State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

Utah Water Quality Board Meeting
Via Adobe Connect

December 2, 2020
Work Meeting Begins at 8:30 am
Board Meeting Begins at 9:30 am

AGENDA

Work Meeting

Presentation of Financial Hardship Policy Alternatives or Hardship Criteria – Draft Policy Discussion ..... Ken Hoffman & Skyler Davies

Water Quality Board Meeting – Roll Call

A. Electronic Meeting Notice ..... Jennifer Grant

B. Minutes:

Approval of Minutes for October 28, 2020 Water Quality Board Meeting ..... Jennifer Grant

C. Executive Secretary's Report ..... Erica Gaddis

D. Funding Requests:

1. Financial Report ..... Emily Cantón
2. Request for Spanish Fork Authorization ..... Skyler Davies
3. Request for San Juan Spanish Valley SSD Authorization ..... Ken Hoffman

E. Rule Making:

1. Request to Initiate Rule Making for R317-8-3, R317-8-4, and R317-8-11, Storm Water Discharges..... Lisa Stevens
2. Request to adopt amendments, R317-2 Standards of Quality for Waters of the State ..... Chris Bittner

F. Public Comment Period

G. Meeting Adjournment

Next Meeting January 27, 2021
8:30 am
Via Adobe Connect
https://utdeq.adobeconnect.com/wqb

DWQ-2020-023466
Revised 11/23/2020

In compliance with the American Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Larene Wyss, Office of Human resources, at (801) 536-4281, TDD (801) 536-4284, or by email at lwyss@utah.gov at least five working days prior to the scheduled meeting.

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Erica Brown Gaddis, PhD
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I, **Jennifer Grant**, Chair of the **Water Quality Board**, have determined that the **December 2, 2020** meeting of the Water Quality Board will be held electronically without an anchor location.

This determination is based on the following facts:

1. Utah is currently dealing with Covid 19, which has been determined to be a pandemic. Covid 19 is extremely contagious and can be deadly to those who contract it, especially those of advanced age and underlying health conditions.

2. The Agency offices are in Salt Lake County, which is currently in the State's orange moderate risk category. This limits the size of public gatherings to fewer than 20 people and requires the wearing of masks and social distancing. People are encouraged to stay in their homes.

3. A vast majority of Agency staff and the members of the Water Quality Board are teleworking to avoid unnecessary contact with others.

4. The Board room is insufficient to allow social distancing and reasonably safe accommodation of the Water Quality Board and the public.

5. The Water Quality Board uses an electronic platform which allows interested parties to view the meeting, hear discussions and provide written comment.

Dated this 18th day of November, 2020.

Jennifer Grant
Jennifer Grant (Nov 18, 2020 06:52 MST)

Jennifer Grant, Chair
Water Quality Board

DWQ-2020-023464

State of Utah

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Department of
Environmental Quality

L. Scott Baird
Interim Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

MINUTES

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
UTAH WATER QUALITY BOARD
Via Adobe Connect

October 28, 2020
8:30 am Board Meeting

UTAH WATER QUALITY BOARD MEMBERS PRESENT

Scott Baird	Mike Luers
Steven Earley	Emily Niehaus
Gregg Galecki	James VanDerslice
Brandon Gordon	James Webb

DIVISION OF WATER QUALITY STAFF MEMBERS PRESENT

Carl Adams	Samantha Heusser
Krystol Carfaro	Elise Hinman
Skyler Davies	Ken Hoffman
Amy Dickey	Brenda Johnson
Dusty Earley	John Mackey
Judy Etherington	Andrew Pompeo
Erica Gaddis	Lonnie Shull
Jodi Gardberg	Jeff Studenka
Dan Griffith	Jake Vanderlaan
Angela Gunderson	Beth Wondimu
Don Hall	

OTHERS PRESENT

Ashley Sumner	EDO
Austin Ballard	Granger-Hunter Improvement District
Jason Helm	Granger-Hunter Improvement District
Ann Leppanen	Town of Bluff
Jackie Warren	Town of Bluff
Amber Brown	UDAF
Jay Olsen	UDAF

Ms. Grant called the Board meeting to order at 8:30 AM and took roll call for the members of the Board and audience.

Ms. Grant read the Electronic Meeting Notice with regards to the Water Quality Board meeting being held electronically, October 28, 2020 without an anchor location.

APPROVAL OF MINUTES OF AUGUST 26, 2020 MEETING

Motion: **Mr. Galecki moved to approve the minutes of the August 26, 2020 meeting.**

Mr. Luers seconded the motion. The motion passed unanimously.

APPROVAL OF MINUTES OF SEPTEMBER 23, 2020 WORK MEETING

Motion: **Mr. Earley to approve the minutes of the September 23, 2020 work meeting.**

Mr. Gordon seconded the motion. The motion passed with Ms. Niehaus recusing herself due to being absent during the September 23, 2020 work meeting.

EXECUTIVE SECRETARY REPORT

National and Regional

- Dr. Gaddis reported that there is an executive order for Modernizing America's Water Resource Management and Water Infrastructure. This executive order formally creates a "water subcabinet" to integrate across federal agencies on water issues. It is tasked with proposing solutions to water storage issues including Colorado Basin drought, promotes water quality trading, and implements a water reuse action plan.
- Dr. Gaddis also reported on the USACE 401 permitting. There has been a nationwide permit issued and a response is required within 60 days. The Division has asked for an extension.

State and Division Issues and Initiatives

- Dr. Gaddis reported that the Division is preparing for the 2021 legislative session.
  - DEQ legislative performance audit
  - HAB building block for budget
  - GSL levels (HCR10) presentations
- Integrated report (went to public notice on 10/21/2020) https://deq.utah.gov/water-quality/combined-2018-2020-integrated-report
- Dr. Gaddis updated the Board on the Wastewater epidemiology COVID-19 study. Due to a grant this study will transition to the Utah Department of Health on January 1, 2021.

Division Management

- Dr. Gaddis introduced the Division's new Compliance and Enforcement Section manager, Samantha Heusser. She also introduced Ken Hoffman as the new Engineering Section Manager.
- Dr. Gaddis informed the Board that the Division will be recruiting 2 or 3 staff members for the new Compliance and Enforcement Section and 1 staff member for the Engineering Section.

FUNDING REQUESTS

Financial Report: Mr. Mackey updated the Water Quality Board on the Loan Funds and Hardship Grant Funds.

Request for Ken Hoffman as Official Signatory: Dr. Gaddis requested that the Water Quality Board designate Mr. Hoffman, the Water Quality Engineering Manager, as a signatory for official documents associated with the Utah Wastewater Project Assistance Program.

Motion: **Mr. Galecki moved to approve the recommendation that Ken Hoffman be an Official Signatory for documents associated with The Utah Wastewater Project Assistance Program.**

Dr. VanDerslice seconded the motion. The motion passed unanimously.

Request for John Mackey as Acting Executive Secretary: Dr. Gaddis requested that the Water Quality Board designate Mr. Mackey as the Acting Executive Secretary to Water Quality Board. This will allow the Board to transact business should Dr. Gaddis be unavailable.

Motion: **Mr. Luers moved to approve the recommendation that John Mackey be appointed as the Acting Executive Secretary to the Water Quality Board.**

Mr. Gordon seconded the motion. The motion passed unanimously.

Bluff Service Area Dissolution and Forgiveness of Planning Advances: The Town of Bluff is requesting forgiveness of $164,000 in planning advances issued to the Bluff Service Area in 2006 and 2009 for wastewater projects that did not go past the planning stages.

Motion: **Mr. Galecki moved to approve the staff recommendation of forgiving the $164,000 in planning advances made to the Bluff Service Area which are now obligated to the Town of Bluff.**

Ms. Niehaus seconded the motion. The motion passed unanimously.

Granter-Hunter Improvement District Loan Refinancing: GHID is requesting restructuring of their $6,202,000, 20 year, 2.5 percent interest rate loan from the Water Quality Board that was closed on September 28, 2011 for construction of its 2011 Old Main Pump Station and

Collection System Improvements Project. The GHID requests a replacement loan in the amount of $4,085,000 with an interest rate of 1.5 percent. In addition, GHID is requesting that normal debt service and emergency repair and replacement reserve requirements be waived for the replacement bond thereby releasing restrictions on the current reserves of approximately $595,000.

Motion: **Mr. Earley moved to approve the staff recommendations that the Board authorize a replacement loan to Granger-Hunter Improvement District in the amount $4,085,000 with an interest rate of 1.5 percent and a term of 12 years. Staff further recommends that GHID not be required to build and maintain normal debt service and emergency repair and replacement fund reserves in the replacement bond, subject to the special conditions outlined below.**

1. **Granger-Hunter Improvement District must agree to continue to participate annually in the Municipal Wastewater Planning Program (MWPP).**
2. **Granger-Hunter Improvement District must agree to maintain a minimum debt service coverage ratio of 125% for the replacement loan for the life of the loan.**
3. **Granger-Hunter Improvement District must provide a certified annual budget and/or financial statement upon request by the division that demonstrate sufficient revenue to meet a debt service coverage ratio of 125%.**
4. **Granger-Hunter Improvement District must develop, fund and implement an asset management program consistent with the minimum requirements of EPA's Fiscal Sustainability Program for all of the sewerage system and treatment works assets under their management.**

Mr. Luers seconded the motion. The motion passed unanimously.

RULE MAKING

Request to Adopt Amendment R317-1-7, Fremont River Total Maximum Daily Load Study: Ms. Dickey requested authorization from the Board to proceed with incorporating by reference the TMDL study for the Fremont River into Rule (R317-1-7.66).

Motion: **Mr. Webb moved to initiate the change to R317-1.**

Dr. VanDerslice seconded the motion. The motion passed unanimously.

Request to Initiate Rule Make for R317-8-10, Animal Feeling Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs): Mr. Hall requested approval from the Water Quality Board to initiate rulemaking for revisions to the Utah Concentrated Animal

Feeding Operations (CAFO) rule in R317-8-10. The Division also seeks to change language in R317-8-1-1.10(18) to clarify incorporation by reference to the federal CAFO rule.

Motion: **Mr. Galecki moved to initiate the change to R317-8-10.**

Mr. Gordon seconded the motion. The motion passed unanimously.

OTHER BUSINESS

2018/2020 Integrated Report: Ms. Gardberg, Mr. VanderLaan and Ms. Hinman presented the draft combined 2018/2020 Integrated Report to the Water Quality Board.

PUBLIC COMMENTS

No public comments.

MEETING ADJOURNMENT

Motion: **Dr. VanDerslice moved to adjourn the meeting. Ms. Niehaus seconded the motion. The motion passed unanimously.**

To listen to the full recording of the Water Quality Board meeting.
https://deq.utah.gov/boards/utah-water-quality-board-meetings

Next Meeting – December 2, 2020 at 8:30 am
Via Adobe Connect
https://utdeq.adobeconnect.com/wqb/

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Jennifer Grant, Chair
Utah Water Quality Board

LOAN FUNDS FINANCIAL STATUS REPORT OCTOBER 2020

	State Fiscal Year	State Fiscal Year	State Fiscal Year	State Fiscal Year	State Fiscal Year	State Fiscal Year
STATE REVOLVING FUND (SRF)	2021	2022	2023	2024	2025	2026
Funds Available						
Capitalization Grants Awards (FFY17 - 20)	24,758,000	-	-	-	-	-
State Match (FFY17 - 20)	4,884,401	-	-	-	-	-
Future Capitalization Grants (estimated)	8,358,000	8,000,000	8,000,000	8,000,000	8,000,000	8,000,000
Future State Match (estimated)	1,671,600	1,600,000	1,600,000	1,600,000	1,600,000	1,600,000
SRF - 2nd Round	59,463,711	50,191,524	15,177,076	6,921,163	24,108,523	49,789,955
Interest Earnings at 0.5534%	219,381	277,760	83,990	38,302	133,417	275,538
Loan Repayments	5,387,725	17,243,792	16,240,097	16,349,059	15,948,015	15,904,662
Total Funds Available	104,742,819	77,313,076	41,101,163	32,908,523	49,789,955	75,570,154
Project Obligations						
Central Valley Water Reclamation Facility	(28,324,000)	(24,976,000)	(6,800,000)	-	-	-
Duchesne City	(27,295)	-	-	-	-	-
Logan City	(5,131,000)	-	-	-	-	-
Moab City	(80,000)	-	-	-	-	-
Provo City	(17,230,000)	(28,000,000)	(20,000,000)	(8,800,000)	-	-
Salem City	(269,000)	-	-	-	-	-
South Salt Lake City (A)	(1,130,000)	(2,160,000)	(234,000)	-	-	-
Loan Authorizations						
Millville City	(2,000,000)	-	-	-	-	-
South Davis Sewer District (with NPS)	-	(7,000,000)	(7,146,000)	-	-	-
Planned Projects						
*San Juan Spanish Valley SSD	(360,000)	-	-	-	-	-
Total Obligations	(54,551,295)	(62,136,000)	(34,180,000)	(8,800,000)	-	-
SRF Unobligated Funds	$ 50,191,524	$ 15,177,076	$ 6,921,163	$ 24,108,523	$ 49,789,955	$ 75,570,154

	State Fiscal Year	State Fiscal Year	State Fiscal Year	State Fiscal Year	State Fiscal Year	State Fiscal Year
UTAH WASTEWATER LOAN FUND (UWLF)	2021	2022	2023	2024	2025	2026
Funds Available						
UWLF	19,938,722	8,020,302	9,198,409	10,353,196	13,270,206	16,527,741
Sales Tax Revenue	453,857	3,587,500	3,587,500	3,587,500	3,587,500	3,587,500
Loan Repayments	2,169,175	3,031,806	2,582,488	2,565,710	2,906,235	2,759,353
Total Funds Available	22,561,753	14,639,609	15,368,396	16,506,406	19,763,941	22,874,594
General Obligations						
State Match Transfers	(6,556,001)	(1,600,000)	(1,600,000)	(1,600,000)	(1,600,000)	(1,600,000)
DWQ Administrative Expenses	(1,228,450)	(1,636,200)	(1,636,200)	(1,636,200)	(1,636,200)	(1,636,200)
Project Obligations						
Kane Co Water Conservancy Dist (Duck Creek)	(400,000)					
South Salt Lake City (B)	(1,857,000)	(2,205,000)	(1,779,000)	-	-	-
Loan Authorizations						
None at this time		-	-	-	-	-
Planned Projects						
*Spanish Fork	(4,500,000)	-	-	-	-	-
Total Obligations	(14,541,451)	(5,441,200)	(5,015,200)	(3,236,200)	(3,236,200)	(3,236,200)
UWLF Unobligated Funds	$ 8,020,302	$ 9,198,409	$ 10,353,196	$ 13,270,206	$ 16,527,741	$ 19,638,394
Combined Loan Fund Balance	58,211,826	24,375,484	17,274,359	37,378,729	66,317,695	95,208,549
Future Project Reserve	(5,000,000)	(5,000,000)	(5,000,000)	(5,000,000)	-	-
Total Loan Funds Available	53,211,826	19,375,484	12,274,359	32,378,729	66,317,695	95,208,549

DWQ-2020-023866

*WQB Agenda Items

HARDSHIP GRANT FUNDS FINANCIAL STATUS REPORT OCTOBER 2020

HARDSHIP GRANT FUNDS (HGF)	State Fiscal Year 2021	State Fiscal Year 2022	State Fiscal Year 2023	State Fiscal Year 2024	State Fiscal Year 2025	State Fiscal Year 2026
Funds Available						
Beginning Balance		637,285	797,444	589,923	88,639	(70,174)
Federal HGF Beginning Balance	6,562,069	-	-	-	-	-
State HGF Beginning Balance	2,140,709	-	-	-	-	-
Interest Earnings at 0.5534%	32,107	3,527	4,413	3,265	491	-
UWLF Interest Earnings at 0.5534%	73,561	44,384	50,904	57,295	73,437	91,465
Hardship Grant Assessments	526,661	739,214	641,688	370,965	477,839	396,397
Interest Payments	199,902	373,034	345,473	317,191	289,421	261,668
Advance Repayments	962,500	-	-	-	-	-
Total Funds Available	10,497,509	1,797,444	1,839,923	1,338,639	929,826	679,356
Financial Assistance Project Obligations						
Eagle Mountain City - Construction Grant	(510,000)	-	-	-	-	-
Emigration Sewer Imp Dist - Planning Grant	(26,158)	-	-	-	-	-
Green River	(54,000)	-	-	-	-	-
Kane Co Water Conservancy Dist (Duck Creek) - Hardship Grant	(3,997,000)	-	-	-	-	-
Lewiston City - Design and Construction	(314,000)	-	-	-	-	-
Millville City - Design and Construction	(1,500,000)	-				
Salina City - Planning Grant/Advance	(99,500)					
Wasatch Co. Study	(47,341)	-	-	-	-	-
Non-Point Source/Hardship Grant Obligations						
Fitzgerald ARDL interest-rate buy down	(51,056)	-	-	-	-	-
McKees ARDL interest-rate buy down	(55,261)	-	-	-	-	-
Munk Dairy ARDL interest-rate buy down	(16,017)	-	-	-	-	-
(FY12) Utah Department of Agriculture	(334,266)	-	-	-	-	-
(FY13) DEQ - Great Salt Lake Advisory Council	(82,506)	-	-	-	-	-
(FY15) DEQ - Ammonia Criteria Study	(27,242)	-	-	-	-	-
(FY15) DEQ - Nitrogen Transformation Study	(14,500)	-	-	-	-	-
(FY17) DEQ - Utah Lake Water Quality Study	(348,301)	-	-	-	-	-
BYU - Bioassays to Investigate Nutrient Limitation	(22,675)	-	-	-	-	-
USU - Historic Trophic State/Nutrient Concentrations Paleo	(162,276)	-	-	-	-	-
FY 2015 - Remaining Payments	(4,223)	-	-	-	-	-
FY 2016 - Remaining Payments	(2,386)	-	-	-	-	-
FY 2018 - Remaining Payments	(128,322)	-	-	-	-	-
FY 2019 - Remaining Payments	(576,060)	-	-	-	-	-
FY 2020 - Remaining Payments	(652,828)	-	-	-	-	-
FY 2021 - Remaining Payments	(834,306)					
Future NPS Annual Allocations		(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)
Planned Projects						
*Spanish Fork - Hardship Grant	-	-	(250,000)	(250,000)		-
Total Obligations	(9,860,224)	(1,000,000)	(1,250,000)	(1,250,000)	(1,000,000)	(1,000,000)
HGF Unobligated Funds	$ 637,285	$ 797,444	$ 589,923	$ 88,639	$ (70,174)	$ (320,644)

*WQB Agenda Items

State of Utah
Wastewater Project Assistance Program
Project Priority List
As of November 17, 2020

Rank	Project Name	Funding Authorized	Total Points	Point Categories			
				Project Need	Potential Improvement	Population Affected	Special Consideration
1	South Davis Sewer District	x	138	50	18	10	60
2	Spanish Fork Water Reclamation Facility		117	50	19	8	40
3	Millville City	x	114	45	46	3	20
4	Fairview City		107	50	15	2	40
5	San Juan Spanish Valley SSD		86	25	0	1	60
6	Wellington City	x	74	10	21	3	40
7	Lewiston City	x	67	10	16	1	40

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Date Received: June 4, 2020
Date to be presented to the WQB: December 2, 2020

WATER QUALITY BOARD
FEASIBILITY REPORT FOR WASTEWATER TREATMENT PROJECT

AUTHORIZATION

APPLICANT:	Spanish Fork City 40 South Main Street Spanish Fork, UT 84660
PRESIDING OFFICIAL:	Steve Leifson - Mayor
CONTACT PERSON:	Chris Thompson - PW Director/City Engineer.
TREASURER/RECORDER:	Kent Clark - Finance Director
CONSULTING ENGINEER:	Gary Vance, P.E. J-U-B Engineers, Inc. 392 East Winchester St, Suite 300 Salt Lake City, UT 84107 Telephone: (801) 547-0393
BOND COUNSEL:	Gilmore & Bell 15 West South Temple #145 Salt Lake City, UT 84101 Telephone (801) 364-5080
FINANCIAL ADVISOR:	Jonathon Ward, Senior Vice President Zions Public Finance One South Main St 18th Floor Salt Lake City, UT 84113-1109 Telephone (801) 844-7379

APPLICANT'S REQUEST:

Spanish Fork City initially requested a grant in the amount of $3,500,000 to be issued over 7 years in $500,000 annual increments, to enhance the City's credit position in bonding to construct their new $94.1 million plant. The City has since participated in discussions with Division of Water Quality staff, and with current balances taken into consideration has modified the request to be a **$500,000 grant and a $4,500,000 Loan at 1.12% for 20 years.**

It should be noted that the Spanish Fork Wastewater Treatment Plant is jointly owned by the cities of Spanish Fork and Mapleton. Although this report primarily discusses the application in terms of Spanish Fork City the plant is jointly and proportionally owned and Mapleton is a partner throughout the process.

