

Comments on the December 24, 2019 Draft Public Notice UPDES Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) UTR090000

Comment Number	Commentor	Permit Part	Comment	DWQ Response
1	Todd Christensen, Bountiful City	4.2.6.3	Requirement to identify "high-priority" municipal facilities is ambiguous, suggest changing the word "identify" to "consider", such that permit would read, "...the Permittee must consider as 'high-priority'..." If a facility having any of the characteristics listed are required to be designated as "high-priority," then it is far too restrictive and burdensome. If stating that a facility having all of the characteristics listed are to be designated as "highpriority," then that is much more reasonable, yet perhaps no municipal facilities would be considered as "high-priority" if no materials are found to be stored incorrectly.	Suggested edit was not made because if the facility meets one of the criteria listed in Permit Part 4.2.6.3, it would be considered "high-priority".
2	Todd Christensen, Bountiful City	4.2.4.4	It seems the word "Co-Permittee" should be replaced with "Permittee" in third sentence. Question on whether this is for the Permittee, Co-Permittee or both?	Change has been made.
3	Todd Christensen, Bountiful City	4.2.6.5.3	Reference for attempting to evaluate discharge four times during the wet season should be changed to once during the wet season.	Change has been made.
4	Craig Fairbaugh, Contech	4.2.5.1.2	Insert "for the life cycle of the project" to stress importance of maintenance and promote adoption of maintainable practices.	Change was not made. Maintenance is discussed in Permit Part 4.2.5.2.
5	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 build-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.
6	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.
7	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.
8	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.
9	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.
10	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.
11	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 grant the operator recourse if they believe a violation of the CGP was incorrectly identified by the MS4 inspector.
12	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.
13	Dana Shuler, Jones and Associates	2.3	Clarification requested on requirement to submit revised SWMPs within 180 days of permit effective date, original permit expires 2/28/2021, modification indicates effective date moving up to MM/DD/2020. Do all Permittees have to submit revised SWMPs within 180 days of the new effective date or wait until the next permit cycle?	The Permittee must update their SWPPP to reflect the permit changes within 180 days of the permit effective date.
14	Dana Shuler, Jones and Associates	Statement of Basins (4.0)	Suggest adding clarification to references of "original permit" and "reissuance" in permit duration, recommended wording is 'five years after the effective date of the original Permit' or 'five years after the original effective date of the Permit'. Alternatively, you can clarify that "The Modified Permit shall become effective on Month, Day, 2020; however, the original effective date of the Permit remains unchanged."	A permit issuance timeline has been added to the FSSOB to clarify dates.
15	Dana Shuler, Jones and Associates	NA	Recommendation to move little revisions (training, inspections, etc.) from this permit modification into the next permit cycle (next year).	DWQ has repeatedly received requests for consistency with permitting. The Jordan Valley Municipalities (JVM) Permit and Small General MS4 Permit represent 97% of Utah's MS4 permit universe. The Small permit was updated to reflect the renewed JVM permit to promote consistency.

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16	Paul Taylor, JUB Phyllis Mayhew, Stantec	Cover page and 4.2.2.2	Multiple commentators - Recommendation to extend permit expiration date to Feb. 28, 2025 to coincide with the Jordan Valley permit to minimize problems associated with different requirements between the two and to save the State and small MS4s from repeating the same process next year including resubmitting SWMPs when additional changes/updates are unlikely. Concern also expressed of significant impact to MS4 programs to complete major updates to the SWMP, SWPPPs, retraining employees, ordinance updates, etc. Request that the Director treat this as a modification and reissuance with a new term or revoke and reissue with a new term. Statement made that not every modification was clearly called out in the Fact Sheet.	The permit cannot be extended to 2025 under the regulations that govern permit modifications. UDWQ intends for this permit to be renewed on-time in 2021.
17	Paul Taylor, JUB	4.2.2.2	Replace "Applicants" with 'Permittees' in second sentence	Change made.
18	Paul Taylor, JUB	4.2.4.4.1	Add 'applicable to road/street projects only' following "Utah Department of Transportation Erosion Control Supervisor (ECS)" item at bottom of list of "qualified person" certifications.	Change made.
