.
19	Robert Thompson, Salt Lake County	4.2.2.1	Clarification requested on what defines a 'policy directive'?	The MS4 must create opportunities for the public to provide input on their SWMP.
20	Robert Thompson, Salt Lake County	4.2.6.6.3	Salt Lake County Flood Control Engineering requests an exemption from the language in 4.2.6.6.3 in the event of a flood fight. Most of the water and sediment to be removed from flood control facilities are related to snow melt runoff, not rain events and tend to concentrate in the spring months following large snowpack melt events. If spring runoff reaches levels that require intervention Flood Control it is by definition an emergency response and must be taken care of when and where necessary.	Handling, treatment, storage and disposal of materials removed from the MS4 other than as described in Permit Part 4.2.6.6.3 shall be reviewed and approved by the <i>Director</i> of the Division of Water Quality.
21	Robert Thompson, Salt Lake County	4.2.6.6.3	Flood Control also requests a definition of "contained area" as containers large enough to hold dredge spoils in the volumes described above do not exist. A list of acceptable BMP's or a guidance document should be produced so this compliance target can be achieved.	The "contained area" must be an impervious surface and must not allow storm water that comes into contact with the material or the liquid portion of the material to discharge. Examples could be water-tight roll-off containers, or a paved surface with berms.
22	Cherie Wood, South Salt Lake	4.2.5.1.2	The retention requirement for redevelopment projects should be clarified to apply a net gain standard for all redevelopment projects. The 10% increase in impervious surface threshold is vague and could lead to confusion in practice. The commentor suggests removing the 10% threshold and apply the net-gain standard for all redevelopment projects. If the 10% threshold remains in the permit, the commentor requests that the 80% retention standard only apply to the portion of the site being redeveloped.	The redevelopment criteria was developed through collaboration between the DWQ, Utah League of Cities and Towns, Utah Home Builder's Association and the Utah City Engineers Association. Calculation of impervious surface is part of the water quality volume calculation. The redevelopment criteria will not be changed at this time. As currently drafted, the 80% retention standard only applies to the increased impervious cover on the site being redeveloped.
23	Cherie Wood, South Salt Lake	4.2.5.1.3	Documentation requirements for Low Impact Development are excessive and should be reduced. These requirements place an excessive burden on the Co-Permittees, and would make the review process much more complicated. Given these concerns, as well as the fact that neither state nor federal regulations authorize DWQ to incorporate these LID requirements into the permit, DWQ should remove Part 4.2.5.1.3 from the permit.	EPA has delegated authority to the State to implement the UPDES program, including development and implementation of post-construction retention standards that are clear, specific, and measurable. The record keeping requirements in the permit are necessary to ensure proper implementation of the permit requirements.



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24	Cherie Wood, South Salt Lake	4.2.1.5	Training requirements in Part 4.2.1.5 are overbroad and should be amended to only target individuals whose positions relate to the training topics. Some of the training requirements in the revised draft permit remain too broad because they apply to employees whose primary job responsibilities do not concern the requirements or issues addressed by the training. Commentor requests that Part 4.2.1.5 be removed from the draft permit and instead rely on Parts 4.2.3.11 and 4.2.4.5 that require annual training tailored to target the individuals whose positions concern the issues addressed.	Agreed. Part 4.2.1.5 has been removed.
25	Cherie Wood, South Salt Lake	4.2.3.3.1 and 4.2.3.3.2	Commentor requests removal of Parts 4.2.3.3.1 and 4.2.3.3.2 that require priority area inspections as duplicative of other permit requirements for inspections including Parts 4.2.3.3.3 (dry weather screening), 4.2.6.5.1 (visual inspections of high priority facilities and related stormwater outfalls), 4.2.6.5.2 (comprehensive inspections of high priority facilities). Commentor also notes inspections are part of standard operating procedures that address regular inspection of conveyance and structural controls, illicit discharges, and areas with onsite sewage disposal systems, older sewer lines or with a history of sewer outflows or cross-connections.	The inspections required of Part 4.2.3.3.3 are for outfalls only and the inspections required of Part 4.2.6.5.1/4.2.6.5.2 are for MS4-owned facilities. The priority area inspections required of Parts 4.2.3.3.1/4.2.3.3.2 require the MS4 to evaluate areas of the MS4 with history and/or potential of illicit discharges, connection or spills. The areas inspected will vary for each MS4.