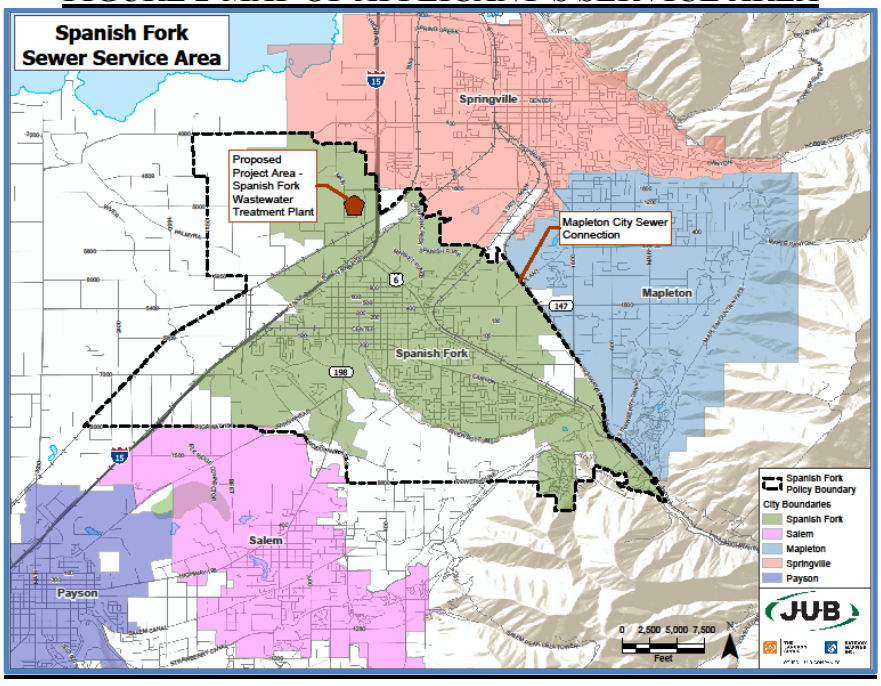
The City initially expressed interest in a low interest loan from the Board but, in recognizing fund limitations at the time of application, had proposed a credit enhancement agreement, funded by grant. The City has a requirement to maintain a minimum debt service coverage ratio (DSCR) for all of its loans of 1.5. The proposed agreement would enable the City to maintain a debt service coverage ratio of 1.5 without needing to increase its rates above what is necessary to cover all of its costs. The Board normally requires a 1.25 DSCR on its loans. The City is able to secure more favorable financing from the private sector by maintaining the higher DSCR.

APPLICANT'S LOCATION:

The Spanish Fork Wastewater Treatment Plant is located at 150 E 2160 N in Spanish Fork City, about 50 miles south of Salt Lake City. Figure 1 shows the plant location and Figure 2 shows its service area:

FIGURE 1-MAP OF APPLICANT'S LOCATION

FIGURE 2-MAP OF APPLICANT'S SERVICE AREA



BACKGROUND:

The Spanish Fork Wastewater Treatment Plant (WWTP) was originally constructed in 1955. The original design capacity was 1.8 MGD. A plant upgrade in 1987 increased the plant's capacity to 5 MGD, and in 2006 further upgrades increased the capacity to 6 MGD. The current average inflow to the plant is 4.5 MGD with a permit limit of 5 MGD. Spanish Fork WWTP provides regional service to over 56,000 people in Spanish Fork and Mapleton Cities.

Most of Spanish Fork City's collection system flows by gravity to the WWTP as the land slopes downward from the mountains towards Utah Lake. The only exceptions are the industrial areas near the Airport and areas at the southwest end of the City, which have pump stations that deliver the sewage to the treatment plant. The facility discharges to Dry Creek which flows into Provo Bay on Utah Lake. The City now maintains and operates about 167 miles of sewer pipe.

Spanish Fork's city limits cover about 16.22 square miles with an estimated population of 44,623. The Mapleton city limits span approximately 13.35 square miles with a population of almost 10,762. Mapleton was incorporated in 1948 and is significantly more rural than Spanish Fork, with 60% of its land still undeveloped. The ownership of the treatment facility is split between the two cities based on usage. As upgrades are made at the facility, the financial requirements for the projects are split between the two cities according to the current capacity ownership.

PROJECT NEED:

The City recently completed a condition assessment study which indicated the need for significant upgrades and replacement of existing infrastructure. In addition, the WWTP will need substantial modifications to reliably meet the technology based phosphorus effluent limit (TBPEL) and future water quality based effluent limits that are anticipated for discharges to Utah Lake.

The general condition assessment was conducted for the existing treatment process-related equipment and structures at the WWTP. The results of the assessment determined asset replacement priority based on the remaining useful life of each asset. Overall, very few of the plant facilities are in "like new" or "very good" condition. The majority of the equipment at the plant is in "satisfactory", "poor", or "very poor" condition.

The proposed improved facilities will continue to discharge to the same outfall in Dry Creek. Dry Creek discharges to Provo Bay in Utah Lake, which is an impaired water body. The excess nutrients in Utah Lake contribute to Harmful Algal Blooms (HABs), which occur during the summer months. A major study, funded in part by the Board, is being conducted for Utah Lake to establish water quality standards for the Utah Lake system.

While the study is being conducted, DWQ has established a compliance schedule for meeting the more stringent, chronic ammonia limits listed in the permit (7 mg/L maximum monthly average in the summer and 9 mg/L maximum monthly average the rest of the year) and the technology-

based phosphorus effluent limit (TBPEL) of 1 mg/L phosphorus. Compliance with these new limits is required by 2023, unless an extension is negotiated. As currently configured, the WWTP will be challenged to meet the new monthly average ammonia limits. The plant has had several exceedances of the previous daily maximum ammonia concentration limit of 18 mg/L in 2018 and 2019.

Spanish Fork and Mapleton have formally submitted a request to DWQ to delay the implementation of the interim ammonia permit limits and until January 1, 2026. They have also requested an extension to their variance to the TBPEL.

To meet these new nutrient limits, Spanish Fork WWTP is proposing to install a new Membrane Bioreactor (MBR) treatment process. The new upgrades will also increase the capacity of the plant to 8.4 MGD (maximum monthly flow). The plant will also be designed to accommodate future upgrades that support future regionalization and more stringent nutrient limits. Spanish Fork WWTP has acquired land across the street from the existing plant, which will allow for simpler construction now and with future expansion.

The goal of this WWTP expansion project is to decrease nutrient loads to Utah Lake, while increasing the capacity of the WWTP to accommodate growth within the service area and expectantly, to provide broader regional service for surrounding towns.

POSITION ON PROJECT PRIORITY LIST:

This project is ranked 2nd of 7 projects on the Wastewater Treatment Project Priority List.

POPULATION GROWTH:

The Spanish Fork Wastewater Treatment Plant receives sewage from both Spanish Fork City and Mapleton City. Since 2018, Spanish Fork and Mapleton have experienced annual average growth rates of 1.78% and 3.08%, respectively. The Governor's Office of Management and Budget (2013) estimated that the populations will increase annually by 1.87% and 2.28% for Spanish Fork and Mapleton, respectively, from 2020 to 2040. The combined build out population is estimated to be 145,374 people.

Year	Spanish Fork		Mapleton		Total Population
	Population	Growth Rate[1]	Population	Growth Rate[1]	
2020	44,623	1.27%	10,762	1.51%	**55,385**
2040	64,607	1.87%	16,901	2.28%	**81,508**
Build-Out[2]	115,971		29,403		**145,374**

[1] Annual Average Growth Rate for previous 20 year period
[2] Expected build-out population taken from Aqua Engineering's 2011 Wastewater Master Plan

(Source: Spanish Fork and Mapleton WWTP Master Plan –JUB/Stantec- May 29, 2020)

PUBLIC PARTICIPATION AND DEMONSTRATION OF PUBLIC SUPPORT:

The proposed project has been discussed as an agenda item in several public City Council meetings over the past two years, including most recently in November 2020, during which the City Council approved a resolution to adopt the Master Plan. The City Council is supportive of the project and demonstrated their support by (1) increasing sewer rates; (2) increasing sewer impact fees; (3) exploring financial assistance with DWQ. Public hearings in City Council were held in July of 2018 and 2019 to present the sewer rate increases in anticipation of the new WWTP. The City believes the public is well informed on the need for the project. The public has been notified of a sewer rate increase and impact fee increase to support the upcoming WWTP project. Additional public meetings are planned as the project progresses.

IMPLEMENTATION SCHEDULE:

Apply to WQB for Funding:	June 2020
WQB Introduction	August 26, 2020
WQB Funding Authorization:	December 2, 2020
Begin Construction	2022
Complete Construction	2025

APPLICANT'S CURRENT USER CHARGE:

Spanish Fork currently charges a base rate of $19.82 for most residential connections with an overage rate of $2.25/1,000 gallons. According to their website the average monthly residential bill is currently $27.75 per month. For comparison, based on the 2018 MAGI for Spanish Fork of $54,600 a 1.4% of MAGI would yield a rate of $63.70 per month per ERU.

APPLICANT'S ALTERNATIVES EVALUATED:

Spanish Fork retained JUB/Stantec to conduct a study to determine the most feasible treatment plant upgrades. The results of the JUB/Stantec study are contained in the report "Spanish Fork and Mapleton Wastewater Treatment Master Plan". A retrofit option and an offsite construction option were both proposed with several different wastewater treatment technologies. The alternatives considered are listed below:

Existing Site (Retrofit)

- Activated Sludge Process (A2O)
- Membrane Bioreactor (MRB)
- Integrated Fixed Film Activated Sludge
- Ballasted Activated Sludge (BioMag)
- Algae Bioreactor (CLEARAS)
- AquaNereda

Construction on New Site (Greenfield Site)

- Activated Sludge Process (A2O)
- Membrane Bioreactor (MBR)
- AquaNereda
- Sequencing Batch Reactor

Based on their alternatives analysis, JUB/Stantec recommends constructing an MBR plant offsite. Spanish Fork recently acquired land across the street from the existing plant. This will lower construction costs, and allow Spanish Fork to continue to utilize some of the existing treatment plant facilities.

The proposed project will address the existing WWTP's capacity, aging infrastructure, and ability to comply with future nutrient limits. A proposed regional greenfield membrane bioreactor facility will be constructed at a new 9-acre site located on the east side of 200 E, across the street from the existing WWTP and south of the railroad tracks. The site will be master planned to facilitate regionalization in the area, both for Springville and for developable county land toward West Mountain. Spanish Fork intends to treat future entities that tie into their system as partners rather than customers. Future regionalization partners will buy into the facility and have a voice in decision making.

The greenfield site will include a new headworks facility with coarse screens, grit removal, and fine screens; influent lift station; anaerobic, anoxic, and aerobic biological process basins (A2O process), membrane bioreactor tanks, blower/recycle pump station/chemical storage building, emergency standby generator, electrical/MCC building, UV disinfection building, and all associated yard piping and site civil work.

For this first phase of the project, the City plans to keep the solids handling facilities at the existing site and retrofit it to be used in conjunction with the new plant to reduce overall construction costs. This project will also include interceptor sewers to the new site.

The recommended alternative allows space for expansion, in the case of further regionalization, or for a water reuse application site. This recommended alternative will also allow for Spanish Fork WWTP to meet the current nutrient limits and to adjust to potential future nutrient limits.

COST ANALYSIS:

Spanish Fork is looking to construct phase 1 at this time. The total cost of this phase is estimated to be $94,100,000 of which Spanish Fork is requesting $500,000/$4,500,000 in grant/loan from the Water Quality Board. A breakdown of these costs follows:

Item	Project Costs
Loan Origination Fee	N/A
Legal and Bonding	900,000
Engineering and CMS	$13,400,000
Construction	$66,200,000
Contingency	$13,600,000
Sub-Total	$94,100,000

COST SHARING:

Spanish Fork is proposing the following cost sharing for the identified projects. Spanish Fork intends to fund the portion not funded by the Water Quality Board utilizing Market Loans and local contribution.

Funding Source	Cost Sharing	Percent of Project
Spanish Fork and Mapleton Cash	$ 16,000,000	17.0%
Spanish Fork and Mapleton Market Loan	$ 73,100,000	77.7%
WQB Loan	$ 4,500,000	4.8%
WQB Grant	$500,000	0.5%
Total	$94,100,000	100%

STAFF COMMENTS:

Spanish Fork City has been diligent in keeping out of debt and saving toward the cost of this project. The City has worked to minimize the impact of the plant upgrade on its citizens, while addressing their growth needs, including, extraterritorial regional considerations, and future water quality protection expectations.

The type of funding Spanish Fork initially requested would have been unusual: $500,000 grants each year for 7 years to maintain the City required debt service coverage ratio (DSCR) of 1.5, and maintain their ability to obtain low interest loans through the market. The City has already secured a loan for the project through the private bonding process making a large loan from the Board less desirable. The intent of the requested financing is to maintain a high debt service coverage ratio, which maintains their good bond rating and results in a lower effective interest rate. A small grant during key years of the loan allows the City to minimize the necessary increase in user rates as the population grows and eventually maintains the DSCR with increased revenues without needing to increase and then later decrease user rates.

Based on the required 1.5 DSCR for all loans, a relatively small amount of grant has a higher impact on rates than a loan from DWQ's SRF funds. Additional factors that were considered are that the City has already obtained a favorable loan in the public sector, and if Federal SRF funds are used, federal requirements such as AIS and Davis Bacon Wages would increase costs for the project.

Spanish Fork City has an MAGI of $54,600 which would place a 1.4% bill at $63.70 per month, about double their current sewer rate. This project would not place Spanish Fork City into a hardship position based on the criterion of 1.4% of MAGI, even if the entire project were financed at current market rates. A static cost model based on the initial request of $3.5 million is included as Attachment 1. In the cost model, staff considered different combinations of WQB grants, loans, and interest rates to provide a comparison between sewer rates with various WQB assistance terms (it should be noted that this model only maintains a 1.25 DSCR not the 1.5 DSCR required by the City). Attachment 2 is a smaller static model based on the modified request of $500,000 grant and $4,500,000 Loan.

Based on this analysis traditional affordability is not a concern in regard to financing this project. However, the City does have a concern based on short term cash flow that could be greatly alleviated with a small amount of grant and a graduated payment schedule on a small loan from the Board. Staff have had meetings and reviewed several scenarios with the City. Staff, in coordination with the City, has come up with an alternative financing option that still helps the customers of the treatment plant, incentivizes the regional facility to be constructed as planned, and works within the Water Quality Board funding balances. The best option that has been identified is to provide a $500,000 grant that can be applied to key low cash flow years and a $4,500,000 loan with graduated payments.

Attachment 3 provides a dynamic model which demonstrates the anticipated funding model with these funding amounts.

Although there have been numerous comparisons created in the financial models, it is important to note that the reason for considering grant assistance in this case is not related to a defined long-term financial hardship of the community, but rather, it is based on incentivizing the increased level of treatment and maintaining the ability to regionalize with additional areas in the future. As was discussed above, since the city has bonded on the open market for most of their needs, a loan from federal funds by the Board is not the preferred financing for the applicant at this time, especially as it would add cost to the project due to the federal requirements. A large loan from the Board at a very low interest rate would be required to have much impact on the user rates. Alternatively, a small loan from the Utah Wastewater Loan Fund and a small grant will have much more impact on user rates. In addition, during our discussions, staff identified the concept of replenishing the $500,000 of grant money from interest payments on a Board loan. The City was very receptive of this concept. It is also worth noting that $500,000 grant with a $4,500,000 loan with a 20 year term at 1.12% has equivalent payment to a $5,000,000 loan with a 20 year term at 0.10% interest.

STAFF RECOMMENDATIONS:

As there are not sufficient hardship grant funds to provide the initially requested $3.5 million grant, staff recommends the following financing package to incentivize the project for its regionalization component and high water quality impact. A $500,000 grant incentive is sustainable from a fund management standpoint and in combination with the requested loan and interest rate, provides less of a deduction in rates than we have given with regionalization incentives authorized on other loans, i.e., interest rate deductions of 0.25% for regionalization projects. Additionally the recommended interest rate of 1.12% on a $4.5 million loan will replenish the $500,000 grant that is being requested by Spanish Fork.

Staff recommends that the Board authorize a grant of $500,000 from the Utah Hardship Grant Fund and a loan of $4,500,000 from the Utah Wastewater Loan Fund at 1.12% for 20 years with an allowance for graduated payments.

Staff recommends the following special conditions in conjunction with this grant authorization:

1. The Applicant must agree to participate annually in the Municipal wastewater Planning Program (MWPP)
2. As part of the facility planning, the Applicant must complete a Water Conservation and Management Plan.
3. The Applicant must construct the project as proposed on the greenfield site to support future regional service.
4. The Applicant must construct a treatment system consisting of biological nutrient reduction and a membrane bioreactor.
5. The Applicant must pursue and retain remaining funding necessary to fully implement the project.

ATTACHMENT 1

Spanish Fork City - Water Quality Board

20 Year Loan Static Cost Model

Project Costs		
Legal and Bonding	$	900,000.00
Engineering & CMS	$	13,400,000.00
Construction	$	66,200,000.00
Contingency	$	13,600,000.00
Total Project Cost:	$	94,100,000.00

Requested Project Funding		
WQB Grant	$	3,500,000.00
Local Contribution	$	17,500,000.00
Market Loan	$	73,100,000.00
Total Project Funding	$	94,100,000.00

Current Customer Base & User Charges	
Current (ERU):	14,577
MAGI 2018 CITY):	$54,600
Monthly User Fee (per ERU):	$31.07
1.4% MAGI UserFee	$63.70

Projected Annual Sewer O&M Cost	
Estimated Operating Expenses:	$1,965,000

Funding Conditions	
Loan Repayment Term:	20
Reserve Funding Period:	6 years

TABLE 1 - PROJECT ESTIMATED COST OF SEWER SERVICE UNDER STRAIGHT-LINE AMORTIZATION

WQB Grant Amount	WQB Loan Amount	WQB Loan Interest Rate	WQB Loan Debt Service	WQB Loan Reserve	Market Loan Amount	Market Loan Interest Rate	Market Loan Debt Service	*Market Loan Reserve	Annual Sewer O&M Cost	Total Annual Sewer Cost	Monthly Sewer Cost/ERU	Sewer Cost as % of MAGI
$3,500,000	**$0**	**0.00%**	**$0**	**$0**	**$73,100,000**	**1.77%**	**$4,371,093**	**$1,092,773**	**$1,965,000**	**$7,428,866**	**$42.47**	**0.93%**
$2,500,000	$0	0.00%	$0	$0	$74,100,000	1.77%	$4,430,889	$1,107,722	$1,965,000	$7,503,611	$42.90	0.94%
$2,000,000	$0	0.00%	$0	$0	$74,600,000	1.77%	$4,460,787	$1,115,197	$1,965,000	$7,540,984	$43.11	0.95%
$1,500,000	$0	0.00%	$0	$0	$75,100,000	1.77%	$4,490,685	$1,122,671	$1,965,000	$7,578,356	$43.32	0.95%
$1,000,000	$0	0.00%	$0	$0	$75,600,000	1.77%	$4,520,583	$1,130,146	$1,965,000	$7,615,729	$43.54	0.96%
$500,000	$0	0.00%	$0	$0	$76,100,000	1.77%	$4,550,481	$1,137,620	$1,965,000	$7,653,101	$43.75	0.96%
$0	$3,000,000	0.00%	$150,000	$37,500	$73,600,000	1.77%	$4,400,991	$1,100,248	$1,965,000	$7,653,739	$43.75	0.96%
$0	$6,000,000	0.00%	$300,000	$75,000	$70,600,000	1.77%	$4,221,603	$1,055,401	$1,965,000	$7,617,003	$43.54	0.96%
$0	$9,200,000	0.00%	$460,000	$115,000	$67,400,000	1.77%	$4,030,255	$1,007,564	$1,965,000	$7,577,819	$43.32	0.95%
$0	$12,200,000	0.00%	$610,000	$152,500	$64,400,000	1.77%	$3,850,867	$962,717	$1,965,000	$7,541,084	$43.11	0.95%
$0	$15,200,000	0.00%	$760,000	$190,000	$61,400,000	1.77%	$3,671,479	$917,870	$1,965,000	$7,504,349	$42.90	0.94%
$0	**$21,400,000**	**0.00%**	**$1,070,000**	**$267,500**	**$55,200,000**	**1.77%**	**$3,300,743**	**$825,186**	**$1,965,000**	**$7,428,429**	**$42.47**	**0.93%**
$0	$76,600,000	1.52%	$4,469,544	$1,117,386	$0	1.77%	$0	$0	$1,965,000	$7,551,930	$43.17	0.95%
$1,853,000	$0	0.00%	$0	$0	$74,747,000	1.77%	$4,469,577	$1,117,394	$1,965,000	$7,551,971	$43.17	0.95%
$0	$5,500,000	0.00%	$275,000	$68,750	$71,100,000	1.77%	$4,251,501	$1,062,875	$1,965,000	$7,623,126	$43.58	0.96%
$0	$10,000,000	0.00%	$500,000	$125,000	$66,600,000	1.77%	$3,982,418	$995,605	$1,965,000	$7,568,023	$43.26	0.95%
$0	$11,000,000	0.00%	$550,000	$137,500	$65,600,000	1.77%	$3,922,622	$980,656	$1,965,000	$7,555,778	$43.19	0.95%
$0	$19,200,000	0.00%	$960,000	$240,000	$57,400,000	1.77%	$3,432,295	$858,074	$1,965,000	$7,455,368	$42.62	0.94%
$1,000,000	$13,700,000	0.00%	$685,000	$171,250	$61,900,000	1.77%	$3,701,377	$925,344	$1,965,000	$7,447,971	$42.58	0.94%
$2,000,000	$8,200,000	0.00%	$410,000	$102,500	$66,400,000	1.77%	$3,970,459	$992,615	$1,965,000	$7,440,574	$42.54	0.93%
$2,500,000	$5,450,000	0.00%	$272,500	$68,125	$68,650,000	1.77%	$4,105,000	$1,026,250	$1,965,000	$7,436,876	$42.51	0.93%
$3,000,000	$2,700,000	0.00%	$135,000	$33,750	$70,900,000	1.77%	$4,239,542	$1,059,885	$1,965,000	$7,433,177	$42.49	0.93%
$0	$65,000,000	0.00%	$3,250,000	$812,500	$11,600,000	1.77%	$693,634	$173,409	$1,965,000	$6,894,543	$39.41	0.87%
$0	$65,000,000	0.00%	$3,250,000	$812,500	$11,600,000	1.77%	$693,634	$173,409	$1,965,000	$6,894,543	$39.41	0.87%
$0	$65,000,000	0.00%	$3,250,000	$812,500	$11,600,000	1.77%	$693,634	$173,409	$1,965,000	$6,894,543	$39.41	0.87%
$0	$65,000,000	0.50%	$3,423,319	$855,830	$11,600,000	1.77%	$693,634	$173,409	$1,965,000	$7,111,192	$40.65	0.89%
$0	$65,000,000	1.00%	$3,601,995	$900,499	$11,600,000	1.77%	$693,634	$173,409	$1,965,000	$7,334,537	$41.93	0.92%
$0	$65,000,000	1.50%	$3,785,973	$946,493	$11,600,000	1.77%	$693,634	$173,409	$1,965,000	$7,564,509	$43.24	0.95%
$0	$65,000,000	1.75%	$3,879,930	$969,982	$11,600,000	1.77%	$693,634	$173,409	$1,965,000	$7,681,955	$43.92	0.97%
$0	$76,600,000	0.50%	$4,034,250	$1,008,563	$0	1.77%	$0	$0	$1,965,000	$7,007,813	$40.06	0.88%
$0	$76,600,000	1.00%	$4,244,813	$1,061,203	$0	1.77%	$0	$0	$1,965,000	$7,271,016	$41.57	0.91%
$0	$76,600,000	1.51%	$4,466,463	$1,116,616	$0	1.77%	$0	$0	$1,965,000	$7,548,079	$43.15	0.95%
$0	$76,600,000	1.76%	$4,577,255	$1,144,314	$0	1.77%	$0	$0	$1,965,000	$7,686,569	$43.94	0.97%

Bolded row is the requested funding, 1.761% interest rate is from Municipal Benchmark Curve MBIS however the actual market interest rate may be higher or lower (as of 10/19/20)

*Market Loan Reserve on market loan may not be required, however, this is the same amount necessary to achieve a 1.25 debt service coverage ratio that most institutions require as a minimum, and it provides a better comparison to loans issued by the Board.