19	Paul Taylor, JUB	4.2.5.2.3	Suggest removing "annual" and inserting 'at least every other year' in second sentence with regard to private property owner/operators or qualified third parties conducting maintenance and providing certification of the same to be consistent with requirements under 4.2.5.2.5	No change made. No rationale has been provided for a reduction in the certification frequency in Part 4.2.5.2.3. This requirement is necessary to ensure proper implementation of permit requirements.
20	Paul Taylor, JUB	4.2.6.9	Typographical error in first sentence, "that" is repeated twice and missing from latter part of sentence. It should read "The Permittee must develop a plan to retrofit existing developed sites that the Permittee owns or operates that are adversely impacting water quality."	Change made.
21	Paul Taylor, JUB	4.2.4.4	Clarification requested on prohibition of an individual or entity who prepares the SWPPP against performing construction site inspections on behalf of the Permittee. If the project is a city project, put together by city staff, including the SWPPP, can city inspectors do the SWPPP oversight inspections?	Part 4.2.4.4. refers to entities who perform inspections on behalf of the MS4. The MS4 may prepare the SWPPP and conduct the MS4 required inspections.
22	Ashley Thoman, Layton City	4.2.4.4.4	Does this section only apply to those permit holders that choose to become a co-permittee with other entities? If not "Co-Permittee" should be changed to 'Permittee'.	Change made.
23	Ashley Thoman, Layton City	4.2.5.1.2	Suggest rewording term "aimed at net gain" in first sentence of last paragraph to better explain what is meant by this phrase.	The phrase "aimed at net gain to onsite retention" for redevelopment projects refers to in overall increase in the retention volume between the originally developed site and the redeveloped site in accordance with Permit Part 4.2.5.1.2.
24	Kelsey Christiansen, Summit County	Cover page	Clarification requested on reference to "Director of the Utah Water Quality Board" in third paragraph. Should this be reworded to be "Director of the Division of Water Quality"?	Change made.
25	Kelsey Christiansen, Summit County	1.2.1 and 1.2.1.1.1	Reference to "Indian Country", definition not included in permit as stated.	Reference to Indian Country removed.
26	Kelsey Christiansen, Summit County	2.3.1	Statement that "The requirements of this part apply only to Renewal Permittees..." is confusing and conflicting authoritative language if this is treated as a permit modification and not a reissuance.	"Renewal Permittees" refers to existing permittees, i.e. those currently covered by this permit.
27	Kelsey Christiansen, Summit County	3.1.1.1	Insert space following "Director" in third sentence.	Change made.
28	Kelsey Christiansen, Summit County	4.2.4.2.2	Suggest rewording statement "Documentation and tracking of all enforcement actions." to 'Must document and track all enforcement actions.'	Change made.
29	Kelsey Christiansen, Summit County	4.2.4.4.1	Question on whether Permittee can use their own inspection form if it includes all the requirements found in DWQ's inspection form. Also link provided ( <a href="http://www.deq.utah.gov/Permits/water/updes/stormwatermun.htm">http://www.deq.utah.gov/Permits/water/updes/stormwatermun.htm</a> ) no longer works.	Yes, the MS4 can use their own form as long as it includes all of the information found on the DWQ form. The link has been updated.
30	Kelsey Christiansen, Summit County	4.2.4.4.2	Does land disturbance include the installation of perimeter BMPs?	Typically, perimeter BMPs are installed prior to land disturbance.
31	Kelsey Christiansen, Summit County	4.2.4.4.3	Link to " <a href="http://www.deq.utah.gov/Permits/water/updes/stormwatermun.htm">http://www.deq.utah.gov/Permits/water/updes/stormwatermun.htm</a> " no longer works.	The link has been updated.
32	Kelsey Christiansen, Summit County	4.2.5.1.4	Request for clarification on whether MS4 is being asked to enforce rainwater harvesting requirements.	Rainwater harvesting is one LID option and is not a requirement of the permit.
33	Kelsey Christiansen, Summit County	4.2.6.5.1	Suggestion to include more frequent inspection schedules as dictated by other permits, e.g. industrial stormwater permit for a County owned landfill.	Permit Part 4.2.6.5 describes the minimum required inspection frequency determined to be appropriate for MS4s.