26	Cherie Wood, South Salt Lake	Definition of waters of the State	Commentor requests replacing the term "waters of the state" with "surface waters" to narrow the scope of the draft permit and exclude from regulation discharges to groundwater to be consistent with UPDES rule, federal law and stormwater management practice. Specifically UAC R317-8-2.1(2)(i) is cited as support for this change which states that "[d]ischarges which are not regulated by the U.S. EPA under Section 402" of the CWA do not require a permit under UPDES. The commentor also cites common stormwater management practices that rely on infiltration to groundwater that might be considered a violation if subject to UPDES requirements.	This Permit is both a state and federal permit, and, as such, incorporates both state and federal requirements. According to Utah Administrative Code R317-8-2, the UPDES program requires permits for discharges to waters of the State. In Utah, waters of the State includes groundwater.
27	Cherie Wood, South Salt Lake	5.1	Commentor requests removal of the narrative standard in Part 5.1 that states "[i]t shall be unlawful, and a violation of this permit, for the Co-Permittee to discharge or place any waste or other substance in such a way as will be or may become offensive[.]" as contradictory to the maximum extent practicable operative standard referenced in parts 4.1.1, 4.2, and in the definitions section of the Permit. The commentor is concerned that including the narrative standard in the permit creates the potential for exposure to strict liability which does not depend on actual negligence or intent to harm.	This comment was answered by the last round of notice and comment on the Draft Permit. For reference, 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. Additionally, based on the stakeholder task force, language has been added to 4.2.3.6.2 of the permit to clarify that it does not impose strict liability.
28	Cherie Wood, South Salt Lake	4.2.5.1.2	Commentor requests DWQ to engage in rulemaking to update its rules consistent with permit requirements specifically in regard to post construction requirements related to stormwater retention and low impact development. This is a restated comment provided on the 2018 Draft Permit Comments in which DWQ responded that rulemaking was unnecessary because a particular course of action is not required and it does not represent a change in existing law. While the draft permit allows for deviation when infeasible, the alternative still imposes an additional requirement to provide a rationale for using alternative design criteria that is not set forth in rules and hence cannot be imposed with notice-and-comment rulemaking.	This comment was answered by the last round of notice and comment on the Draft Permit. For reference, rulemaking is not required because the Permit's post-construction measures do not unconditionally require a particular course of action, and thus, are not generally applicable nor do they represent a change in existing MEP standard because they allow the Permittee to explain why a deviation is needed. The need to provide a rationale for alternative design criteria likewise does not represent a deviation from or addition to the existing MEP standard. Rather, it allows co-permittees greater flexibility in achieving the existing standard set by federal law. However, DWQ is committed to updating and clarifying the rules that govern storm water permitting.
29	Dan Johnson, West Valley City, Tyler Shelley Sandy City	4.2.5.1.2	Commentor states that March 1, 2020 implementation date does not allow sufficient time to change ordinances to implement this requirement and should be set relative to the issuance of the permit, specifically to SWMP redevelopment.	The implementation dates have been changed to July 1, 2020.
30	Dan Johnson, West Valley City	4.2.5.1.4	Commentor requests clarification if Part 4.2.5.1.4 requires rainwater harvesting on all projects and how is this dependent on the volume of water collected and stored for beneficial use.	Rainwater harvesting is an option for retention of the volume associated with the 80th percentile storm event. It is not required.
31	EPA R8	Permit	The EPA's review focused on consistency with federal requirements under the CWA and its implementing regulations.	Thank you for your comments.