ATTACHMENT 2

Spanish Fork City - Water Quality Board

20 Year Loan Static Cost Model

Project Costs		
Legal and Bonding	$	900,000.00
Engineering & CMS	$	13,400,000.00
Construction	$	66,200,000.00
Contingency	$	13,600,000.00
Total Project Cost:	$	94,100,000.00

Requested Project Funding		
WQB Funding	$	5,000,000.00
Local Contribution	$	16,000,000.00
Market Loan	$	73,100,000.00
Total Project Funding	$	94,100,000.00

Current Customer Base & User Charges	
Current (ERU):	14,577
MAGI 2018 CITY):	$54,600
Monthly User Fee (per ERU):	$31.07
1.4% MAGI UserFee	$63.70

Projected Annual Sewer O&M Cost	
Estimated Operating Expenses:	$1,965,000

Funding Conditions	
Loan Repayment Term:	20
Reserve Funding Period:	6 years

TABLE 1- PROJECT ESTIMATED COST OF SEWER SERVICE UNDER STRAIGHT-LINE AMORTIZATION

WQB Grant Amount	WQB Loan Amount	WQB Loan Interest Rate	WQB Loan Debt Service	WQB Loan Reserve	Market Loan Amount	Market Loan Interest Rate	Market Loan Debt Service	*Market Loan Reserve	Annual Sewer O&M Cost	Total Annual Sewer Cost	Monthly Sewer Cost/ERU	Sewer Cost as % of MAGI
$3,500,000	$ -	0.00%	$0	$0	$74,600,000	1.77%	$4,460,787	$1,115,197	$1,965,000	$7,540,984	$43.11	0.95%
$500,000	**$4,500,000**	**1.12%**	**$252,392**	**$63,098**	**$73,100,000**	**1.77%**	**$4,371,093**	**$1,092,773**	**$1,965,000**	**$7,744,357**	**$44.27**	**0.97%**
$2,000,000	$3,000,000	1.12%	$168,262	$42,065	$73,100,000	1.77%	$4,371,093	$1,092,773	$1,965,000	$7,639,193	$43.67	0.96%
$1,500,000	$3,500,000	1.12%	$196,305	$49,076	$73,100,000	1.77%	$4,371,093	$1,092,773	$1,965,000	$7,674,248	$43.87	0.96%
$1,000,000	$4,000,000	1.12%	$224,349	$56,087	$73,100,000	1.77%	$4,371,093	$1,092,773	$1,965,000	$7,709,302	$44.07	0.97%
$0	$5,000,000	0.10%	$252,633	$63,158	$73,100,000	1.77%	$4,371,093	$1,092,773	$1,965,000	$7,744,658	$44.27	0.97%
$0	$6,000,000	0.38%	$312,114	$78,028	$72,100,000	1.77%	$4,311,297	$1,077,824	$1,965,000	$7,744,263	$44.27	0.97%
$0	$9,200,000	0.86%	$502,664	$125,666	$68,900,000	1.77%	$4,119,949	$1,029,987	$1,965,000	$7,743,267	$44.27	0.97%
$0	$12,200,000	1.10%	$682,894	$170,723	$65,900,000	1.77%	$3,940,561	$985,140	$1,965,000	$7,744,319	$44.27	0.97%
$0	$15,200,000	1.23%	$861,950	$215,487	$62,900,000	1.77%	$3,761,173	$940,293	$1,965,000	$7,743,904	$44.27	0.97%
$0	$21,400,000	1.39%	$1,232,984	$308,246	$56,700,000	1.77%	$3,390,437	$847,609	$1,965,000	$7,744,277	$44.27	0.97%
$0	$76,600,000	1.52%	$4,469,544	$1,117,386	$1,500,000	1.77%	$89,694	$22,424	$1,965,000	$7,664,048	$43.81	0.96%
$1,853,000	$0	0.00%	$0	$0	$76,247,000	1.77%	$4,559,271	$1,139,818	$1,965,000	$7,664,089	$43.81	0.96%
$0	$78,100,000	1.67%	$4,623,325	$1,155,831	$0	1.77%	$0	$0	$1,965,000	$7,744,157	$44.27	0.97%
$0	***$78,100,000***	***1.51%***	***$4,553,926***	***$1,138,482***	***$0***	***1.77%***	***$0***	***$0***	***$1,965,000***	***$7,657,408***	***$43.78***	***0.96%***
$1,340,000	$3,660,000	0.00%	$183,000	$45,750	$73,100,000	1.77%	$4,371,093	$1,092,773	$1,965,000	$7,657,616	$43.78	0.96%
$0	$78,100,000	1.67%	$4,625,588	$1,156,397	$0	1.77%	$0	$0	$1,965,000	$7,746,986	$44.29	0.97%
$0	$78,100,000	1.76%	$4,666,888	$1,166,722	$0	1.77%	$0	$0	$1,965,000	$7,798,610	$44.58	0.98%

Bolded row is the requested funding, highlighted row is total financed ammount at 1.761% interest rate is from Municipal Benchmark Curve MBIS however the actual market interest rate may be higher or lower (MBIS rate pulled

Bolded Italisized row is a 0.25 decrease on market rate for regionalization which is what we would have likely reomended if we financed the entire loan with state money. The row directly below that is an equivalent funding with

*Market Loan Reserve on market loan may not be required, however, this is the same amount necessary to achieve a 1.25 debt service coverage ratio that most institutions require as a minimum, and it provides a better comparison to loans issued by the Board.

Spanish Fork Water Reclamation Facility Feasibility Report - Introduction
August 26, 2020
Attachment 3

ATTACHMENT 3

Spanish Fork City Cash Flow Analysis (2020 dollars)

20-year loan with graduated repayments

Proposed Financing		Interest Rate
WQB Grant	$ 500,000	
WQB Loan	$ 4,500,000	1.12%
Market Loan	$ 73,100,000	1.63%
Local Contribution	$ 17,500,000	
Total:	$ 95,600,000	

Projected Annual Sewer Expenses	
Annual Operating Expense (O&M):	$ 1,965,000
Water Quality Board Loan avg annual pmt	$ 177,439
Market Loan Payment	$ 3,100,213
Existing Debt:	$ -
Total Annual Cost:	$ 5,242,652

Projected Sewer Revenue Sources	
MAGI (2018):	$54,600
Beginning Cash	$ -
2016 Customers (ERU)	14,577
Projected Growth Rate	1.66%
Proposed Monthly User Fee	$ 47.50
Sewer Impact Fee	$ 2,248.85

Sewer Revenue

Year	Growth Rate (%)	Annual Growth (ERU)	Total Users (ERU)	Proposed User Rates	User Charge Revenue	Impact Fee Revenue	WQB Grant Revenue	Total Revenue	WQB Loan Payment	WQB Loan Reserves	WQB Remaining Principal	WQB Principal Payment	WQB Interest Payment	Market Loan Payment	O&M Expenses	Total Expenses	Beginning Cash	Ending Cash Flow	Net Revenue	Debt Service Ratio
2020	1.7%	0	14,577	0.00	-	-	-	-			-				-	-	-	-	-	-
2021	1.7%	242	14,819	47.50	8,446,830	544,222	-	8,991,052			-			$ 1,390,758	1,965,000	3,355,758	-	5,635,294	5,635,294	5.05
2022	1.7%	246	15,065	47.50	8,587,050	553,217	-	9,140,267	-	26,616	-	-	-	$ 2,430,450	1,965,000	4,422,066	5,635,294	10,353,495	4,718,201	2.95
2023	1.7%	250	15,315	47.50	8,729,550	562,213	-	9,291,763	-	26,616	-	-	-	$ 2,430,450	1,965,000	4,422,066	10,353,495	15,223,192	4,869,697	3.01
2024	1.7%	254	15,569	47.50	8,874,330	571,208	300,000	9,745,538	16,800	26,616	1,500,000	-	16,800	$ 5,155,575	1,965,000	7,163,991	15,223,192	17,804,739	2,581,547	1.50
2025	1.7%	258	15,827	47.50	9,021,390	580,203	200,000	9,801,593	50,400	26,616	4,500,000	-	50,400	$ 5,142,575	1,965,000	7,184,591	17,804,739	20,421,741	2,617,002	1.51
2026	1.7%	263	16,090	47.50	9,171,300	591,448	-	9,762,748	55,344	26,616	4,495,000	5,000	50,344	$ 5,142,575	1,965,000	7,189,535	20,421,741	22,994,954	2,573,213	1.50
2027	1.7%	267	16,357	47.50	9,323,490	600,443	-	9,923,933	129,448	26,616	4,415,000	80,000	49,448	$ 5,159,450	1,965,000	7,280,514	22,994,954	25,638,373	2,643,419	1.50
2028	1.7%	272	16,629	47.50	9,478,530	611,687	-	10,090,217	271,928	26,616	4,190,000	225,000	46,928	$ 5,143,200	1,965,000	7,406,744	25,638,373	28,321,847	2,683,473	1.50
2029	1.7%	276	16,905	47.50	9,635,850	620,683		10,256,533	290,173	26,616	3,944,000	246,000	44,173	$ 5,143,825	1,965,000	7,425,614	28,321,847	31,152,765	2,830,919	1.53
2030	1.7%	281	17,186	47.50	9,796,020	631,927	-	10,427,947	287,418	26,616	3,698,000	246,000	41,418	$ 5,160,075	1,965,000	7,439,108	31,152,765	34,141,604	2,988,838	1.55
2031	1.7%	285	17,471	47.50	9,958,470	640,922	-	10,599,392	284,662	26,616	3,452,000	246,000	38,662	$ 5,166,325	1,965,000	7,442,603	34,141,604	37,298,393	3,156,789	1.58
2032	1.7%	290	17,761	47.50	10,123,770	652,167	-	10,775,937	281,907		3,206,000	246,000	35,907	$ 5,158,950	1,965,000	7,405,857	37,298,393	40,668,472	3,370,079	1.62
2033	1.7%	295	18,056	47.50	10,291,920	663,411	-	10,955,331	279,152		2,960,000	246,000	33,152	$ 5,164,450	1,965,000	7,408,602	40,668,472	44,215,201	3,546,729	1.65
2034	1.7%	300	18,356	47.50	10,462,920	674,655	-	11,137,575	276,397		2,714,000	246,000	30,397	$ 5,158,450	1,965,000	7,399,847	44,215,201	47,952,929	3,737,728	1.69
2035	1.7%	305	18,661	47.50	10,636,770	685,899	-	11,322,669	273,642		2,468,000	246,000	27,642	$ 5,148,225	1,965,000	7,386,867	47,952,929	51,888,732	3,935,803	1.73
2036	1.7%	310	18,971	47.50	10,813,470	697,144	-	11,510,614	270,886		2,222,000	246,000	24,886	$ 5,161,250	1,965,000	7,397,136	51,888,732	56,002,209	4,113,477	1.76
2037	1.7%	315	19,286	47.50	10,993,020	708,388	-	11,701,408	268,131		1,976,000	246,000	22,131	$ 5,143,000	1,965,000	7,376,131	56,002,209	60,327,485	4,325,277	1.80
2038	1.7%	320	19,606	47.50	11,175,420	719,632	-	11,895,052	265,376		1,730,000	246,000	19,376	$ 5,148,000	1,965,000	7,378,376	60,327,485	64,844,161	4,516,676	1.83
2039	1.7%	325	19,931	47.50	11,360,670	730,876	-	12,091,546	262,621		1,484,000	246,000	16,621	$ 5,151,000	1,965,000	7,378,621	64,844,161	69,557,087	4,712,925	1.87
2040	1.7%	331	20,262	47.50	11,549,340	744,369	-	12,293,709	259,866		1,238,000	246,000	13,866	$ 5,151,000	1,965,000	7,375,866	69,557,087	74,474,931	4,917,844	1.91
2041	1.7%	336	20,598	47.50	11,740,860	755,614	-	12,496,474	258,099		991,000	247,000	11,099	$ 5,152,000	1,965,000	7,375,099	74,474,931	79,596,305	5,121,374	1.95
2042	1.7%	342	20,940	47.50	11,935,800	769,107	-	12,704,907	255,333		744,000	247,000	8,333	$ 5,151,000	1,965,000	7,371,333	79,596,305	84,929,879	5,333,574	1.99
2043	1.7%	348	21,288	47.50	12,134,160	782,600	-	12,916,760	253,555		496,000	248,000	5,555	$ -	1,965,000	2,218,555	84,929,879	95,628,083	10,698,205	43.19
2044	1.7%	353	21,641	47.50	12,335,370	793,844	-	13,129,214	250,778		248,000	248,000	2,778	$ -	1,965,000	2,215,778	95,628,083	106,541,520	10,913,436	44.52
2045	1.7%	359	22,000	47.50	12,540,000	807,337	-	13,347,337	248,000		-	248,000	-	$ -	1,965,000	2,213,000	106,541,520	117,675,857	11,134,337	45.90

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

MEMORANDUM

TO: Utah Water Quality Board

THROUGH: Erica Brown Gaddis, PhD, Director
John Mackey, P.E., Assistant Director

FROM: Ken Hoffman, P.E. and Beth Wondimu, P. E.

DATE: December 2, 2020

SUBJECT: San Juan Spanish Valley SSD – New Wastewater Collection System
$360,000 Project Closeout Supplemental Funding Request

Applicant Request

San Juan Spanish Valley SSD is requesting that the Board authorize supplemental funding of $360,000 needed to complete the subject collection system project.

Background

In 2016 and 2018, the Board authorized a loan of $968,000 with an interest rate of 0% and a term of 30 years and a principal forgiveness grant of $1,997,000 including a $220,000 design advance to support SJSVSSD's design and construction of a new wastewater collection system. The Utah Permanent Community Impact Board (CIB) also authorized loan and grant funding in support of the project. CIB authorized a loan of $885,000 with an interest rate of 0% and a 30 year term and a grant of $2,065,000 for the project. In addition, the SJSVSSD self-funded $1,725,000 in septic system abandonment and lateral connections. This project is ranked 6th out of 7 projects on the Wastewater Treatment Project Priority List. Staff reports to the Board for 2016 and 2018 are included as Attachment 2 and 3.

2020 Cost overruns

During construction of the project, additional costs were incurred due to unanticipated utility congestion which caused alignments to have to change during construction and due to additional exploratory work needed to work around existing utilities throughout the construction of the sewer pipeline. The additional subsurface and exploratory work required more labor, prefabricated products,

and additional work to protect the existing utilities. No change orders were approved for this cost overrun by the SJSVSSD or DWQ but the work was completed by the contractor. Subsequently, contractors were not reimbursed for these overruns. The contractor submitted a dispute to the SJSVSSD in June 2020. This dispute was settled for $750,000 through arbitration during the summer of 2020. The County has paid this settlement and is expecting reimbursement from the SJSVSSD. SJSVSSD is requesting additional assistance from the board in the amount $360,000 toward final closeout of the project. If authorized, this funding would bring the board's total investment in the project to $3,325,000. SJSVSSD requests the supplemental financing in the term of a loan.

Staff developed static cost models (Attachment 1) to evaluate three scenarios for supplemental funding by the Board in the amount $360,000:

- Scenario 1 - $360,000 in additional grant (principal forgiveness)
- Scenario 2 - $216,000 in additional grant and $144,000 in additional loan. This is a grant/loan funding proportionate with original authorization
- Scenario 3 - $360,000 in additional loan at varying interest rates.

The SJSVSSD's median adjusted gross income (MAGI of Moab) in 2018 was $37,000. In reference to the Utah Water Quality Board financial assistance criterion, 1.4% of MAGI would be $43.17 per month. The static models show that, in all cases, the sewer rates with current funding will exceed the 1.4% threshold. Thus grant assistance may be considered by the Board as part of a funding package.

Staff Comments

Staff supports the SJSVSSD's plan to implement a public wastewater collection system that will protect a valuable regional drinking water resource and contribute to orderly growth in the area. The project has connected the SJSVSSD's collection system to the regional wastewater treatment plant in Moab City, linking the regional needs for water quality protection. Staff discussed with the SJSVSSD that it is unusual for a project to return to the Board post-loan closing. While it is unfortunate the project experienced cost overruns, this project is complete and in need of financial assistance to close out the project.

Last, staff discussed possible funding recommendations to the Board with the SJSVSSD. The SJSVSSD has indicated to staff they believe the community can support additional loan but asks the Board be as aggressive as possible in rate reductions. Since construction, SJSVSSD has increased connections from 230 to 241 so this growth and additional growth should help SJSVSSD support the loan repayment.

Staff Recommendations

Staff recommends the Board: **authorize an additional $360,000 in loan at 0% interest for a 30 year term.**

December 2, 2020
San Juan Spanish Valley SSD – New Wastewater Collection System
$360,000 Project Closeout Supplemental Funding Request
Attachment 1

ATTACHMENT 1 - STATIC COST MODEL
San Juan Spanish Valley SSD - Water Quality Board

Project Costs	
Land/Right-of-way	$ 155,000
Capacity purchasing(Moab & GWSSA)	$ 312,800
Legal/Bonding	$ 15,000
DWQ Loan Origination Fee	$ 11,400
Geotechnical Eval. & Permit	$ 40,000
Engineering - Design	$ 220,000
Engineering - CMS	$ 175,000
Abandonment Septic Tank (in -kind)	$1,725,000
Construction	$5,072,700
Contingency (approx. 10% const. cost)	$ 273,100
Total Project Cost:	**$8,000,000**

Current Customer Base & User Charges	
Initial Total Customer (ERU's)	241
MAGI for Moab (2018):	$37,000
Affordable Monthly Rate at 1.4%	$43.17
Combined Impact Fee (per ERU):	$5,174.00
Current Monthly Fee (per ERU)	$0.00
New proposed monthly fee	$43.17
Existing Sewer Debt Service	$0

Project Funding	
Abandonment Septic Tank (in -kind)	$1,725,000
Authorization CIB Loan + additioal $90,000	$ 885,000
Authorization CIB Grant + additional $360,000	$2,065,000
Original Authorization WQB Grant + Additional $450,00(	$1,997,000
Original Authorization WQB Loan	$ 968,000
Additial WQB Funding in Dec 2020	$ 360,000
Total Project Cost:	**$8,000,000**

Loan Repayment Term:	30
Reserve Funding Period:	10
New Annual O&M expensive	$35,000

ESTIMATED COST OF SEWER SERVICE

	WQB Grant Amount	WQB Loan Amount	WQB Loan Interest Rate	WQB Loan Debt Service	WQB Loan Reserve	Annual Sewer O&M Cost	Moab & GWSSA Sewer Fee	Existing Debt Service	New CIB Debt Service	New CIB Reserve	Total Annual Sewer Cost	Monthly Sewer Cost/ERU	Sewer Cost as a % of MAGI
	1,997,000	968,000	0.00%	32,267	4,840	35,000	20,475	$0	29,500	4,425	126,507	43.74	1.42%
S1	2,357,000	968,000	0.00%	32,267	4,840	35,000	20,475	$0	29,500	4,425	126,507	43.74	1.42%
S2	2,213,000	1,112,000	0.00%	37,067	5,560	35,000	20,475	$0	29,500	4,425	132,027	45.65	1.48%
S3	1,997,000	1,328,000	0.00%	44,267	6,640	35,000	20,475	$0	29,500	4,425	140,307	48.52	1.57%
	1,997,000	1,328,000	0.50%	47,780	7,167	35,000	20,475	$0	29,500	4,425	144,347	49.91	1.62%
	1,997,000	1,328,000	0.75%	49,598	7,440	35,000	20,475	$0	29,500	4,425	146,438	50.64	1.64%
	1,997,000	1,328,000	1.00%	51,457	7,719	35,000	20,475	$0	29,500	4,425	148,576	51.37	1.67%

Shaded row shows the original WQB and CIB financing

Attachment 2

Project Number:
Date Received: June 2016
Date to be presented to the WQB: October 26, 2016

WATER QUALITY BOARD
FEASIBILITY REPORT FOR WASTEWATER TREATMENT PROJECT
AUTHORIZATION

APPLICANT:	San Juan Spanish Valley SSD P.O. Box 9 Monticello, Utah 84535-009 Telephone: (435) 597-3225
PRESIDING OFFICIAL:	Frank Darcy, Chairman
CONTACT PERSON:	Kelly Pehrson, County Administrator
TREASURER/RECORDER:	Louis Jones, City Recorder
CONSULTING ENGINEER:	Ryan Jolley, P. E. Jones & DeMille Engineering, Inc. 1635 South, 100 West Richfield, Utah 84701 (435) 896-8266
BOND COUNSEL:	Richard Chamberlain Chamberlain & Associates 81 East, 100 South Monticello, Utah 84534 Telephone: (435) 587-2223

APPLICANT'S REQUEST:

San Juan Spanish Valley Special Service District (District) is requesting a grant in the amount $2,000,000 and a loan in the amount $505,000 loan repayable over 30 years at an interest rate of 0% for construction of a new wastewater collection system. The District is also requesting a Design Advance in the amount of $220,000.