34	Kelsey Christiansen, Summit County	6.1	Suggestion to replace "renewal application" in second sentence with 'NOI' or 'coverage'.	Change made to "permit coverage."
35	Kelsey Christiansen, Summit County	6.3	Statement that the permitting process is different for stormwater reapplication than what's presented in this section and should be updated accordingly.	No change made. Part 6.3 includes the process for reapplication.
36	Kelsey Christiansen, Summit County	6.7, 6.8.1, and 6.9	Suggestion to replace "application" with 'NOI'.	No change made. The NOI is the application.
37	Kelsey Christiansen, Summit County	6.8.2.3	Typographical error, replace "and" with 'an' in first sentence.	Change made.
38	Kelsey Christiansen, Summit County	7	Suggestion to specifically reference residential homes under "Common plan of development or sale" definition.	The term "Common plan of development or sale" concept is a broad definition that applies to more than residential homes. No change has been made.
39	Christian Buehler, University of Utah	4.2.4.3.2	Statement "From our phone conversation it didn't seem like your intention was to remove the SWPPP checklist review requirement and I haven't been able to locate that requirement if it has been moved to another citation."	SWPPP checklist requirement moved to 4.2.4.3.

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40	Christian Buehler, University of Utah	4.2.5.4.2	Section references "...inspections conducted pursuant to Part 4.2.5.5..." which is now about training requirements, not inspections.	Reference updated to Part 4.2.5.2.5.
41	Christian Buehler, University of Utah	4.2.5.2.2, 4.2.5.3.1, and 4.2.5.3.2	The following three citations (MCM5, Long Term BMPs) to me all seem to require the same thing just worded slightly differently...when we spoke on the phone I was specifically trying to figure out if 4.2.5.3.1 was requiring something akin to a NEPA review, but you indicated this was not so...	Part 4.2.5.2.2 refers to the requirement for the Permittee's ordinance/other regulatory mechanism to protect water quality. Part 4.2.5.3.1 requires the Permittee to implement procedures to assess water quality impacts associated with new/redevelopment. Part 4.2.5.3.2 requires the Permittee to conduct development plan review to ensure compliance with the requirements of the MCM. While the Permit requires an assessment of potential water quality impacts associated with new/redevelopment projects, a formal NEPA-level assessment is not required.
42	EPA Region 8	Permit	The EPA's review focused on consistency with federal requirements under the CWA and its implementing regulations.	Thank you for your comments.
43	EPA Region 8	4.2.5	The draft permit proposes to replace the current stormwater discharge controls that require a post-construction retention standard based on the 90th percentile rainfall event with a less stringent post-construction retention standard based on the 80th percentile rainfall event. Additionally, the draft permit proposes to include 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 in the current permit.	The 90th percentile post-construction retention standard in the current permit has not, in fact, been implemented in Utah because the implementation date is March 1, 2020. Therefore, although the modified permit represents a change on paper, no numeric post-construction retention standard has been implemented through this permit. Additionally, the circumstances on which the 90th percentile retention standard was based have changed as explained further in the Fact Sheet Statement of Basis.
44	EPA Region 8	Fact sheet	As stated in the EPA's February 28, 2019 letter to the UDWQ with comments on the last proposed modifications to this permit, this 90th percentile post-construction retention standard fits 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 delay in the implementation deadline of the 90th percentile post-construction retention standard does not change the fact that it was a MEP determination.	The permit modification falls under 40 CFR.62(a)(2), which allows states to modify a permit when the Director receives new information. The first post-construction retention standard, 90th percentile storm, was selected following the EPA's October 2015 NPDES Permit Quality Review (PQR) Utah. The PQR included a critical finding that Utah's post-construction storm water management requirements were insufficient to meet maximum extent practicable (MEP) and could include a specific numeric design standard in order to be sufficient. As a result, the Division promptly included a numeric standard, which it originally set at 90th percentile, in the April 2016 version of the permit. Later, the 2016 NPDES MS4 General Permit Remand Rule (December 2016 regulations) at 81 Fed. Reg. 89320 clarified the requirement that states incorporate clear, specific, and measurable permit requirements to meet each of the 6 minimum control measures in 40 CFR 122, 34, one of which is post-construction storm water management in new development and redevelopment sites. The guidance issued concurrently with the December 2016 regulations still did not define specific numeric post-construction standards, relying on states to determine how to best meet the control measure to the maximum extent practicable, and prompting the Division to revisit its numeric standard with the newly acquired knowledge that the EPA had declined to adopt a national standard. Thus, the circumstances and information on which the 90th percentile retention standard was based changed materially and substantially since the permit was originally issued.