32	EPA R8	4.2.5	A previous version of the draft permit was public noticed on July 25, 2018 and included a 90th percentile post-construction retention standard, which fit within the scope of Section 402(p)(3)(B)(iii) of the Clean Water Act to require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP). The current draft changes the post-construction retention standards for controlling stormwater discharges to the 80th percentile rainfall event and includes a new threshold trigger for redevelopment sites, requiring them to implement the post-construction retention standard only if impervious surface area increases by greater than 10%. Each of these changes represents a reduction from the 90th percentile post-construction retention standard and UDWQ's statutory MEP determination from the previous draft permit.	The 90th percentile post-construction retention standard in the previous draft permit has not, in fact, been implemented in Utah for the Jordan Valley Municipalities MS4s. Therefore, although the final permit represents a change on paper, no numeric post-construction retention standard has been implemented through this permit. The statement of basis has been updated to provide further rationale and justification for the final post-construction retention standard for both new and redeveloped sites.
33	EPA R8	Fact sheet	The draft fact sheet provides the following justification for the change in the post-construction retention standards: "Based upon input provided by the development community and permitted MS4s during the Land Use Task Force stakeholder process, the retention requirement for new and redevelopment were separated and reduced to the 80th percentile storm event....The rationale for using the 80th percentile event is that it represents the majority of runoff volume on an annual basis and that larger events would be very difficult and costly to control." (page 6). The same rationale was included in the previous draft permit fact sheet to support the 90th percentile post-construction standard and provided no additional information as to why the 90th percentile no longer represents MEP (e.g., challenges with BMP treatment efficacy, implementation issues with MS4s currently retaining the 90th percentile, etc.). Prior to finalizing the permit, the fact sheet should be updated to provide more information to support the UDWQ's decision on the 80th percentile MEP determination in addition to the 10% impervious surface increase trigger for redeveloped sites.	In reviewing additional literature, diversity of soil types and site conditions around the state, and consulting with practicing design engineers, UDWQ has determined that the 80th percentile event represents the maximum extent practicable for retention as a state-wide standard. While a higher level of retention may be practicable in some areas of the state, it is not practicable for many communities found in Utah's valleys with collapsible soils, high ground water, and poor infiltration rates. Cost and engineering data are site-specific and cannot be provided universally across all conditions in the state. The fact sheet has been updated to provide additional information supporting Utah's MEP determination.
34	EPA R8	4.2.4.4.4	The draft permit also includes a provision, Section 4.2.4.4.4, allowing for construction site inspections to be conducted using an electronic tool in place of up to half of the on-site MS4 inspections. This provision implements, in part, the requirement in 40 CFR 122.34(b)(4)(i)(F) that the permittee "develop and implement...[p]rocedures for site inspection and enforcement of control measures." While the electronic tool provides a method for site inspections, the provision lacks sufficient clarity concerning how an electronic tool will be used for inspections and subsequent enforcement by an MS4. To ensure that this provision is "expressed in clear, specific, and measurable terms" as required by 40 CFR 122.34(a), it should be revised to include information on who will be using the electronic tool (e.g., the MS4 and/or the construction site operators), clear criteria for inspections using the electronic tool, an standards for sharing of electronic information with the MS4. In lieu of incorporating these specific elements in the permit provision, UDWQ may wish to consider developing implementation guidance for the use of electronic inspections tools and referencing it in the existing permit provision.	UDWQ has provided clear, specific, and measurable requirements for inspection procedures in Section 4.2.4. The final permit has added language that requires the permittee to demonstrate to the Director that an electronic tool meets these requirements. If there is interest in adopting electronic tools, amongst permittees, UDWQ will develop and public notice guidance for permittees to use in developing their demonstrations. It is UDWQ's intent to allow permittees more flexibility in implementing inspection programs as efficiently as possible, while maintaining all of the existing requirements of inspections. UDWQ is careful not to narrow the definition of the available tools because it would be improper to endorse a specific software or tool.