At the August 24, 2016 meeting, the Water Quality Board raised questions about the density of development in the District, the expected growth in the service area, and the timing of the project. These questions are addressed in the following section of this report.

PROJECT NEED:

The District overlies groundwater aquifers that are classification Class IA (pristine) and Class II (drinking water quality) groundwater and these aquifers supply drinking to the community. The 2007 Utah Department of Natural Resources (DNRe) study *Hydrogeology of Moab-Spanish Valley, Grand and San Juan Counties Utah with Emphasis on Maps for Water Resource Management and Land-Use Planning,* the potential impacts of adding additional septic tanks was analyzed and concluded that to keep nitrate concentrations below 3 mg/L, new septic tank system development should be confined to building lots of size 10 to 20 acres per residence.

Current septic tank (and water well) densities in the District are shown in Figure 2. The figure illustrates the concentration of development in the Moab-Spanish Valley; the development is not distributed uniformly across the counties and over the aquifers. Rather, development is focused along Highway 191 and in lower lying, buildable areas. As a result, septic tank densities are much greater than recommended in the 2007 DNRe study and water wells in the area are at greater risk of nitrate contamination in the developed areas. Both Southeast Utah Health Department and the San Juan County Health Department expressed concerns about the potential contamination of individual culinary water wells by older septic system in the area.

The U.S. Census Bureau estimates population growth in the Moab area to be 2% per annum. Based on recent building permit applications, the District's engineer estimates the current growth rate is more like 6%. Although this rate of growth is unlikely to be sustained throughout the 30 year planning period, it is consistent with recreation-driven growth in neighboring Moab. This growth is expected to continue for the next 3 or 4 years and as Moab grows, the need for affordable housing and services should continue to expand in San Juan.

Timing needed to implement the project is dictated primarily by availability of wastewater treatment services from Moab. Moab City expects to break ground on its new wastewater treatment plant in November or December 2016. Until this plant is completed in Summer 2018, Moab is unable to accept the District's wastewater. The implementation schedule for the District's project (see below) would have wastewater beginning to flow to Moab in the Spring of 2019.

The construction of the District's sewerage system on the proposed schedule will allow the District to minimize the number of new septic tank systems in its developing areas without curtailing its planned and expected growth while safeguarding the aquifers that provide drinking water to the community.

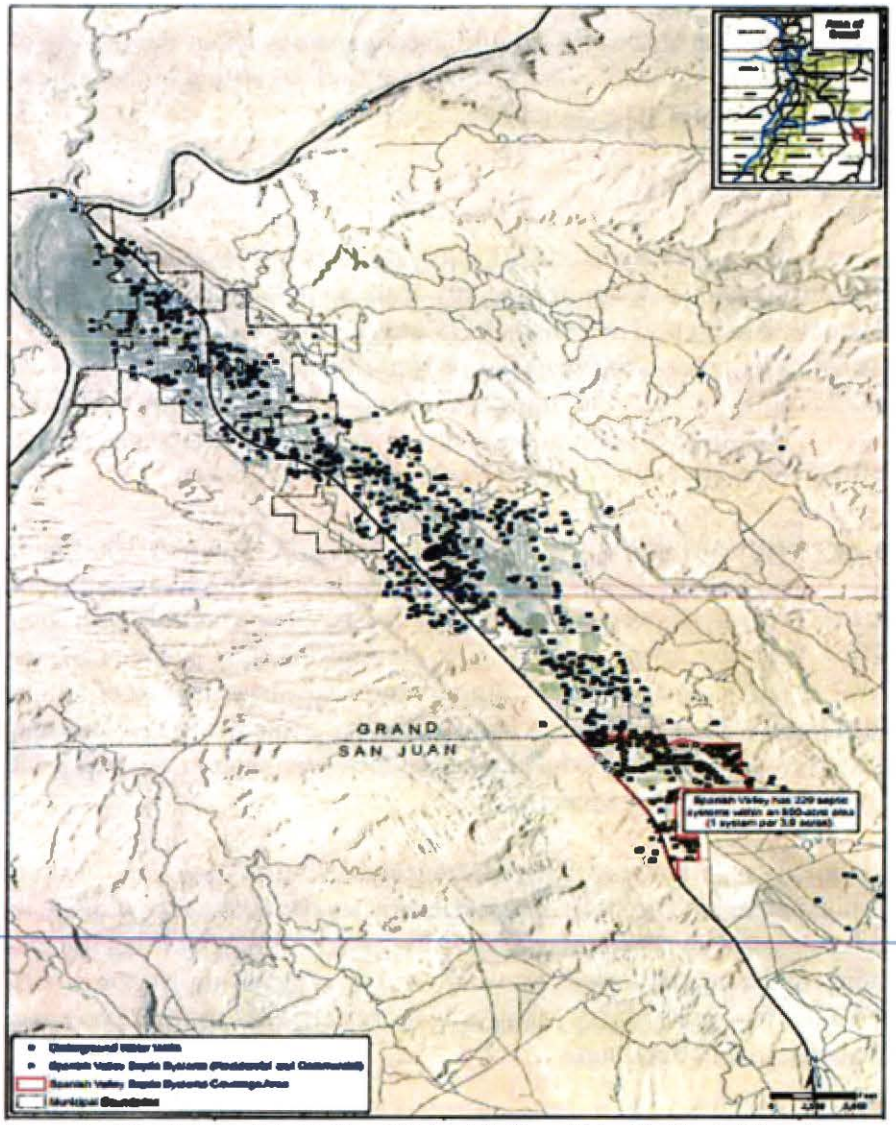


Figure 2. Moab-Spanish Valley Water Well and Septic Tank Density

PROJECT DESCRIPTION:

The District is proposing to construct approximately 44,000 linear feet of 8-inch gravity sewer lines and 145 manholes for sewage collection, as well as 4,800 linear feet of 8-inch interceptor sewer to transfer the wastewater to the Grand Water & Sewer Service Agency (GWSSA). The wastewater will then be conveyed to Moab City's new wastewater treatment system for treatment and disposal (alternative No. 4 as listed below).

ALTERNATIVES EVALUATED

The Facilities Plan evaluated the following alternatives:

1. No action.

2. Construction of a new "stand alone" sewerage system and treatment works by the District.
    a. Total Containment lagoons
    b. Mechanical treatment plant (sequencing batch reactor) with discharge of treated effluent into Pack Creek in Grand County.
3. Construction of a new sewerage system and an interceptor connecting to Moab's sewerage system and regional treatment works.
4. Construction of a new sewerage system that transfers wastewater to the GWSSA and the Moab regional treatment works.

The recommended alternative is No. 4, which is to construct a new sewerage system that connects to GWSSA and the Moab treatment works.

POSITION ON PROJECT PRIORITY LIST:

The District is ranked No.4 out of 8 projects on the FY 2016 Wastewater Treatment Project Priority List.

POPULATION GROWTH:

	Year	Population[1]	ERC[2]
Current	2016	575	230
Design	2047	1,065	426

[1] The average population growth through the year 2047 is estimated to be 2% by the US Census Bureau.
[2] ERC = Equivalent Residential Connections

PUBLIC PARTICIPATION AND DEMONSTRATION OF PUBLIC SUPPORT:

The District held a public meeting on May 16, 2016, as required by the Utah Wastewater State Revolving Fund (SRF) program. The District will hold a final public hearing once funding is secured.

IMPLEMENTATION SCHEDULE:

Public Meeting	May 2016
Apply to WQB for Funding:	August 24, 2016
WQB Funding Authorization:	October 2016
CIB Review / Prioritization	November 2016
Public Hearing:	January 2017
Advertise EA (FONSI):	February 2017
CIB Funding Authorization	February 2017
Engineering Report Approval:	March 2017
Commence Design:	May 2017
Issue Construction Permit:	October 2017
Advertise for Bids:	October 2017
Bid Opening:	October 2017
Loan Closing:	December 2017
Commence Construction:	March 2018

APPLICANT'S CURRENT USER CHARGE:

The District does not currently have a public sewer system.

COST ESTIMATE:

Abandonment & New Connection Costs	$700,000
Engineering - Design	$220,000
Engineering – CMS	$175,000
Geotechnical Evaluation & Permit	$40,000
Land/Easement/Water Rights	$155,000
Capacity Purchase from Moab and GWSSA	$795,000
Construction	$3,270,000
Contingency (~10 % of construction)	$330,000
DWQ Loan Origination Fee*	$5,000
Legal/Bonding	$15,000
Total:	$5,705,000

*Based on a $500,000 WQB loan

COSTS SHARING:

The total cost of the project is $5,705,000. The district has requested the Permanent Community Impact Board (CIB) fund half of the total cost in the amount of $2,500,000 for this project. This request will be presented during the CIB's meeting that will be held November 4, 2016. The following cost sharing is proposed for this project:

Funding Source	Cost Sharing	Percent of Project
Local Cost[1]	$700,000	12%
WQB Funding	$2,505,000	44%
CIB Funding	$2,500,000	44%
Total:	$5,705,000	100%

[1]The current residents would need to pay to abandon existing septic systems and to run sewer laterals to the new community sewer system, and a connection fee was estimated to cost $3,000 per residence. The total local cost is estimated $700,000 to be paid by the community.

ESTIMATED ANNUAL COST FOR SEWER SERVICE:

Staff developed cost models (static and dynamic) to evaluate several financing alternatives for the project. The basic cost data used in modeling financial alternatives for the project are provided below.

Operation & Maintenance – Annual	$35,000
Existing Debt Service	$0
Median Adjusted Gross Household Income- Moab (2014)	$33,922
WQB Maximum Affordable Rate at 1.4% MAGI	$37.24

The static model financing alternatives considered are given in Attachment 1. The applicant's requested financing terms were: a construction grant of $2,000,000, and a $500,000 loan with a 30 years term and 0% interest. The requested financing package is highlighted in Attachment 1. The loan origination fee of 1% was added to the WQB loan amount. For modeling purposes, it was assumed that CIB would extend the same financing package as the WQB except that CIB does not charge a loan origination fee.

The static model shows that a 30 year, 0% interest loan of $600,000 plus $6,000 origination fee is affordable with a grant of $1,900,000. The basic results from this calculation are as follows:

WQB Debt Service (0.0%; 30 yrs)	$20,200
WQB Annual Reserve Payment (first 10 years)	$3,030
CIB Debt Service (0.0%; 30 yrs)	$20,000
CIB Annual Reserve Payment (first 10 years)	$3,000
Total Annual Cost	$102,000
Monthly Cost / ERU	$36.93
Cost calculated as % of MAGI	1.39%

Staff developed a dynamic cost model for the project to determine if growth-based sewer revenues could contribute significantly toward financing the project and reducing the amount of grant needed. The dynamic model presented in Attachment 2 uses a 30 year term and 0% interest rate to establish a graduated loan repayment schedule that recognizes growth in sewer revenue as new connections are made each year. This model uses a 2% annual growth rate, 1.8% annual cost inflation, and the maximum affordable sewer rate of $37.24 per month per ERC. A minimum debt-to-service ratio of 1.25% is maintained throughout the loan term.

For these conditions, the dynamic model shows that a WQB loan of $968,000 is affordable; the grant amount would be $1,547,000. Comparable loan and grant amounts (and terms) from CIB, and a minimum District impact fee of $2,100, are needed to keep the project affordable. The basic results from the dynamic model calculation are as follows:

Average WQB Debt Service (0.0%; 30 yrs)	$32,267
Average WQB Annual Reserve Payment (first 10 years)	$3,880
Average CIB Debt Service (0.0%; 30 yrs)	$31,933
Average CIB Annual Reserve Payment (first 10 years)	$3,830
Average Total Annual Cost	$142,690
Monthly Cost / ERU	$37.24
Cost calculated as % of MAGI	1.4%

Cost sharing by this cost model would be as follows. Should CIB elect to fund this project with and interest bearing loan (likely) their loan / grant amounts would differ.

Funding Source	Cost Sharing	Percent of Project
Local Cost[1]	$700,000	12%
WQB Loan (30 year, 0% int.)	$968,000	17%
WQB Grant	$1,547,000	27%

CIB Loan (30 year, 0% int.)	$958,000	17%
•CIB Grant	$1,537,000	27%
Total:	$5,710,000	100%

STAFF COMMENTS:

Staff supports the District's plan to implement a public sewerage system that will protect a valuable regional drinking water resource and contribute to orderly growth in the area. The recommended alternative would connect the District's sewer to the regional wastewater treatment plant in Moab City, linking the regional needs for water quality protection.

Financing the project is challenging because of its high cost and the limited number of potential sewer customers in the District at present. Current growth and rising costs support the need for planning and constructing a public sewerage system now.

Using a back-loaded repayment schedule as defined in the dynamic model allows the WQB to apply more loan funds to the project and allows the District to defer loan payments while its builds its customers. Both the WQB and the District take on greater risk when depending on this growth to maintain the system and make future debt service payments. Staff believes that this risk is manageable with prudent management of the assets and the utility's finances, including but not limited to regular attention to its cost of services, establishing sewer fees that are consistent with uses, adequately funding depreciation, and maintaining impact fees.

Staff anticipates that this project, when authorized by the WQB, would be funded with first round or equivalency-project federal dollars and that the grant component would be provided as 2015 Capitalization Grant "principal forgiveness."

STAFF RECOMMENTATION:

Staff recommends that the Water Quality Board authorize **SJSVSSD a loan in the amount of $968,000 at an interest rate of 0% repayable over 30 years and a grant in the amount of $1,547,000, along with a Design Advance in the amount of $220,000** subject to these special conditions:

1. The District must agree to participate annually in the Municipal Wastewater Planning Program (MWPP).

2. As part of the facility planning, the District must complete a Water Conservation and Management Plan.

3. The District must pursue and retain additional funding necessary to fully implement the project.

4. The District must negotiate an inter-local agreement between the District, Moab City and GWSSA and establish a construction schedule that indicates the date when Moab and GWSSA will accept its wastewater.

5. As part of its Plan of Operations, the District must develop and implement an asset management program that is consistent with the SRF's Fiscal Sustainability Plan.

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File: Spanish Valley SSD/Planning/Section 1

ATTACHMENT 1 - STATIC COST MODEL
San Juan Spanish Valley SSD - Water Quality Board

Project Costs

Land/Right-of-way	$	155,000
Capacity purchasing(Moab & GWSSA)	$	795,000
Legal/Bonding	$	15,000
DWQ Loan Origination Fee	$	5,000
Geotechnical Evil. & Permit	$	40,000
Engineering - Design	$	220,000
Engineering - CMS	$	175,000
Construction	$	3,270,000
Contingency (approx. 10% const. cost)	$	330,000
Abandonment & New Connection Fee	$	700,000
Total Project Cost:	**$**	**5,705,000**

Project Funding

Local Costs (be paid by residents)	$	700,000
WQB Loan	**$**	**505,000**
WQB Grant	**$**	**2,000,000**
CIB Loan	$	500,000
CIB Grant	$	2,000,000
Total Project Cost:	**$**	**5,705,000**

Current Customer Base & User Charges

Initial Total Customer (ERU's)	230
MAGI for Moab (2014): Moab	$31,922
Affordable Monthly Rate at 1.4%	$37.24
Combined Impact Fee (per ERU):	$5,800
Current Monthly Fee (per ERU)	$0.00
New proposed monthly fee	$37.24
Existing Sewer Debt Service	$0

Funding Conditions

Loan Repayment Term:	30
Reserve Funding Period:	10
New Annual O&M expensive	$35,000

ESTIMATED COST OF SEWER SERVICE

WQB Grant Amount	WQB Loan Amount	WQB Loan Interest Rate	WQB Loan Debt Service	WQB Loan Reserve	Annual Sewer O&M Cost	Moab & GWSSA Sewer Fee	Existing Debt Service	New CIB Debt Service	New CIB Reserve	Total Annual Sewer Cost	Monthly Sewer Cost/ERU	Sewer Cost as a % of MAGI
2,505,000	0	0.00%	0	0	35,000	20,700	$0	-	-	55,700	20.18	0.76%
2,000,000	505,000	0.00%	16,833	2,525	35,000	20,700	$0	16,667	2,500	94,225	34.14	1.28%
2,000,000	505,000	1.00%	19,568	2,935	35,000	20,700	$0	19,374	2,906	100,483	36.41	1.37%
2,000,000	505,000	2.50%	24,128	3,619	35,000	20,700	$0	23,889	3,583	110,919	40.19	1.51%
1,900,000	**606,000**	**0.00%**	**20,200**	**3,030**	**35,000**	**20,700**	**$0**	**20,000**	**3,000**	**101,930**	**36.93**	**1.39%**
1,900,000	606,000	1.00%	23,481	3,522	35,000	20,700	$0	23,249	3,487	109,440	39.65	1.49%
1,900,000	606,000	2.50%	28,953	4,343	35,000	20,700	$0	28,667	4,300	121,963	44.19	1.66%
1,547,000	968,000	0.00%	32,267	4,840	35,000	20,700	$0	31,947	4,792	129,546	46.94	1.76%
1,547,000	968,000	1.00%	37,508	5,626	35,000	20,700	$0	37,137	5,571	141,542	51.28	1.93%

New CIB Debt Service Matches WQB less 1% loan origination fee

ATTACHMENT 2 - DYNAMIC COST MODEL
San Juan Spanish Valley SSD Cash Flow Model (2016 dollars)

WQB Loan Terms

Funded Project Cost:	$	5,710,000
CIB Grant Amount:	$	1,537,000
CIB Loan Amount:	$	958,000
WQB Grant Amount:	$	1,547,000
WQB Loan Amount:	$	968,000
Local Contribution:	$	700,000
Loan Term:		30
Interest Rate:		0.0%
Average Annual WQB Payment:	$	32,267

Annual Sewer Expenses (Estimated)

Proposed WQB Loan Amount:	$	968,000
Estimated O&M Cost:	$	35,000
Annual O&M Cost Increase:		1.80%
Existing Debt Service:	$	-
Incremental Increase Year 1 - 10 =		31.0%
Incremental Increase Year 11 - 30 =		25.0%

Sewer Revenue Sources (Projected)

Beginning Cash:	$	-
Initial Customers (ERU):		230
Projected Growth Rate:		2.00%
District Impact Fee:	$	2,100
Moab + GWSSA Impact Fee	$	3,800
Proposed Monthly User Charge:	$	37.24