45	EPA Region 8	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 4). This rationale does not provide 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.). There is no engineering or cost data provided to support the statement that events larger than the 80th percentile "would be very difficult or costly to control."	In reviewing additional literature, diversity of site conditions and climate 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.
46	EPA Region 8	4.2.5	Further, there is no justification for adding a provision that the post construction standard is contingent on there being a 10% impervious surface increase for redeveloped sites.	The fact sheet has been updated to clarify the rationale for the post-construction retention standard to apply only to redeveloped sites that increase impervious cover by more than 10%.
47	EPA Region 8	4.2.5	In replacing the 90th percentile retention standard with a less stringent 80th percentile retention standard, in addition to adding the 10% impervious surface increase to the redevelopment standard, the UDWQ has changed what it considers MEP without adequate justification.	The fact sheet has been updated to clarify and supplement the justification for UDWQ's determination of MEP.
48	EPA Region 8	Fact sheet	The EPA has identified two other areas in the draft permit that require additional information. First, the UDWQ has not demonstrated that any of the causes for modification under 40 CFR 122.62(a) exist to modify the current permit. 40 CFR 122.62(a)(2) could apply in this situation, as it allows the UDWQ to modify the permit if it receives new information that "was not available at the time of permit issuance...and would have justified the application of different permit conditions at the time of issuance." UDWQ has not identified what additional information it has received or how that information supports the application of different permit conditions from the time of issuance.	UDWQ elected to modify this permit under 40 CFR 122.62(a)(2). The fact sheet has been updated to further explain this rationale.

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49	EPA Region 8	Permit and Fact sheet	Second, to meet the anti-backsliding exception in 40 CFR 122.44(1)(1) the UDWQ must demonstrate that "circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 122.62."	The permit modifications in this case are allowable under 40 CFR 122.62 and do not run afoul of 40 CFR 122.44 because the 90th percentile was never implemented. The permit modification falls under 40 CFR.62(a)(2), which allows states to modify a permit when the Director receives new information. See response to Comment #44.
50	EPA Region 8	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, 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 inspection 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.
51	EPA Region 8	Fact sheet	To ensure compliance with the Clean Water Act and its implementing regulations, the following updates to the draft permit and fact sheet are needed: 1. Update the fact sheet to provide more information to justify the UDWQ's decision to modify its MEP determination from the 90th percentile to an 80th percentile standard and to include a 10% impervious surface increase trigger for redeveloped sites.	The fact sheet has been updated to provide additional information supporting Utah's MEP determination.
52	EPA Region 8	Fact sheet	2. Update the fact sheet to demonstrate at least one of the causes for modification listed under 40 CFR 122.62(a) has been met, such as receipt of new information not available at the time of permit issuance.	The fact sheet has been updated to explain Utah's cause for modification under 40 CFR 122.62(a)(2), new information.
53	EPA Region 8	Fact sheet	3. Update the fact sheet to demonstrate that the circumstances on which the MEP determination in the current permit were based have materially and substantially changed since the time the permit was issued to comply with the anti-backsliding regulations at 40 CFR 122.44(1)(1).	The fact sheet has not been updated to address anti-backsliding because the modification is allowable under 40 CFR 122.62(a)(2). See also response to Comment Nos. 44 and 49.
54	EPA Region 8	Fact sheet	4. Update the permit provisions regarding the electronic inspection tool in Section 4.2.4.4.4 of the permit to be clear, specific, and measurable as required by 40 CFR 122.34(a).	The permit has been clarified to require a permittee to demonstrate to the director that a new electronic tool meets the requirements outlined in Section 4.2.4 which are clear, specific, and measurable.