Sewer Revenue Projections

Year	Growth Rate (%)	Annual Growth (ERU)	Total Users (ERU)	User Charge Revenue	District Only Impact Fee Revenue	Total Revenue	Amortized WQB Loan	WQB Loan Reserves	Amortired CIB Loan	CIB Loan Reserves	Remaining Principal	Moab/GWSSA Sewer Fee	O&M Expenses	Total Expenses	Beginning Cash	Ending Cash Flow	Net Revenue	Debt Service Ratio
2018	2.0%		230							-	1,926,000	-	-	-	-	-	-	-
2019	2.0%	5	235	-	-	-				-	1,926,000	-	-	-	-	-	-	
2020	2.0%	5	240	107,251	10,500	117,751	22,705	3,406	22,372	3,356	1,880,923	21,600	35,630	109,068	-	8,683	8,683	1.34
2021	2.0%	5	245	109,486	10,500	119,986	23,398	3,510	23,064	3,460	1,834,461	22,050	36,271	111,753	8,683	16,916	8,233	1.33
2022	2.0%	5	250	111,720	10,500	122,220	24,090	3,614	23,757	3,564	1,786,614	22,500	36,924	114,449	16,916	24,687	7,771	1.31
2023	2.0%	5	255	113,954	10,500	124,454	24,783	3,717	24,450	3,667	1,737,381	22,950	37,589	117,156	24,687	31,985	7,298	1.30
2024	2.0%	5	260	116,189	10,500	126,689	25,476	3,821	25,142	3,771	1,686,763	23,400	38,265	119,876	31,985	38,798	6,813	1.28
2025	2.0%	5	265	118,423	10,500	128,923	26,168	3,925	25,835	3,875	1,634,760	23,850	38,954	122,608	38,798	45,113	6,315	1.27
2026	2.0%	5	270	120,658	10,500	131,158	26,861	4,029	26,528	3,979	1,581,371	24,300	39,655	125,352	45,113	50,918	5,805	1.26
2027	2.0%	5	275	122,892	10,500	133,392	27,554	4,133	27,220	4,083	1,526,598	24,750	40,369	128,109	50,918	56,201	5,283	1.25
2028	2.0%	6	281	125,573	12,600	138,173	28,385	4,258	28,052	4,208	1,470,161	25,290	41,096	131,288	56,201	63,087	6,886	1.27
2029	2.0%	6	287	128,255	12,600	140,855	29,216	4,382	28,883	4,332	1,412,062	25,830	41,836	134,479	63,087	69,462	6,375	1.26
2030	2.0%	6	293	130,936	12,600	143,536	28,492		28,159		1,355,412	26,370	42,589	125,609	69,462	87,389	17,926	1.32
2031	2.0%	6	299	133,617	12,600	146,217	29,162		28,829		1,297,420	26,910	43,355	128,257	87,389	105,349	17,960	1.31
2032	2.0%	6	305	136,298	12,600	148,898	29,833		29,499		1,238,088	27,450	44,136	130,918	105,349	123,330	17,981	1.30
2033	2.0%	6	311	138,980	12,600	151,580	30,503		30,170		1,177,415	27,990	44,930	133,593	123,330	141,317	17,987	1.30
2034	2.0%	6	317	141,661	12,600	154,261	31,173		30,840		1,115,402	28,530	45,739	136,282	141,317	159,295	17,979	1.29
2035	2.0%	6	323	144,342	12,600	156,942	31,844		31,510		1,052,048	29,070	46,562	138,986	159,295	177,251	17,956	1.28
2036	2.0%	6	329	147,024	12,600	159,624	32,450		32,117		987,481	29,610	47,400	141,577	177,251	195,298	18,047	1.28
2037	2.0%	7	**336**	150,152	14,700	164,852	33,296		32,963		921,222	30,240	48,253	144,752	195,298	215,397	20,099	1.30
2038	2.0%	7	343	153,280	14,700	167,980	34,078		33,745		853,399	30,870	49,122	147,815	215,397	235,562	20,165	1.30
2039	2.0%	7	350	156,408	14,700	171,108	34,860		34,527		784,012	31,500	50,006	150,893	235,562	255,777	20,215	1.29
2040	2.0%	7	357	159,536	14,700	174,236	35,642		35,309		713,061	32,130	50,906	153,987	255,777	276,026	20,249	1.29
2041	2.0%	7	364	162,664	14,700	177,364	36,424		36,091		640,546	32,760	51,823	157,098	276,026	296,293	20,267	1.28
2042	2.0%	7	371	165,792	14,700	180,492	37,206		36,873		566,467	33,390	52,755	160,225	296,293	316,561	20,268	1.27
2043	2.0%	7	378	168,921	14,700	183,621	37,988		37,655		490,824	34,020	53,705	163,368	316,561	336,813	20,252	1.27
2044	2.0%	8	386	172,496	16,800	189,296	38,882		38,549		413,393	34,740	54,672	166,842	336,813	359,266	22,453	1.29
2045	2.0%	8	394	176,071	16,800	192,871	39,776		39,442		334,175	35,460	55,656	170,334	359,266	381,803	22,537	1.28
2046	2.0%	8	402	179,646	16,800	196,446	40,670		40,336		253,169	36,180	56,658	173,843	381,803	404,405	22,602	1.28
2047	2.0%	8	410	183,221	16,800	200,021	41,563		41,230		170,376	36,900	57,677	177,371	404,405	427,055	22,650	1.27
2048	2.0%	8	418	186,796	16,800	203,596	42,457		42,124		85,795	37,620	58,716	180,916	427,055	449,735	22,679	1.27
2049	2.0%	8	426	190,371	16,800	207,171	43,064		42,731		0	38,340	59,772	183,907	449,735	472,999	23,264	1.27
					401,100		**968,000**		**958,000**									

Attachment 3

M E M O R A N D U M

TO: Utah Water Quality Board

THROUGH: Erica Brown Gaddis, PhD
Executive Secretary

FROM: Beth Wondimu, P. E.
Engineering Section

DATE: October 24, 2018

SUBJECT: San Juan Spanish Valley SSD – New Wastewater Collection System
$450,000 Supplemental Funding and Reauthorization Request

On October 26, 2016 the Water Quality Board (the Board) authorized a construction assistance loan of $968,000 with an interest rate of 0% and a term of 30 years and a principal forgiveness grant of $1,547,000 including a $220,000 design advance to support for SJSVSSD's design and construction of a new sewerage system. Staff's report provided to the Board for this authorization is provided in Attachment 2. The Utah Permanent Community Impact Board (CIB) also authorized loan and grant funding in support of the project. CIB authorized a loan of $750,000, an interest rate of 0% percent and a 30 year term and grant of $1,750,000 for the project. The total estimated cost at that time was $5.7 million. The SJSVSSD will self-fund $700,000 needed to pay to abandon existing septic systems and to run sewer laterals to the new community sewer system.

On August 2018, SJSVSSD bid the sewer project and the lowest bid came in over the original construction estimate. With the higher than estimated construction bid, the overall project costs are now estimated to be $6.6 million. A comparison of the original cost estimate with today's cost estimate is given in Table 1. Jones & DeMille Engineering has reviewed all the bids and compared costs. Their analysis of the bids indicated that higher costs are due to higher pipe material costs ($27 per LF versus $35.50 per LF) and higher labor costs due to market conditions.

Table 1 – TOTAL PROJECT COST

Item	Description	October 2016 Budget	October 2018 Budget
1	Abandonment & New Connection Costs	$700,000	$700,000
2	Engineering - Design	$220,000	$220,000
3	Engineering – CMS	$175,000	$175,000
4	Geotechnical Evaluation & Permit	$40,000	$40,000
5	Land/Easement/Water Rights	$155,000	$155,000
6	Capacity Purchase from Moab and GWSSA	$795,000	$312,800
7	Construction	$3,270,000	$4,712,700
8	Contingency	$330,000	$273,100
9	DWQ Loan Origination Fee*	$5,000	$11,400
10	Legal/Bonding	$15,000	$15,000
	Total Project Costs:	$5,705,000	$6,615,000

A total of $6.6 million is needed to fund the project. The District has requested $450,000 in supplemental funding from both the Water Quality Board and from CIB. On October 4, 2018, CIB authorized the additional $450,000 in the form of $90,000 loan at 2.5 percent interest loan and a 30 years term plus a grant of $360,000.

San Juan Spanish Valley SSD is requesting that the Board authorize additional funding of $450,000 bringing its total financing for the project to $2,965,000. SJSVSSD requests the supplemental financing in the form of grant due to hardship by the Board's 1.4% MAGI criterion. A comparison of the authorized and requested funding is shown in Table 2 below.

	TABLE 2-PROJECT FUNDING COMPARISON			
Item	**Funding Source**	**October 2016 Originally**	**Additional** **$450,000 for each, WQB & CIB, Supplemental 2018**	**October 2018 Total**
1	SJSVSSD Cost (cash)	$700,000	-	$700,000
2	WQB Loan (30 year, 0% int.)	$968,000		$968,000
3	WQB Grant	$1,547,000	**$450,000**	$1,997,000
4	CIB Loan (30 year, interest varies.)	$750,000	$90,000	$885,000
5	CIB Grant	$1,750,000	$360,000	$2,065,000
	Total Project Costs:	$5,715,000	$900,000	$6,615,000

Staff developed static cost models (Attachment 1) to evaluate three scenarios for supplemental funding by the Board in the amount $450,000:

(S1) additional $450,000 grant (principal forgiveness)
(S2) additional $450,000 loan
(S3) additional $450,000 in grant/loan proportionate with original authorization (about 60:40)

These static models show that in all cases, the sewer rates with current funding will exceed $45.83 per month per ERU and 1.61 percent of the 2016 MAGI. That is, with supplemental Board funding provided as $450,000 grant (principal forgiveness) the sewer rate will exceed Board affordability criteria.

Staff Comments

Staff supports the District's plan to implement a public sewerage system that will protect a valuable regional drinking water resource and contribute to orderly growth in the area. The recommended alternative would connect the District's sewer to the regional wastewater treatment plant in Moab City, linking the regional needs for water quality protection.

Financing the project is challenging because of its high cost and the limited number of potential sewer customers in the District at present. Current growth and rising costs support the need for planning and constructing a public sewerage system now.

Staff Recommendations

Staff anticipates that this project, when re-authorized by the WQB, would be funded with first round or equivalency-project federal dollars and the grant component would be provided as 2016 Capitalization Grant "principal forgiveness".

Staff recommends the Board authorize the additional $450,000.00 requested by San Juan Spanish Valley SSD as principal forgiveness with the same loan and special conditions as the original authorization.

Based on this recommendation the final financing would consist of **a loan of $968,000.00 at an interest rate of 0% repayable over 30 years with a grant in the amount of $1,997,000** in the form of principal forgiveness.

ATTACHMENT 1 - STATIC COST MODEL

San Juan Spanish Valley SSD - Water Quality Board

Project Costs		
Land/Right-of-way	$	155,000
Capacity purchasing(Moab & GWSSA)	$	312,800
Legal/Bonding	$	15,000
DWQ Loan Origination Fee	$	11,400
Geotechnical Eval. & Permit	$	40,000
Engineering - Design	$	220,000
Engineering - CMS	$	175,000
Abandonment Septic Tank (in -kind)	$	700,000
Construction	$	4,712,700
Contingency (approx. 10% const. cost)	$	273,100
Total Project Cost:	**$**	**6,615,000**

Project Funding		
Abandonment Septic Tank (in -kind)	$	700,000
Original Authorization CIB Loan	$	750,000
Original Authorization CIB Grant	$	1,750,000
Additional CIB Funding	$	450,000
Original Authorization WQB Grant	$	1,547,000
Original Authorization WQB Loan	$	968,000
Additional WQB Funding	$	450,000
Total Project Cost:	**$**	**6,615,000**

Current Customer Base & User Charges	
Initial Total Customer (ERU's)	230
MAGI for Moab (2016):	$34,108
Affordable Monthly Rate at 1.4%	$39.79
Combined Impact Fee (per ERU):	$5,800
Current Monthly Fee (per ERU)	$0.00
New proposed monthly fee	$43.50
Existing Sewer Debt Service	$0

Loan Repayment Term:	30
Reserve Funding Period:	10
New Annual O&M expensive	$35,000

ESTIMATED COST OF SEWER SERVICE

	WQB Grant Amount	WQB Loan Amount	WQB Loan Interest Rate	WQB Loan Debt Service	WQB Loan Reserve	Annual Sewer O&M Cost	Moab & GWSSA Sewer Fee	Existing Debt Service	New CIB Debt Service	New CIB Reserve	Total Annual Sewer Cost	Monthly Sewer Cost/ERU	ewer Cost as a % of MAGI
	1,547,000	968,000	0.00%	32,267	4,840	35,000	20,700	$0	29,300	4,395	126,502	45.83	1.61%
S1	1,997,000	968,000	0.00%	32,267	4,840	35,000	20,700	$0	29,300	4,395	126,502	45.83	1.61%
S2	1,547,000	1,418,000	0.00%	47,267	7,090	35,000	20,700	$0	29,300	4,395	143,752	52.08	1.83%
	1,547,000	1,418,000	0.50%	51,018	7,653	35,000	20,700	$0	29,300	4,395	148,066	53.65	1.89%
	1,547,000	1,418,000	1.00%	54,945	8,242	35,000	20,700	$0	29,300	4,395	152,582	55.28	1.94%
	1,547,000	1,418,000	1.50%	59,044	8,857	35,000	20,700	$0	29,300	4,395	157,296	56.99	2.01%
S3	1,823,750	1,141,250	0.00%	38,042	5,706	35,000	20,700	$0	29,300	4,395	133,143	48.24	1.70%

Shaded row indicates original authorization by the Board along with CIB's current funding

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

M E M O R A N D U M

TO: Utah Water Quality Board

FROM: Lisa Stevens, Storm Water Specialist, General Permitting Section

THROUGH: Erica Gaddis, Executive Secretary
John Mackey, Assistant Director, DWQ
Jeanne Riley, General Permitting Section Manager, DWQ

DATE: December 2, 2020

SUBJECT: **Proposed Rulemaking, Revisions to the Utah Pollutant Discharge Elimination System (UPDES) Storm Water Discharge Rules, Utah Administrative Code, R317-8-1, R317-8-3, R317-8-4, and R317-8-11**

The Division of Water Quality (Division) seeks approval from the Water Quality Board (Board) to initiate rulemaking for revisions to the Utah storm water discharge rules in Part R317-8. Revisions to storm water permitting rules are required by HB226 which was passed in the 2020 General Session. HB226 requires the Board to make rules to establish the requirements for permitting of storm water discharges into waters of the state and that storm water permits be consistent with the established rules. The Administrative Rulemaking Act requires rulemaking to be initiated within 180 days of the effective date of a bill requiring rulemaking. The deadline for initiating rulemaking associated with HB226 is December 28, 2020.

SB6004 was passed during the sixth 2020 interim session and limits rulemaking by the Water Quality Board (and Air Quality Board) unless it is a state rule related to a federally delegated program; a rule mandated by statute to be made, amended, or repealed on or before July 1, 2020; or a rule that is necessary because failure to make, amend, or repeal the rule will cause imminent peril to public health and safety, imminent budget reduction, place the agency in violation of federal or state law, or fail to provide regulatory relief. This proposed rule change meets the first two requirements of SB6004 because the storm water rules fulfill the federal requirement to implement storm water permitting under the National Pollutant Discharge Elimination System Program (NPDES) [40 CFR 122] and are mandated by HB226. These revisions would therefore be allowed under SB6004.

The storm water rules are currently split up into the following sections of the administrative code:

R317-8-3.9, R317-8-4.1(15)(c), and R317-8-4.2(18). The proposed revisions consolidate the storm water rules into a new section, R317-8-11, to make access and review easier. The rules were also reviewed for accuracy and consistency with current permits. Updates were made to remove inaccuracies and incorrect or outdated references. Upon approval by the Board, the Division will initiate rulemaking by public noticing the proposed rule changes for 60 days. The Division wants to provide sufficient time for stakeholders to review these changes before final rulemaking. Further, the Division anticipates a larger effort to clean-up and reorganize R317-8 over the next years

Purpose of Proposed Rule Changes, (R317-8-11)
The Division is proposing changes to the state storm water discharge rules for the following reasons:

1. To improve and simplify referencing to requirements; and
2. To remove inaccuracies and incorrect or outdated references.

Improve and Simplify Referencing to Requirements
The storm water rules were scattered among other Utah Pollutant Discharge Elimination System (UPDES) permit requirements (R317-8). This made it difficult for those unfamiliar with the rules to locate pertinent information. Since the inception of Utah's storm water program, the rules appear to have been updated over time, as changes occurred, causing some information to be ordered in a less than orderly manner. The proposed revisions simply reorganize the rules and place them in one central location to make it easier to find the applicable sections.

Remove Inaccuracies and Correct Incorrect or Outdated References
The language for the storm water rules originated from 40 CFR 122.26. There are references to federally used forms which are not used by the Division. There are also requirements for permitting that reflect federal practices instead of Division practices.

The new rules remove references to the federal forms and reflect current practices within the Division.

Summary of changes
R317-8-1.6 Definitions Applicable to Storm-Water Discharges
References to information in R317-8-3.9 were updated to reference the sections that were moved to R317-8-11. Added a definition for Maximum Extent Practicable (MEP).

R317-8-1.10 Incorporation of Federal Regulations by Reference
References to information in R317-8-3.9 were updated to reference the sections that were moved to R317-8-11.

R317-8-3.1 Application for a UPDES Permit
References to information in R317-8-3.9 were updated to reference the sections that were moved to R317-8-11.

R317-8-3.2 Application Requirements for New Sources and New Discharges
References to information in R317-8-3.9 were updated to reference the sections that were moved to R317-8-11.

R317-8-3.4 Signatories to Permit Applications and Reports
References to information in R317-8-3.9 were updated to reference the sections that were moved to R317-8-11.

R317-8-3.5 Application Requirements for Existing Manufacturing, Commercial, Mining, and Silvicultural Discharges
References to information in R317-8-3.9 were updated to reference the sections that were moved to R317-8-11.

R317-8-3.9 Storm Water Discharges
Moved text to R317-8-11.3. To avoid renumbering subsequent sections the section title was left and the text was replaced with "Refer to Section R317-8-11".

R317-8-4.1(15)(c) Municipal Separate Storm Sewer Systems
Moved text to R317-8-11.3.(9).

R317-8-4.2(18) Qualifying State or Local Programs
Moved text to R317-8-11.4.

R317-8-11 Municipal, Industrial, and Construction Storm Water Discharges
This is a new section that was created for rules related to storm water discharges. Most of the text has been moved from other sections. In addition, the following modifications were made to the text:

- Added Section 11.1 which describes rule applicability.
- Added Section 11.2 which references the storm water definitions in R317-8-1.6.
- Created section 11.3:
    - Moved text from Section 3.9 and Subsection 4.1(15)(c) .
    - Reordered Sections in 11.3 to increase readability.
    - Separated the requirements for large construction activities that are greater than 5 acres from industrial activities.
    - Combined small and large construction activities. Requirements were combined where possible because they are permitted the same.
    - Combined large, medium, and small municipal separate storm sewer system (MS4) requirements where possible since they are permitted in the same fashion.
    - Updated "Executive Secretary" to "Director".
    - Removed outdated text that did not accurately reflect current practices.
    - Updated all references for moved content.
    - Corrected references that were incorrect.

  - Modified text to meet DAR requirements (removal of superfluous phrases such as "the provisions of" before a citation, removal of the term and/or, etc.).
  - Added retention requirements that are currently in municipal storm water permits.
- Moved text from Subsection R317-8-4.2(18) to create Section 11.4.

R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-1. General Provisions and Definitions.

1.1 COMPARABILITY WITH THE CWA. The UPDES rules promulgated pursuant to the Utah Water Quality Act are intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 CONFLICTING PROVISIONS. The provisions of the UPDES rules are to be construed as being compatible with and complementary to each other. In the event that any of these rules are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 SEVERABILITY. In the event that any provision of these rules is found to be invalid by a court of competent jurisdiction, the remaining UPDES rules shall not be affected or diminished thereby.

1.4 ADMINISTRATION OF THE UPDES PROGRAM. The Director has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the Director in accordance with UCA Subsection 19-5-104(11) and UCA Subsection 19-5-107(2)(a). The Director has the responsibility for issuance, denial, modification, revocation and enforcement of UPDES permits, including general permits, Federal facilities permits, and sludge permits; and approval and enforcement authority for the pretreatment program.

1.5 DEFINITIONS. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and rules promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms available from the Division, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks,

sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the State" from any "point source." This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the Director to the economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

(14) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent State form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

(15) "Draft permit" means a document prepared under R317-8-6.3 indicating the Director's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in R317-8-5.6 is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

(16) "Effluent limitation" means any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the State.

(17) "Effluent limitations guidelines" means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise effluent limitations.

(18) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(19) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

(20) "General permit" means any UPDES permit authorizing a category of discharges within a geographical area, and issued under R317-8-2.5.

(21) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(22) "Indirect discharge" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(23) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers or duties pertaining to the control of pollutants.

(24) "Major facility" means any UPDES facility or activity classified as such by the Director in conjunction with the Regional Administrator.

(25) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(26) "Municipality" means a city, town, district, county, or other public body created by or under the State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of these rules, an agency designated by the Governor under Section 208 of the CWA is also considered to be a municipality.

(27) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

(28) "New discharger" means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

(29) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) After promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

(30) "Non-continuous or batch discharge" for a discharge to be considered a non-continuous or batch discharge the following must apply:

(a) Frequency of a non-continuous or batch discharge:

i. shall not occur more than once every three (3) weeks,

ii. shall not be more than once during the three (3) weeks and

iii. shall not exceed 24 hours;

(b) Shall not cause a slug load at the POTW.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the UPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the Director to implement the requirements of the UPDES rules. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

(33) "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the United States government.

(34) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm-water runoff or return flows from irrigated agriculture.

(35) "Pollutant" means, for the purpose of these rules, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the State, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations shall not be deemed to be alterations necessary for the public health and safety. A discharge not in accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

(37) "Primary industry category" means any industry category listed in R317-8-3.11.

(38) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a POTW.

(39) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results

from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(40) "Proposed permit" means a UPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and adjudicative proceedings, which is sent to EPA for review before final issuance by the Director. A proposed permit is not a draft permit.

(41) "Publicly-owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the State, its political subdivisions, or other public entity. For the purposes of these rules, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

(42) "Recommencing discharger" means a source which resumes discharge after terminating operation.

(43) "Regional Administrator" means the Regional Administrator of the Region VIII office of the EPA or the authorized representative of the Regional Administrator.

(44) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the Utah Water Quality Act and rules promulgated pursuant thereto.

(45) "Secondary industry category" means any industry category which is not a primary industry category.

(46) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

(47) "Seven (7) consecutive day discharge limit" means the highest allowable average of daily discharges over a seven (7) consecutive day period.

(48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

(49) "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet dumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

(50) "Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

(51) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

(52) "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act and which is required to obtain a permit under R317-8-2.1.

(53) "Standards for sewage sludge use or disposal" means the

rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

(54) "State/EPA Agreement" means an agreement between the State and the Regional Administrator which coordinates State and EPA activities, responsibilities and programs, including those under the CWA programs.

(55) "Thirty (30) consecutive day discharge limit" means the highest allowable average of daily discharges over a thirty (30) consecutive day period.

(56) "Toxic pollutant" means any pollutant listed as toxic in R317-8-7.6 or, in the case of sludge use or disposal practices, any pollutant identified as toxic in State adopted rules for the disposal of sewage sludge.

(57) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

(58) "Variance" means any mechanism or provision under the UPDES rules which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(59) "Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be "waters of the State." The exception for confined bodies of water does not apply to any waters which meet the definition of "waters of the United States" under 40 CFR 122.2. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the State includes "wetlands" as defined in the Federal Clean Water Act.

(60) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(61) "Whole effluent toxicity" means the aggregate toxic effect of an effluent as measured directly by a toxicity test.

(62) "Utah Pollutant Discharge Elimination System (UPDES)" means the State-wide program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under the Utah Water

Quality Act.

1.6 DEFINITIONS APPLICABLE TO STORM-WATER DISCHARGES.

(1) "Co-Permittee" means a permittee to a UPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a UPDES permit (other than the UPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) "Incorporated place" means a city or town that is incorporated under the laws of Utah.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census; or

(b) Located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the 1990 Decennial Census by the Bureau of Census, except municipal separate storm sewers that are located in the incorporated places, townships or towns within the County; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) or (b) and that are designated by the Director as part of a large or medium municipal separate storm sewer system. See Subsection R317-8-[~~3.9~~]11.3(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Maximum Extent Practicable" (MEP) means the technology-based discharge standard for Municipal Separate Storm Sewer Systems established by paragraph 402(p)(3)(B)(iii) of the Federal Clean Water Act (CWA), which states that permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the Administrator or the State determines appropriate for the control of such pollutants.

([~~7~~]8) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas

with a population greater than 100,000 but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in R317-8-1.6(4)(a) and (b) and that are designated by the Director as part of the large or medium municipal separate storm sewer system. See Subsection R317-8-[~~3.9~~]11.3(6)(b) for provisions regarding this definition.

([~~8~~]9) "MS4" means a municipal separate storm sewer system.

([~~9~~]10) "Municipal separate storm sewer system" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to [~~paragraphs~~]Subsections R317-8-1.6(4), ([~~7~~]8), and (1[~~4~~]5) of this section, or designated under [~~paragraph~~]Subsection R317-8-[~~3.9~~]11.3(1)(a)[~~5~~]6[~~of this section~~].

(1[~~0~~]1) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(1[~~1~~]2) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(1[~~2~~]3) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(1[~~3~~]4) "Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA: any chemical the facility is required to report pursuant to section 313 of Title III of SARA: fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(1[~~4~~]5) "Small municipal separate storm sewer system" means all separate storm sewers that are:

(a) Owned or operated by the United States, State of Utah, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State.

(b) Not defined as "large" or "medium" municipal separate storm sewer system pursuant to [~~paragraphs~~]Subsections R317-8-1.6(4) and ([~~7~~]8)[~~of this section~~], or designated under [~~paragraph~~]Subsection R317-8-[~~3.9~~]11.3(1)(a)[~~5~~]6[~~of this section~~].

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(1[~~5~~]6) "Small MS4" means a small municipal separate storm sewer system.

(1[~~6~~]7) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(1[~~7~~]8) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program. See Subsection R317-8-[~~3.9~~]11.3(6)(c) and (d) for provisions applicable to this definition.

(1[~~8~~]9) "Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

1.7 ABBREVIATIONS AND ACRONYMS. The following abbreviations and acronyms, as used throughout the UPDES rules, shall have the meaning given below:

(1) "BAT" means best available technology economically achievable;

(2) "BCT" means best conventional pollutant control technology;

(3) "BMPs" means best management practices;

(4) "BOD" means biochemical oxygen demands;

(5) "BPT" means best practicable technology currently available;

(6) "CFR" means Code of Federal Regulations;

(7) "COD" means chemical oxygen demand;

(8) "CWA" means the Federal Clean Water Act;

(9) "DMR" means discharge monitoring report;

(10) "NPDES" means National Pollutant Discharge Elimination System;

(11) "POTW" means publicly owned treatment works;

(12) "SIC" means standard industrial classification;

(13) "TDS" means total dissolved solids;

(14) "TSS" means total suspended solids;

(15) "UPDES" means Utah Pollutant Discharge Elimination System;

(16) "UWQB" means the Utah Water Quality Board;

(17) "WET" means whole effluent toxicity.

1.8 UPGRADE AND RECLASSIFICATION. Upgrading or reclassification of waters of the State by the Utah Water Quality Board may be done periodically, but only using procedures and in a manner consistent with the requirements of State and Federal law.

1.9 PUBLIC PARTICIPATION. The Division will investigate and provide written response to all citizen complaints. In addition, the Director shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Director will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The State adopts the following Federal standards and procedures, effective as of December 8, 1999 unless otherwise noted, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".
(b) Substitute Director of the Division of Water Quality for all federal regulation references to "State Director".
(c) Substitute "R317-8-4.4, R317-8-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".
(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:
(a) 40 CFR 133.102 for which R317-1-3.2 is substituted.
(b) 40 CFR 133.105.
(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.
(d) Substitute Director of the Division of Water Quality for all federal regulation references to "State Director" in 40 CFR 133.103.
(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)
(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards), effective as of May 16, 2008, with the following exception:
(a) Substitute Director of the Division of Water Quality for all federal regulation references to "Director".
(5) 40 CFR 403.7, effective as of May 16, 2008, (Removal Credits)
(6) 40 CFR 403.13, effective as of May 16, 2008, (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)
(7) 40 CFR Parts 405 through 411
(8) 40 CFR Part 412, effective as of July 30, 2012, with the following changes:
(a) Substitute Director of the Division of Water Quality for all federal regulation references to "Director".
(b) Substitute "UPDES" for all federal regulation references to "NPDES".
(c) Substitute "surface waters" of the state for all federal regulation references to "surface water," "waters of the United States," "navigable waters," or "U.S. waters."
(9) 40 CFR Parts 413 through 471
(10) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the State except as provided in R317-1-6.4, with the following changes:
(a) Substitute Director of the Division of Water Quality for all federal regulation references to "Director".
(11) 40 CFR 122.30
(12) 40 CFR 122.32
(a) In 122.32(a)(2), replace the reference 122.26(f) with Subsection R317-8-[~~3.9~~]11.3(5).
(13) 40 CFR 122.33
(a) In 122.33(b)(2)(i), replace the reference 122.21(f) with R317-8-3.1(6).
(b) In 122.33(b)(2)(i), replace the reference 122.21(f)(7) with R317-8-3.1(6)(g).
(c) In 122.33(b)(2)(ii), replace the reference 122.26(d)(1)

and (2) with Subsection R317-8-[~~3.9~~]11.3(3)(a)[~~ and (b)~~]

(d) In 122.33(b)(3), replace the reference 122.26 with R317-8.

(e) In 122.33(b)(3), replace the reference 122.26(d)(1)(iii) and (iv); and (d)(2)(iv) with Subsections R317-8-[~~3.9(3)(a)3~~]11.3(4)(b)2 and [~~4~~]6; and (3)(b)[~~4~~].

(14) 40 CFR 122.34

~~[(a) In 122.34(a), replace the reference 122.26(d) with R317-8-3.9(3).~~

~~(b) In 122.34(b)(3)(i), replace the reference 122.26(d)(2) with R317-8-3.9(3)(b).]~~

([~~c~~]a) In 122.34(b)(4)(i), replace the reference 122.26(b)(15)(i) with Subsection R317-8-[~~3.9~~]11.3(6)(e)1.

([~~d~~]b) In 122.34(f), replace the references 122.41 through 122.49 with R317-8-4.1 through R317-8-5.4.

([~~e~~]c) In 122.34(g)(2), replace the reference 122.7 with R317-8-3.3.

(15) 40 CFR 122.35

(a) In 122.35, replace the reference 122 with R317-8.

(16) 40 CFR 122.36

(17) For the references R317-8-1.10(12), (13), (14), (15), and (16), make the following substitutions:

(a) Substitute the Director of the Division of Water Quality for the "NPDES permitting authority"

(b) Substitute "UPDES" for "NPDES"

(18) 40 CFR 122.21(i), 40 CFR 122.23(a), 40 CFR 122.23(b)(3), 40 CFR 122.23(b)(5), 40 CFR 122.23(b)(7), 40 CFR 122.23(b)(8), 40 CFR 122.23(c), 40 CFR 122.23(d)(2), 40 CFR 122.23(e), 40 CFR 122.23(h), 40 CFR 122.28(b)(2), 40 CFR 122.42(e), 40 CFR 122.62(a)(17), and 40 CFR 122.63(h), with the following substitutions:

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

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

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

R317-8-2. Scope and Applicability.

2.1 APPLICABILITY OF THE UPDES REQUIREMENTS. The UPDES program requires permits for the discharge of pollutants from any point source into waters of the State. The program also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain a UPDES permit in accordance with R317-8-8. Prior to promulgation of State rules for sewage sludge use and disposal, the Director shall impose interim conditions in permits issued for publicly owned treatment works or take such other measures as the Director deems appropriate to protect public health and the environment from any adverse affects which may occur from toxic pollutants in sewage sludge.

(1) Specific inclusions. The following are examples of specific categories of point sources requiring UPDES permits for discharges. These terms are further defined in R317-8-3.5 through R317-8-10.9:

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;
(d) Storm water discharges;
(e) Silvicultural point sources; and
(f) Pesticide discharges.

(2) Specific exclusions. The following discharges do not require UPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to storage facility or a seafood processing facility, or when secured in waters of the state for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of CWA.

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the State are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by the State, a municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, but not discharges from concentrated animal feeding operations as defined in R317-8-10, discharges from concentrated aquatic animal production facilities as defined in R317-8-3.7, discharges to aquaculture projects as defined in R317-8-3.8, and discharges from silvicultural point sources as defined in R317-8-3.10.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Director may otherwise require under R317-8-4.2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, and which are issued under the state's Underground Injection Control program; and underground injections and disposal wells which are permitted by the Director pursuant to Part VII of the Utah Wastewater Disposal Regulations or the Board of Oil, Gas and Mining, Class II.

(i) Discharges which are not regulated by the U.S. EPA under Section 402 of the Clean Water Act.

(3) Requirements for permits on a case-by-case basis.

(a) Various sections of R317-8 allow the Director to determine,

on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, separate storm sewers and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Director decides that an individual permit is required as specified in R317-8-2.1(3)(a), the Director shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit within 60 days of receipt of notice, unless permission for a later date is granted by the Director. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Director may require the discharger to submit a permit application or other information regarding the discharge. In requiring such information, the Director shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Director. The question whether the determination was proper will remain open for consideration during the public comment period and in any subsequent adjudicative proceeding.

2.2 PROHIBITIONS. No permit may be issued by the Director:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the Utah Water Quality Act, as amended, or rules promulgated pursuant thereto;

(2) When the Regional Administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Utah and all affected states;

(4) When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA.

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Utah water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the UPDES rules and for which the Director has performed a wasteload allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining wasteload allocations to allow for the discharge; and

(b) The existing dischargers into the segment are subject to

schedules of compliance designed to bring the segment into compliance with Utah Water Quality Standards. (See R317-2.)

2.3 VARIANCE REQUESTS BY NON-POTW'S. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(1) Fundamentally different factors.

(a) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

1. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under R317-8-6.5.

2. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

a. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations: or

b. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

3. Requests should be filed with the Director. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(b) The request shall explain how the requirements of the applicable regulatory and statutory criteria have been met.

(2) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided, however, that 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Director to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under Section 301((g)(4) of the CWA) must be filed as follows:

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Filing an initial request with the Director stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977: or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977: and

2. Submitting a completed request no later than the close of the public comment period under R317-8-6.5 demonstrating that the requirements of R317-8-6.8 and the applicable requirements of

R317-8-8.8 have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the Director must make a decision (unless the Director establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with R317-8-2.3(2)(a)(2) and need not be preceded by an initial request under R317-8-2.3(2)(a)(2).

3. Requests should be filed with the Director. A request filed with EPA shall be considered to be a request filed under the UPDES program.

(3) Delay in construction of POTW. An extension of the Federal statutory deadlines based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under R317-8-2.7, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) Innovative technology. An extension from the Federal statutory deadline for best available technology, or for best conventional pollutant control technology, based on the use of innovative technology may be requested no later than the close of the public comment period under Section R317-8-6.5 for the discharger's initial permit requiring compliance with best available technology or best conventional pollutant control technology. The request shall demonstrate that the requirements of Section R317-8-6.8 and 8-5.6 have been met.

(5) Thermal discharges. A variance for the thermal component of any discharge must be filed with a timely application for a permit under R317-8-3 except that if thermal effluent limitations are established by EPA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under R317-8-6.5.

(6) Water Quality Related Effluent Limitations. A modification of requirements for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under R317-8-6.5 on the permit from which the modification is sought.

2.4 EXPEDITED VARIANCE PROCEDURES AND TIME EXTENSIONS. Notwithstanding the time requirements in R317-8-2.3, the Director may notify a permit applicant before a draft permit is issued under R317-8-6.3 that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the Director may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the requirements of R317-8-7 applicable to the variance have been met. The Director may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under R317-8-2.3(2) may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions will be no more than six months in duration.

2.5 GENERAL PERMITS

(1) Coverage. The Director may issue a general permit in accordance with the following:

(a) Area. The general permit will be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under Sections 208 and 303 of CWA;

2. City, county, or state political boundaries;

3. State highway systems;

4. Standard metropolitan statistical areas as defined by the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;

6. Any other appropriate division or combination of boundaries as determined by the Director.

(b) Sources. The general permit will be written to regulate, within the area described in R317-8-2.5(a), either;

1. Storm water point sources; or

2. A category of point sources other than storm water point sources, or a category of treatment works, treating domestic sewage, if the sources or treatment works treating domestic sewage all:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices.

c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;

d. Require the same or similar monitoring; and

e. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(2) Administration.

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-6.

(b) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

1. Except as provided in paragraphs (2)(b)5. and (2)(b)6. of this section, discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (2)(b)5. of this section, contains a provision that a notice of intent is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (2)(b)6. of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of R-317-8-3.

2. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility of discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfill occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in R317-8-10, including a topographic map. All notices of intent shall be signed in accordance with R317-8-3.3.

3. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;

4. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use for disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Director. Coverage may be terminated or revoked in accordance with paragraph (2)(c) of this section.

5. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

6. The Director may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph R317-8-2.5(2)(c).

(c) Requiring an individual permit.

1. The Director may require any person authorized by a general permit to apply for and obtain an individual UPDES permit. Any interested person may petition the Director to take action under R317-8-2.4. Cases where an individual UPDES permit may be required include the following:

a. The discharge(s) is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:

i. The location of the discharge with respect to waters of the State;

ii. The size of the discharge;

iii. The quantity and nature of the pollutants discharged to waters of the State; and

iv. Other relevant factors;

b. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general UPDES permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

d. Effluent limitation guidelines are promulgated for point sources covered by the general UPDES permit;

e. A Utah Water Quality Management Plan containing requirements applicable to such point sources is approved;

f. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general UPDES permit; or

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under R317-8-3.1 to the Director with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Director in accordance with R317-8-6.5. If the reasons cited by the owner or operator are adequate to support the request, the Director may issue an individual permit.

3. When an individual UPDES permit is issued to an owner or operator otherwise subject to a general UPDES permit, the applicability of the general permit to the individual UPDES permittee is automatically terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because he already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

2.6 DISPOSAL OF POLLUTANTS INTO WELLS, INTO POTWS OR BY LAND APPLICATION.

(1) The Director may issue UPDES permits to control the disposal of pollutants into wells when necessary to protect the public health and welfare, and to prevent the pollution of ground and surface waters.

(2) When part of a discharger's process wastewater is not being discharged into waters of the State (including groundwater) because it is disposed of into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants being discharged into waters of the State, applicable effluent standards and limitations for the discharge in a UPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the State and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent

limitations or standards.

(b) In all cases other than those described in R317-8-2.6(2)(a), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater to be treated and discharged into waters of the State and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under R317-8-7.3 to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as: $P = E \times N/T$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the State and T is the total wastewater flow.

(3) R317-8-2.6(2) shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) R317-8-2.6(2) does not alter a dischargers obligation to meet any more stringent requirements established under R317-8-4.

2.7 VARIANCE REQUESTS BY POTWS. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following provision:

(1) Water Quality Based Effluent Limitation. A permit modification of the requirements for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under R317-8-6.5 on the permit for which the modification is sought.

(2) Delay in construction. An extension of a Federal statutory deadline based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

2.8 DECISION ON VARIANCES

(1) The Director may deny or forward to the Administrator (or his delegate) with a written concurrence, a completed request for:

(a) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(b) After consultation with the Regional Administrator, extensions based on the use of innovative technology; or

(c) Variances under R317-8-2.3(4) for thermal pollution.

(2) The Director may deny or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(a) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(b) A variance based on the economic capability of the applicant;

(c) A variance based upon certain water quality factors (See CWA section 301(g)); or

(d) A variance based on water quality related effluent limitations.

(e) Except for information required by R317-8-3.1(4)(c) which shall be retained for a period of at least five years from the date the application is signed, applicants shall keep records of all data used to complete permit applications and any supplemental information for a period of at least three years from the date the application is signed.

R317-8-3. Application Requirements.

3.1 APPLYING FOR A UPDES PERMIT

(1) Application requirements

(a) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the Director as described in this rule and R317-8-2 Scope and Applicability. On the date of UPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a UPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR 122.6. For the purpose of this section the Director will accept the information required under R317-8-3.5 for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(b) Any person who (1) discharges or proposes to discharge pollutants and (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the Director in accordance with this section and R317-8-6. A complete application shall include a BMP program, if necessary, under R317-8-4.2(10). The following are exceptions to the application requirements:

1. Persons covered by general permits under R317-8-4.2(10);

2. Discharges excluded under R317-8-2.1(2);

3. Users of a privately owned treatment works unless the Director requires otherwise under R317-8-4.2(12).

(2) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under Subsection R317-8-[~~3.9(6)11~~]11.3(6)(e)1. shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also Subsections R317-8-3.2~~,~~[~~ and~~] R317-8-[~~3.9~~]11.3(2)(a)1.g[~~.~~], and R317-8-11.3(2)(a)2.

(3) Who Applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit.

(4) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of

the existing permit, unless permission for a later date has been granted by the Director. The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that:

1. The Director may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date; and

2. The Director may grant permission to submit the information required by R317-8-3.5(7), (9) and (10) after the permit expiration date.

(c) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B or 2C or 2F or equivalent State forms as directed by the Director to apply under R317-8-3. Forms may be obtained from the Director. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR 501.15(a)(2) within the time frames established in R317-8-3.1(7)(a) and (b).

(d) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

2. The Director, through no fault of the permittee, does not issue a new permit with an effective date under R317-8-6.11 on or before the expiration date of the previous permit.

3. Effect Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

4. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under R317-8-6.3(2);

c. Issue a new permit under R317-8-6 with appropriate conditions; or

d. Take other actions authorized by the UPDES rules.

(5) Completeness. The Director will not issue a UPDES permit before receiving a complete application for a permit except for UPDES General Permits. A permit application is complete when the Director receives an application form with any supplemental information which is completed to his or her satisfaction.

(6) Information requirements. All applicants for UPDES permits shall provide the following information to the Director, using the application form provided by the Director.

(a) The activities being conducted which require the applicant to obtain UPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) From one (1) to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The operators name, address, telephone number, ownership status, and status as to Federal, State, private, public, or other entity.

(e) Whether the facility is located on Indian lands.

(f) A listing of all other relevant environmental permits, or construction approvals issued by the Director or other state or federal permits.

(g) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(h) A brief description of the nature of the business.

(i) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source rules promulgated by the Director.

(7) Permits Under Section 19-5-107 of the Utah Water Quality Act.

(a) POTWs with currently effective UPDES permits shall submit the application information required by R317-8-3.1(4)(c) with the next application submitted in accordance with R317-8-3.1(4) of this section or within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to the POTW's sludge use or disposal practice(s), whichever occurs first.

(b) Any other existing treatment works treating domestic sewage not covered in R317-8-3.1(7)(a) shall submit an application to the Director within 120 days after promulgation of a standard for sewage sludge use or disposal applicable to its sludge use or disposal practice(s) or upon request of the Director prior to the promulgation of an applicable standard for sewage sludge use or disposal if the Director determines that a permit is necessary to protect to public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(c) Any treatment works treating domestic sewage that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

(8) Recordkeeping. Except for information required by R317-8-3.1(7)(c) which shall be retained for a period of at least five years from the date the application is signed or longer as required by the Director, applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this rule for a period of at least three (3) years from the date the application is signed.

(9) Service of process. Every applicant and permittee shall provide the Director an address for receipt of any legal paper for service of process. The last address provided to the Director pursuant to this provision shall be the address at which the Director may tender any legal notice, including but not limited to service

of process in connection with any enforcement action. Service, whether by bond or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(10) Application Forms. The State will use EPA-developed NPDES application forms or State equivalents in administering the UPDES program.

3.2 APPLICATION REQUIREMENTS FOR NEW SOURCES AND NEW DISCHARGES. New manufacturing, commercial, mining and silvicultural dischargers applying for UPDES permits (except for new discharges of facilities subject to the requirements of R317-8-3.5 or new discharges of storm water associated with industrial activity which are subject to Subsection R317-8-[~~3.9~~]11.3(2)(a) except as provided by Subsection R317-8-[~~3.9~~]11.3(2)(a)2, shall provide the following information to the Director, using application forms provided by the Director:

(1) Expected outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) Discharge dates. The expected date of commencement of discharge.

(3) Flows, Sources of Pollution and Treatment Technologies

(a) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance as described in R317-8-3.5(2).

(c) Intermittent Flows. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(4) Production. If a new source performance standard or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by R317-8-4.3(2)(b) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(5) Effluent Characteristics. The requirements in R317-8-3.5(7) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of R317-8-4.3(7) are met. All levels (except for discharge flow, temperature and pH) must be estimated as concentration and as total mass.

(a) Each applicant must report estimated daily maximum, daily average and source of information for each outfall for the following pollutants or parameters. The Director may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support

issuance of the permit can be obtained through less stringent reporting requirements.

1. Biochemical Oxygen Demand (BOD).
2. Chemical Oxygen Demand (COD).
3. Total Organic Carbon (TOC).
4. Total Suspended Solids (TSS).
5. Flow.
6. Ammonia (as N).
7. Temperature (winter and summer).
8. pH.

(b) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, R317-8-3.12(4) (certain conventional and nonconventional pollutants).

(c) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

1. The pollutants listed in Table III, R317-8-3.12(3) (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

2. The organic toxic pollutants in R317-8-3.12(2) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(d) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

1. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

2. 2-(2,4,5-trichlorophenoxy) propanic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

3. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);)

4. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

5. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

6. Hexachlorophene (HCP) (CAS #70-80-4);

(e) Each applicant must report any pollutants listed in Table V, R317-8-3.12(5) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(f) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2c (see R317-8-3.5). However, the applicant need not complete those portions of Item V requiring tests which he has already performed and reported under the discharge monitoring requirements of his UPDES permit.

(6) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge.

(7) Other information. Any optional information the permittee wishes to have considered.

(8) Certification. Signature of certifying official under R317-8-3.4.

3.3 CONFIDENTIALITY OF INFORMATION

(1) Any information submitted to the Director pursuant to the UPDES rules may be claimed as confidential by the person submitting the information. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. If a claim is asserted, it will be treated according to the standards of 40 CFR Part 2.

(2) Information which includes effluent data and records required by UPDES application forms provided by the Director under R317-8-3.1 may not be claimed as confidential.

(3) Information contained in UPDES permits may not be claimed as confidential.

3.4 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits and other information requested by the Director under Subsection R317-8-~~3.9~~11.3(3) shall be signed by a person described in subsection (1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section:

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the

regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

(c) The written authorization is submitted to the Director.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(5) Discharge Monitoring Reports and related information may be signed and submitted electronically to the EPA's NetDMR program, if a Subscriber Agreement is in place. See Utah Admin. Code R317-1-9.

3.5 APPLICATION REQUIREMENTS FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

Existing manufacturing, commercial, mining, and silvicultural dischargers applying for UPDES permits shall provide the following information to the Director, using application forms provided by the Director:

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under R317-8-3.5. The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms, (for example, "dye-making reactor," "distillation tower.") For a privately owned treatment works, this information shall include the identity of each

user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

(4) Intermittent flows. If any of the discharges described in R317-8-3.5(3) are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(5) Maximum production levels. If an EPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by R317-8-4.3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided, except information on storm water discharges which is to be provided as specified in Subsection R317-8-[~~3.9~~]11.3. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 136. When no particular analytical method is required the applicant may use any suitable method but must provide a description of the method. The Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (c) and (d) of this subsection that an applicant shall provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine,, oil and grease, and or E. coli. For all other pollutants, twenty-four (24)-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge

or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under Subsection R317-8-[~~3.9~~]11.3(3) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in Subsection R317-8-[~~3.9~~]11.3(2)(a). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in Subsection R317-8-[~~3.9~~]11.3 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, or E. coli, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

(a) Every applicant shall report quantitative data for every outfall for the following pollutants:

1. Biochemical Oxygen Demand (BOD)
2. Chemical Oxygen Demand
3. Total Organic Carbon
4. Total Suspended Solids
5. Ammonia (as N)
6. Temperature (both winter and summer)
7. pH

(b) The Director may waive the reporting requirements for one or more of the pollutants listed in R317-8-3.5(7)(a) if the applicant has demonstrated that the waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(c) Each applicant with processes in one or more primary industry category, listed in R317-8-3.11 of this rule, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. The organic toxic pollutants in the fractions designated in Table 1 of R317-8-3.12 for the applicant's industrial category or categories unless the applicant qualifies as a small business under R317-8-3.5(8). Table II of R317-8-3.12 of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses

gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

2. The pollutants listed in Table III of R317-8-3.12 (the toxic metals, cyanide, and total phenols).

(d) 1. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of R317-8-3.12 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of R317-8-3.12 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2.4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentration less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under R317-8-3.5(8) is not required to analyze for pollutants listed in Table II of R317-8-3.12 (the organic toxic pollutants).

(e) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in R317-8-3.12(5) of this rule, certain hazardous substances and asbestos are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for the pollutant.

(f) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin(TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2.4.5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

2. Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in R317-8-3.5(7)(c) and (d) to submit quantitative data for the pollutants listed in R317-8-3.12(2), organic

toxic pollutants:

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than $100,000 per year, in second quarter 1980 dollars.

(9) Used or manufactured toxics. The application shall include a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue the permit.

(10) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by R317-8-3.5(7), the identity of each laboratory or firm and the analyses performed shall be included in the application.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the Director, upon request, other information as the Director may reasonably be required to assess the discharges of the facility and to determine whether to issue a UPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

3.6 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) Refer to R317-8-10 for concentrated animal feeding operation permit application requirements.

3.7 CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

(1) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in R317-8-3.7(5) or which the Director designates under R317-8-3.7(3).

(3) Case-by-Case designation of concentrated aquatic animal production facilities.

(a) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Director will consider the following factors:

1. The location and quality of the receiving waters of the State;

2. The holding, feeding, and production capacities of the facility;

3. The quantity and nature of the pollutants reaching waters of the State; and

4. Other relevant factors.

(b) A permit application will not be required from a concentrated aquatic animal production facility designated under this section until the Director or authorized representative has conducted

an on-site inspection of the facility and has determined that the facility could and should be regulated under the UPDES permit program.

(4) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the Director using the application form provided:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

(5) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this rule if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

3. Cold water aquatic animals include, but are not limited to the Salmonidae family of fish.

(b) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or

2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000) pounds) of aquatic animals per year.

3. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish.

3.8 AQUACULTURE PROJECTS

(1) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the UPDES permit program.

(2) Definitions.

(a) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(b) "Designated project areas" means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will

enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

3.9 STORM WATER DISCHARGES

(1) Refer to Section R317-8-11.[~~Permit requirement.~~

~~(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:~~

~~1. A discharge with respect to which a permit has been issued prior to February 4, 1987;~~

~~2. A discharge associated with industrial activity;~~

~~3. A discharge from a large municipal separate storm sewer system;~~

~~4. A discharge from a medium municipal separate storm sewer system;~~

~~5. A discharge which the Director determines contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the State. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:~~

~~a. The location of the discharge with respect to waters of the State;~~

~~b. The size of the discharge;~~

~~c. The quantity and nature of the pollutants discharged to waters of the State; and~~

~~d. Other relevant factors.~~

~~(b) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, by product, or waste products located on the site of such operations.~~

~~(c) Large and medium municipal separate storm sewer systems.~~

~~1. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.~~

~~2. The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or individual discharges from municipal separate storm sewers within the system.~~

~~3. The operator of a discharge from a municipal separate storm~~

~~sewer which is part of a large or medium municipal separate storm sewer system must either:~~

~~a. Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;~~

~~b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or~~

~~4. A regional authority may be responsible for submitting a permit application under the following guidelines:~~

~~i. The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;~~

~~ii. The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;~~

~~iii. Each of the operators of municipal separate storm sewers within the systems described in R317-8-1.6(4)(a),(b) and (c) or R317-8-1.6(7)(a),(b), and (c), that are under the purview of the designated regional authority, shall comply with the application requirements of R317-8-3.9(3).~~

~~5. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.~~

~~6. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.~~

~~7. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.~~

~~(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of R317-8-3.9(2), an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing UPDES permit number.~~

~~(e) Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are designated under R317-8-3.9(1)(a)(5) on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits~~

~~for individual discharges.~~

~~(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his discretion, may issue: a single UPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.~~

~~1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.~~

~~2. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.~~

~~3. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.~~

~~(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain UPDES permits and that are not subject to the provisions of this section.~~

~~(h) Small municipal, small construction, TMDL pollutants of concern, and significant contributors of pollution.~~

~~1. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (1)(a) of this section to obtain a permit, operators shall be required to obtain a UPDES permit only if:~~

~~a. The discharge is from a small MS4 required to be regulated pursuant to 40 CFR 122.32 (see R317-8-1.10(10)).~~

~~b. The discharge is a storm water discharge associated with small construction activity pursuant to paragraph R317-8-3.9(6)(c).~~

~~c. The Director or authorized representative determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or~~

~~d. The Director or authorized representative determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.~~

~~2. Operators of small MS4s designated pursuant to paragraphs (1)(h)1.a., (1)(h)1.c., and (1)(h)1.d. of this section shall seek coverage under an UPDES permit in accordance with 40 CFR 122.33, 122.34, and 122.35 (see R317-8-1.10(11) through R317-8-1.10(13). Operators of non-municipal sources designated pursuant to paragraph (1)(h)1.b; (1)(h)1.c; and (1)(h)1.d of this section shall seek coverage under a UPDES permit in accordance with paragraph (2)(a) of this section.~~

~~3. Operators of storm water discharges designated pursuant to paragraphs (1)(h)1.c. and (1)(h)1.d. of this section shall apply to the Director for a permit within 180 days of receipt of notice, unless~~

~~permission for a later date is granted by the Director (see R317-8-3.6(3)).~~

~~(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.~~

~~(a) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating under R317-8-3.9(1)(a)5 and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph R317-8-3.9(2)(b) of this section, shall submit an UPDES application in accordance with R317-8-3.1 and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Forms 1 and 2F. Applicants for discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2C, and 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit EPA Forms 1, 2D, and 2F.~~

~~1. Except as provided in R317-8-3.9(2)(a)2, 3, and 4, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:~~

~~a. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;~~

~~b. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;~~

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a UPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with R317-8-3.1 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

i. Any pollutant limited in an effluent guideline to which the facility is subject;

ii. Any pollutant listed in the facility's UPDES permit for its process wastewater (if the facility is operating under an existing UPDES permit);

iii. Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

iv. Any information on the discharge required under R317-8-3.5(7)(d) and (e);

v. Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

vi. The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

f. Operators of a discharge which is composed entirely of storm water are exempt from R317-8-3.5(2),(3),(4),(5),(7)(a),(c), and (f); and

g. Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in R317-8-3.9(2)(a)1e instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in R317-8-3.5(2)(a)1e within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the UPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of R317-8-3.2(3)(b) and (c) and 3.2(5).

2. An operator of an existing or new storm water discharge that is associated with industrial activity solely under R317-8-3.9(6)(c)11 of this section or is associated with small construction activity solely under paragraph R317-8-3.9(6)(e) of this section, is exempt from the requirements of R317-8-3.5 and R317-8-3.9(2)(a)1. Such operator shall provide a narrative description of:

a. The location (including a map) and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

f. The name of the receiving water.

3. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with R317-8-3.9(2)(a)1, unless the facility:

a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987;

b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. Contributes to a violation of a water quality standard.

4. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

5. Applicants shall provide such other information the Director may reasonably require to determine whether to issue a permit and may require any facility subject to R317-8-3.9(2)(a)2 to comply with R317-8-3.9(2)(a)1.

(3) Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under R317-8-3.9(1)(a)5, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under R317-8-3.9(1)(a)5 shall include:

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address,

~~telephone number of contact person, ownership status and status as a State or local government entity.~~

~~2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in R317-8-3.9(3)(b)1, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.~~

~~3. Source identification.~~

~~a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.~~

~~b. A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:~~

~~i. The location of known municipal storm sewer system outfalls discharging to waters of the State;~~

~~ii. A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agriculture and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, and estimate of an average runoff coefficient shall be provided;~~

~~iii. The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;~~

~~iv. The location and the permit number of any known discharge to the municipal storm sewer that has been issued a UPDES permit;~~

~~v. The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and~~

~~vi. The identification of publicly owned parks, recreational areas, and other open lands.~~

~~4. Discharge characterization.~~

~~a. Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.~~

~~b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.~~

~~c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:~~

~~i. Assessed and reported in CWA 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of~~

nonsupport of designated uses;

ii. Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

iii. Listed in Utah Nonpoint Source Assessments that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

iv. Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

v. Recognized by the applicant as highly valued or sensitive waters;

vi. Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

vii. Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (for any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

i. A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

ii. All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in

each cell; major outfalls may be used as field screening points;

iii. Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

iv. Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

v. Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or building in the area; history of the area; and land use types;

vi. For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

vii. Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in R317-8-3.9(3)(a)4di-vi, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of R317-8-3.9(3)(b)3. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under R317-8-3.9(3)(b)3.a, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfall or field screening points for such sampling should reflect water quality concerns to the extent practicable.

5. Management programs.

a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law

as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

6. Financial resources. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

d. Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. The location of any major outfall that discharges to waters of the State that was not reported under R317-8-3.9(3)(a)3b 1. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

3. Characterization data. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent in accordance with R317-8-3.5(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

a. Quantitative data from representative outfalls designated by the Director (based on information received in part 1 of the application, the Director shall designate between five and ten outfalls or field screening points as representative of the

commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) developed as follows:

i. For each outfall or field screening point designated, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with R317-8-3.5(7) (the Director may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

ii. A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

iii. For samples collected and described under R317-8-3.9(3)(b)3.a i and ii, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (other toxic pollutants metals, cyanide, and total phenols) of R317-8-3.13, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD5
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

iv. Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation and other parameters necessary to insure representativeness);

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either R317-8-3.9(3)(b)2 or R317-8-3.9(3)(a)3b 1 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under R317-8-3.9(3)(b)3a of this section; and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location

~~of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.~~

~~4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:~~

~~a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:~~

~~i. A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;~~

~~ii. A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in R317-8-3.9(3)(b)4d;~~

~~iii. A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;~~

~~iv. A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.~~

~~v. A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under~~

R317-8-3.9(3)(b)4c); and

vi. A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

i. A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

ii. A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

iii. A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

iv. A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

v. A description of a program to promote, publicize and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

vi. A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

vii. A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

i. Identify priorities and procedures for inspection and establishing and implementing control measures for such discharges;

ii. Describe a monitoring program for storm water discharges associated with the industrial facilities identified in R317-8-3.9(b)4c to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing UPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under R317-8-3.5(7)(d) 1, 2, and (e).

d. A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

i. A description of procedures for site planning which incorporate consideration of potential water quality impacts;

ii. A description of requirements for nonstructural and structural best management practices;

iii. A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

iv. A description of appropriate educational and training measures for construction site operators.

v. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

vi. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under R317-8-3.9(8)(b) 3 and 4. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

vii. Where more than one legal entity submits an application, the application shall contain a description of the rules and responsibilities of each legal entity and procedures to ensure effective coordination.

viii. Where requirements under R317-8-3.9(3)(a)4c, 3.9(3)(b)3b, and 3.9(3)(b)4 are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under R317-8-3.9(1)(a)5,

~~R317-8-1.6(4)(b) or R317-8-1.6(7)(b) from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer located in incorporated places with populations greater than 100,000 and less than 250,000 according to the latest decennial census by Bureau of Census; or located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest decennial census by the Bureau of Census, from any of the permit application requirements except where authorized.~~

~~(4) Application deadlines. Any operator of a point source required to obtain a permit under R317-8-3.9(1)(a) that does not have an effective UPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:~~

~~(a) Storm water discharges associated with industrial activities.~~

~~1. Except as provided in paragraph (4)(a)2. Of this section, for any storm water discharge associated with industrial activity identified in paragraphs R317-8-3.9(6)(d)1 through 11 of this section that is not authorized by a storm water general permit, a permit application made pursuant to paragraph R317-8-3.9(2) of this section must be submitted to the Executive Secretary by October 1, 1992;~~

~~2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Executive Secretary by March 10, 2003.~~

~~(b) For any discharge from a large municipal separate storm sewer system:~~

~~1. Part 1 of the application shall be submitted to the Director by November 18, 1991;~~

~~2. Based on information received in the part 1 application the Director will approve or deny a sampling plan within 90 days after receiving the part 1 application;~~

~~3. Part 2 of the application shall be submitted to the Director by November 16, 1992.~~

~~(c) For any discharge from a medium municipal separate storm sewer system;~~

~~1. Part 1 of the application shall be submitted to the Director by May 18, 1992.~~

~~2. Based on information received in the part 1 application the Director will approve or deny a sampling plan within 90 days after receiving the part 1 application.~~

~~3. Part 2 of the application shall be submitted to the Director by May 17, 1993.~~

~~(d) A permit application shall be submitted to the Executive Secretary within 180 days of notice, unless permission for a later date is granted by the Director for;~~

~~1. A storm water discharge which the Director determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.~~

~~2. A storm water discharge subject to R317-8-3.9(2)(a)5.~~

~~(e) Facilities with existing UPDES permits for storm water discharges associated with industrial activity shall maintain~~

existing permits. New applications shall be submitted 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in R317-8-3.9(4)(a).

(f) For any storm water discharge associated with small construction activity identified in paragraph R317-8-3.9(6)(e)1. of this section, see R317-8-3.1(2). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(g) For any discharge from a regulated small MS4, the permit application made under 40 CFR 122.33 (see R317-8-1.10(11)) must be submitted to the Executive Secretary by:

1. March 10, 2003 if designated under 40 CFR 122.32 (a)(1) (see R317-8-1.10(10)) unless your MS4 serves a jurisdiction with a population under 10,000 and the Executive Secretary has established a phasing schedule under 40 CFR 123.35 (d)(3); or

2. Within 180 days of notice, unless the Executive Secretary grants a later date, if designated under 40 CFR 122.32(a)(2) and 40 CFR 122.33(c)(2) (see R317-8-1.10(10) and (11)).

(5) Petitions.

(a) Any operator of a municipal separate storm sewer system may petition the Executive Secretary to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Executive Secretary to require a UPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharge to combined sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the UPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by R317-8-1.6(4), (7), and (14).

(e) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of the petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

(6) Provisions Applicable to Storm Water Definitions.

(a) The Director may designate a municipal separate storm sewer system as part of a large system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under R317-8-1.6(4)(a) or (b). In making the determination under R317-8-1.6(4)(b) the Director may consider the following factors:

1. Physical interconnections between the municipal separate

~~storm sewers;~~

~~2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(3)(a);~~

~~3. The quantity and nature of pollutants discharged to waters of the State;~~

~~4. The nature of the receiving waters; and~~

~~5. Other relevant factors; or~~

~~The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(4).~~

~~(b) The Director may designate a municipal separate storm sewer system as part of a medium system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers describer under R317-8-1.6(7)(a) or (b). In making the determination under R317-8-1.6(7)(b) the Director may consider the following factors;~~

~~1. Physical interconnections between the municipal separate storm sewers;~~

~~2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R317-8-1.6(7)(a);~~

~~3. The quantity and nature of pollutants discharged to waters of the State;~~

~~4. The nature of the receiving waters; or~~

~~5. Other relevant factors; or~~

~~The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R317-8-1.6(7)(a), (b), and (c).~~

~~(c) Storm water discharges associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program under this part R317-8. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste water (as defined in 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purpose of this paragraph, material handling activities~~

include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (d)1. through (11.) of this section) include those facilities designated under the provisions of paragraph (1)(a)5. of this section.

d. The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this section (see R317-8-3.9(1)(a)2 and (6)(c)).

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, or toxic pollutant effluent standards under 40 CFR subchapter N except facilities with toxic pollutant effluent standards which are exempted under category R317-8-3.9(6)(c)11;

2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial

Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under R317-8-3.9(6)(c) 1 through 7 or R317-8-3.9(6)(c) 9 through 11 are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with requirements for disposal of sewage sludge.

10. Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25.

(c) Storm water discharge associated with small construction activity means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

a. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), page 21-64, dated January 1997. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity

~~factor is less than five; or~~

~~b. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.~~

~~2. Any other construction activity designated by the Director based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.~~

~~(7) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snow melt and/or runoff, and the discharger satisfies the conditions in paragraphs (7)(a) through (7)(d) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.~~

~~(a) Qualification. To qualify for this exclusion, the operator of the discharge must:~~

~~1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff:~~

~~2. Complete and sign (according to R317-8-3.3) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (7)(b) of this section:~~

~~3. Submit the signed certification to the Director once every five years;~~

~~4. Allow the Director or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;~~

~~5. Allow the Director or authorized representative to make any "no exposure" inspection reports available to the public upon request; and~~

~~6. For facilities that discharge through an MS4, upon request,~~

~~submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.~~

~~(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:~~

~~1. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);~~

~~2. Adequately maintained vehicles used in material handling; and~~

~~3. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).~~

~~(c) Limitations~~

~~1. Storm water discharges from construction activities identified in paragraphs R317-8-3.9(6)(d)10. and R317-8-3.9(6)(e) are not eligible for this conditional exclusion.~~

~~2. This conditional exclusion from the requirement for an UPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.~~

~~3. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge become subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.~~

~~4. Notwithstanding the provisions of this paragraph, the Director retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.~~

~~(d) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the Director in determining if the facility qualifies for the no exposure exclusion:~~

~~1. The legal name, address and phone number of the discharger (see R317-8-3.1(3)).~~

~~2. The facility name and address, the county name and the latitude and longitude where the facility is located;~~

~~3. The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:~~

~~a. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;~~

~~b. Materials or residuals on the ground or in storm water inlets from spills/leaks;~~

~~c. Materials or products from past industrial activity;~~

~~d. Materials handling equipment (except adequately maintained vehicles);~~

e. Materials or products during loading/unloading or transporting activities;

f. Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge to pollutants);

g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;

i. Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

j. Application or disposal of process wastewater (unless otherwise permitted); and

k. Particulate matter or visible deposits or residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

4. All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of R317-8-3.3 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from UPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (7)(b) of this section). I understand that I am obligated to submit a no exposure certification form once every five years to the Director and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the Director or authorized representative or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and make such inspection reports publicly available upon request. I understand that I must obtain coverage under a UPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(8) The Director may designate small MS4's other than those described in 40 CFR 122.32(a)(1) (see also R317-8-1.10(10)) to be covered under the UPDES storm water permit program, and require a UPDES storm water permit. Designations of this kind will be based on whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts; and shall apply to any small MS4 located outside of an urbanized area serving a population density of at least 1,000 people per square mile and a population of at least 10,000.

~~(a) Criteria used in designation may include;~~
~~1. discharge(s) to sensitive waters,~~
~~2. areas with high growth or growth potential,~~
~~3. areas with a high population density,~~
~~4. areas that are contiguous to an urbanized area,~~
~~5. small MS4's that cause a significant contribution of pollutants to waters of the State,~~
~~6. small MS4's that do not have effective programs to protect water quality by other programs, or~~
~~7. other appropriate criteria.~~
~~(b) Permits for designated MS4's under this paragraph shall be under the same requirements as small MS4's designated under 40 CFR 122.32(a)(1) (see also R317-8-1.10(10)).~~]

3.10 SILVICULTURAL ACTIVITIES

(1) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the UPDES permit program.

(2) Definitions.

(a) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

(b) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(c) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

3.11 APPLICATION REQUIREMENTS FOR NEW AND EXISTING POTWS.

(1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Director.

(a) All POTWs with design influent flows equal to or greater than one million gallons per day; and

(b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in R317-8-3.11(1)(a) and (b) the Director may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(b) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or

known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Director determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under R317-8-3.11(1) or (2) to conduct toxicity testing. POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last UPDES permit reissuance or permit modification under R317-8-5.6(1) whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the Director regarding the testing methodology to be used.

(4) All POTWs with approved pretreatment programs shall provide to the Director a written technical evaluation of the need to revise local limits.

3.12 PRIMARY INDUSTRY CATEGORIES. Any UPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the UPDES rules and Sections 301(b)(2)(A),(C),(D),(E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been promulgated.

(1) Adhesives and sealants
(2) Aluminum forming
(3) Auto and other laundries
(4) Battery manufacturing
(5) Coal mining
(6) Coil coating
(7) Copper forming
(8) Electrical and electronic components
(9) Electroplating
(10) Explosives manufacturing
(11) Foundries
(12) Gum and wood chemicals
(13) Inorganic chemicals manufacturing
(14) Iron and steel manufacturing
(15) Leather tanning and finishing
(16) Mechanical products manufacturing
(17) Nonferrous metals manufacturing
(18) Ore mining
(19) Organic chemicals manufacturing
(20) Paint and ink formulation
(21) Pesticides
(22) Petroleum refining
(23) Pharmaceutical preparations
(24) Photographic equipment and supplies
(25) Plastics processing
(26) Plastic and synthetic materials manufacturing
(27) Porcelain enameling
(28) Printing and publishing
(29) Pulp and paper mills
(30) Rubber processing
(31) Soap and detergent manufacturing
(32) Steam electric power plants

(33) Textile mills
(34) Timber products processing

3.13 UPDES PERMIT APPLICATION TESTING REQUIREMENTS

TABLE I
Testing Requirements for Organic Toxic Pollutants
by Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction (1) Volatile	Acid	Base/	Pesticide
Adhesives and sealants	(*)	(*)	(*)	...
Aluminum Forming	(*)	(*)	(*)	...
Auto and Other Laundry	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	...	(*)	...
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	...
Copper Forming	(*)	(*)	(*)	...
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	...
Explosives Manufacturing	...	(*)	(*)	...
Foundries	(*)	(*)	(*)	...
Gum and Wood Chemicals	(*)	(*)	(*)	...
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	...
Iron and Steel Manufacturing	(*)	(*)	(*)	...
Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	(*)
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	(*)
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)	...	...	...
Porcelain Enameling	(*)	...	(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	...
Soap and Detergent Manufacturing	(*)	(*)	(*)	...
Steam Electric Power Plant	(*)	(*)	(*)	...
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

(1) The toxic pollutants in each fraction are listed in Table II.

* Testing required.

TABLE II
Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a) VOLATILES

1V	acrolein
2V	acrylonitrile
3V	benzene
4V	bis (chloromethyl) ether
5V	bromoform
6V	carbon tetrachloride
7V	chlorobenzene
8V	chlorodibromomethane
9V	chloroethane
10V	2-chloroethylvinyl ether
11V	chloroform
12V	dichlorobromomethane
13V	dichlorodifluoromethane
14V	1,1-dichloroethane
15V	1,2-dichloroethane
16V	1,1-dichloroehtylene
17V	1,2-dichloropropane
18V	1,2-dichloropropylene
19V	ethylbenzene
20V	metyl bromide
21V	methyl chloride
22V	methoylene chloride
23V	1,1,2,2-tetrachloroethane
24V	tetrachloroethylene
25V	toluene
26V	1,2-trans-dichloroethylene
27V	1,1,1-trichloroethane
28V	1,1,2-trichloroethane
29V	trichloroethylene
30V	trichlorofluoromethane
31V	vinyl chloride

(b) ACID COMPOUNDS

1A	2-chlorophenol
2A	2,4-dichlorophenol
3A	2.4-dimethylphenol
4A	4,6-dinitro-o-cresol
5A	2,4-dinitrophenol
6A	2-nitrophenol
7A	4-nitrophenol
8A	p-chloro-m-cresol
9A	pentachlorophenol

10A phenol
11A 2,4,6-trichlorophenol

(c) BASE/NEUTRAL

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroethyl)ether
13B bis(2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthanlene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenxo(a,h)anthracene
20B 1,2-dichlorobenzen
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phtahalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenzene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B naphthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4-trichlorobenzene

(d) PESTICIDES

1P aldrin

2P	alpha-BHC
3P	beta-BHC
4P	gamma-BHC
5P	delta-BHC
6P	chlordane
7P	4,4'-DDT
8P	4,4'-DDE
10P	dieldrin
11P	alpha-endosulfan
12P	beta-endosulfan
13P	endosulfan sulfate
14P	endrin
15P	endrin aldehyde
16P	heptachlor
17P	heptachlor epoxide
18P	PCB-1242
19P	PCB-1254
20P	PCB-1221
21P	PCB-1232
22P	PCB-1248
23P	PCB-1260
24P	PCB-1016
25P	toxaphene

TABLE III
Other Toxic Pollutants; Metals, Cyanide, and Total Phenols

(a)	Antimony, Total
(b)	Arsenic, Total
(c)	Beryllium, total
(d)	Cadmium, Total
(e)	Chromium, Total
(f)	Copper, Total
(g)	Lead, Total
(h)	Mercury, Total
(i)	Nickel, Total
(j)	Selenium, Total
(k)	Silver, Total
(l)	Thallium, Total
(m)	Zinc, Total
(n)	Cyanide, Total
(o)	Phenols, Total

TABLE IV
Conventional and Nonconventional Pollutants Required to be Tested by Existing Dischargers if Expected to be Present

(a)	Bromide
(b)	Chlorine, Total Residual
(c)	Color
(d)	E. coli
(e)	Fluoride
(f)	Nitrate-Nitrite

(g) Nitrogen, total Organic
(h) Oil and Grease
(i) Phosphorus, Total
(j) Radioactivity
(k) Sulfate
(l) Sulfide
(m) Sulfite
(n) Surfactants
(o) Aluminum, Total
(p) Barium, Total
(q) Boron, Total
(r) Cobalt, Total
(s) Iron, Total
(t) Magnesium, Total
(u) Molybdenum, Total
(v) Manganese, Total
(w) Tin, Total
(x) Titanium, Total

TABLE V
28 Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present

(a) Toxic Pollutants - Asbestos
(b) Hazardous Substances

1. Acetaldhyde
2. Allyl alcohol
3. Allyl chloride
4. Amyl acetate
5. Aniline
6. Benzonitrile
7. Benzyl chloride
8. Butyl acetate
9. Butylamine
10. Captan
11. Carbaryl
12. Carbofuran
13. Carbon disulfide
14. Chlorpyrifos
15. Coumaphos
16. Cresol
17. Crotonaldehyde
18. Cyclohexane
19. 2,4-D(2.4-Dichlorophenoxy acetic acid)
20. Diazinon
21. Dicamba
22. Dichlobenil
23. Dichlone
24. 2,2-Dichloropropionic acid
25. Dichlorvos
26. Diethyl amine
27. Dimethyl amine

28. Dintrobenzene
29. Diquat
30. Disulfoton
31. Diuron
32. Epichloropydrin
33. Ethanolamine
34. Ethion
35. Ethylene diamine
36. Ethylene dibromide
37. Formaldehyde
38. Furfural
39. Guthion
40. Isoprene
41. Isopropanolamine dodecylbenzenesulfonate
42. Kelthane
43. Kepone
44. Malathion
45. Mercaptodimethur
46. Methoxychlor
47. Methyl mercaptan
48. Methyl methacrylate
49. Methyl parathion
50. Mevinphos
51. Mexacarbate
52. Monoethyl amine
53. Monomethyl amine
54. Naled
55. Npathenic acid
56. Nitrotouene
57. Parathion
58. Phenolsulfanante
59. Phosgene
60. Propargite
61. Propylene oxide
62. Pyrethrins
63. Quinoline
64. Resorconol
65. Strontium
66. Strychnine
67. Styrene
68. 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid)
69. TDE(Tetrachlorodiphenylethane)
70. 2,4,5-TP (2-(2,4,5 - trichlorophenoxy)propanic acid)
71. Trichlorofan
72. Triethanolamine dodecylbenzenesulfonate
73. Triethylamine
74. Trimethylamine
75. Uranium
76. Vanadium
77. Vinyl Acetate
78. Xylene
79. Xylenol
80. Zirconium

3.14 APPLICATION REQUIREMENTS OF R317-8-3.8(7)(E) SUSPENDED

FOR CERTAIN CATEGORIES AND SUBCATEGORIES OF PRIMARY INDUSTRIES. The application requirements of R317-8-3.5 (7)(c) are suspended for the following categories and subcategories of the primary industries listed in R317-8-3.11:

(1) Coal mines.

(2) Testing and reporting for all four organic fractions in the Greige Mills subcategory of the Textile Mills Industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(3) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four fractions in all other subcategories of this industrial category.

(4) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Testing and reporting for the pesticide fraction in the Tall Oil Resin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

(6) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

(7) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

(8) Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories of the Pulp and Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink Dissolving Kraft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving, Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.

(9) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

R317-8-4. Permit Conditions.

4.1 CONDITIONS APPLICABLE TO ALL UPDES PERMITS. The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these rules must be given in the permit. In addition to conditions required in all UPDES permits, the Director will establish conditions as required on a case-by-case basis under R317-8-4.2 and R317-8-5.

(1) Duty to Comply.

(a) General requirement. The permittee must comply with all conditions of the UPDES permit. Any permit noncompliance is a violation of the Utah Water Quality Act, as amended and is grounds

for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions for toxic pollutants and with standards for sewage sludge use or disposal established by the State within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (40 CFR, 129).

2. The Utah Water Quality Act, in 19-5-115, provides that any person who violates the Act, or any permit, rule, or order adopted under it is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or with gross negligence violates the Act, or any permit, rule or order adopted under it is subject to a fine of not more than $25,000 per day of violation. Any person convicted under 19-5-115 a second time shall be punished by a fine not exceeding $50,000 per day.

(2) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required in R317-8-3.1.

(3) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.)

(4) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the UPDES permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property Rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the

Director, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Director, or an authorized representative, including an authorized contractor acting as a representative of the Director) upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times for the purposes of assuring UPDES program compliance or as otherwise authorized by the Utah Water Quality Act any substances or parameters, or practices at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, shall be retained for a period of at least five years or longer as required by State promulgated standards for sewage sludge use and disposal.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) and times analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use or disposal, unless other test procedures, approved by EPA under 40 CFR 136, have been specified in the permit.

(e) Section 19-5-115(3) of the Utah Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine not exceeding $10,000 or imprisonment for not more than six months or by both.

(11) Signatory Requirement. All applications, reports, or information submitted to the Director shall be signed and certified

as indicated in R317-8-3.4. The Utah Water Quality Act provides that any person who knowingly makes any false statements, representations, or certifications in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months or by both.

(12) Reporting Requirements.

(a) Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in R317-8-8; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit nor to notification requirements under R317-8-4.1(15).

3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(b) Anticipated Noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the Director. The Director may require modification on and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Utah Water Quality Act, as amended. (In some cases, modification, revocation and reissuance is mandatory.)

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. Monitoring results may also be submitted electronically to the EPA's NetDMR program, if a Subscriber Agreement is in place. See Utah Admin. Code R317-1-9.

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or the in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use and disposal, or as specified in the permit according to procedures approved by EPA, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise

specified in the permit.

(e) Compliance Schedules. Reports of compliance or noncompliance with, or any progress report on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen days following each scheduled date.

(f) Twenty-Four Hour Reporting. The permittee shall (orally) report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. (The report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance.) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (The Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.) The following shall be included as events which must be reported within twenty-four hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in R317-8-4.1(13).

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) Other NonCompliance. The permittee shall report all instances of noncompliance not reported under R317-8-4.1(12) (d), (e), and (f) at the time monitoring reports are submitted. The reports shall contain the information listed in R317-8-4.1(12)(f).

(h) Other Information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in its permit application or in any report to the Director, it shall promptly submit such facts or information.

(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to R317-8-4.1(13)(c) or (d).

(c) Prohibition of Bypass.

1. Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of human life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)(d).

2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in R317-8-4.1(13)(c) a, b, and c.

(d) Notice.

1. Anticipated bypass. Except as provided in R317-8-4.1(13)(b) and R317-8-4.1(13)(d)2, if the permittee knows in advance of the need for a bypass, it shall submit prior notice, at least 90 days before the date of bypass. The prior notice shall include the following unless otherwise waived by the Director:

a. Evaluation of alternatives to the bypass, including cost-benefit analysis containing an assessment of anticipated resource damages;

b. A specific bypass plan describing the work to be performed including scheduled dates and times. The permittee must notify the Director in advance of any changes to the bypass schedule;

c. Description of specific measures to be taken to minimize environmental and public health impacts;

d. A notification plan sufficient to alert all downstream users, the public and others reasonably expected to be impacted by the bypass;

e. A water quality assessment plan to include sufficient monitoring of the receiving water before, during and following the bypass to enable evaluation of public health risks and environmental impacts; and

f. Any additional information requested by the Director.

2. Emergency Bypass. Where ninety days advance notice is not possible, the permittee must notify the Director, and the Director of the Department of Natural Resources, as soon as it becomes aware of the need to bypass and provide to the Director the information in R317-8-4.1(13)(d)1.a. through f. to the extent practicable.

3. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass to the Director as required in R317-8-4.1(12)(f). The permittee shall also immediately notify the Director of the Department of Natural Resources , the public and downstream users and shall implement measures to minimize impacts to public health and the environment to the extent practicable.

(14) Occurrence of an Upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not

include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of R317-8-4.1(14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. The permittee submitted notice of the upset as required in R317-8-4.1(12)(f) (twenty-four hour notice).

4. The permittee complied with any remedial measures required under R317-8-4.1(4).

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional Conditions Applicable to Specified Categories of UPDES Permits. The following conditions, in addition to others set forth in these rules apply to all UPDES permits within the categories specified below:

(a) Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under R317-8-4.1(12),(13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Director as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(7) or (10).

d. The level established by the Director in accordance with R317-8-4.2(6).

2. That any activity has occurred or will occur which would result in any discharge on a non-routine or infrequent basis of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l).

b. One milligram per liter (1 mg/l) for antimony.

c. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(9).

d. The level established by the Director in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Director of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES rules if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW; and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

~~[(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Director under R317-8-3.9(1)(a)5 of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:~~

~~1. The status of implementing the components of the storm water management program that are established as permit conditions;~~

~~2. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.9(3)(b)3; and~~

~~3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.9(3)(b)4 and 3.9(3)(b)5;~~

~~4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;~~

~~5. Annual expenditures and budget for year following each annual report;~~

~~6. A summary describing the number and nature of enforcement actions, inspections, and public education programs;~~

~~7. Identification of water quality improvements or degradation.~~]

4.2 ESTABLISHING PERMIT CONDITIONS. For the purposes of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in R317-8-5.6. New or reissued permits, and to the extent allowed under R317-8-5.6, modified or revoked and reissued permits shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under R317-8-4.1 each UPDES permit will include conditions on a case by case basis to provide for and ensure compliance with all applicable Utah statutory and regulatory requirements and the following, as applicable:

(1) Technology-based effluent limitations and standards, based on effluent limitations and standards promulgated under Section 19-5-104 of the Utah Water Quality Act or new source performance standards promulgated under Section 19-5-104 of the Utah Water Quality

Act, on case-by-case effluent limitations, or a combination of the two in accordance with R317-8-7.1.

(2) Toxic Effluent Standards and Other Effluent Limitations. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these rules to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener Clause. For any discharger within a primary industry category, as listed in R317-8-3.11, requirements will be incorporated as follows:

(a) On or before June 30, 1981:

1. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations.

(b) On or after the statutory deadline set forth in Section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of Section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by R317-8-4.2(3)(a)1.

(c) The Director shall promptly modify or revoke and reissue any permit containing the clause required under R317-8-4.2(3)(a)1 to incorporate an applicable effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal adopted by the State. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitation guidelines or standards will be included, when necessary to:

(a) Achieve water quality standards established under the Utah Water Quality Act, as amended and rules promulgated pursuant thereto, including State narrative criteria for water quality.

1. Permit limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause,

or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the Director shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

3. When the Director determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

4. When the Director determines, using the procedures in R317-8-4.2(4)(2), that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit will contain effluent limits for whole effluent toxicity.

5. Except as provided in R317-8-4.2, when the Director determines, using the procedures in R317-8-4.2(4)(2), toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit will contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Director determines in the fact sheet or statement of basis of the UPDES permit, using the procedures in R317-8-4.2(4)(2), that chemical specific limits for effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

6. Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard the Director will establish effluent limits using one or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Director determines will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or rule interpreting its narrative water quality criteria supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents:

b. Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 307(a) of the CWA, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitations;

(ii) The fact sheet as required by .4 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the Director to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the Director shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(b) Attain or maintain a specified water quality through water quality related effluent limits established under the Utah Water Quality Act;

(c) Conform to applicable water quality requirements when the discharge affects a state other than Utah;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations.

(e) Ensure consistency with the requirements of any Utah Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under R317-8-7.3.

(5) Technology-based Controls for Toxic Pollutants. Limitations established under R317-8-4.2 (1), (2), or (4) to control pollutants meeting the criteria listed in R317-8-4.2(5)(a) will be included in the permit, if applicable. Limitations will be established in accordance with R317-8-4.2(5)(6). An explanation of the development of these limitations will be included in the fact sheet under R317-8-6.4.

(a) Limitations will control all toxic pollutants which:

1. The Director determines, based on information reported in a permit application under R317-8-3.5(7) and (10), or in a notification under R317-8-4.1(15)(a) of this rule or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3)(a),(b) and (c).

2. The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(b) The requirement that the limitations control the pollutants

meeting the criteria of paragraph (a) of this subsection will be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by R317-8-7.1(3)(a), (b) and (c).

(6) Notification Level. A "notification level" which exceeds the notification level of R317-8-4.1(15) upon a petition from the permittee or on the Director's initiative will be incorporated as a permit condition, if applicable. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under R317-8-7.1(3).

(7) Twenty-Four (24) Hour Reporting. Pollutants for which the permittee will report violations of maximum daily discharge limitations under R317-8-4.1(12)(f) shall be listed in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring Requirements. The permit will incorporate, as applicable in addition to R317-8-4.1(12) the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor;

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall;

3. Other measurements as appropriate, including pollutants in internal waste streams under R317-8-4.3(8); pollutants in intake water for net limitations under R317-8-4.3(7); frequency and rate of discharge for noncontinuous discharges under R317-8-4.3(5); pollutants subject to notification requirements under R317-8-4.1(15)(a); and pollutants in sewage sludge or other monitoring as specified in State rules for sludge use or disposal or as determined to be necessary pursuant to R317-8-2.1.

4. According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(b) Except as provided in paragraphs (8)(d) and (8)(e) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be a specified in R317-8-1.10(8) (where applicable), but in no case less than once a year.

(c) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(d) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (c)above) shall be established on a case-by-case basis with a frequency dependent on the nature and effect

of the discharge. At a minimum, a permit for such a discharge must require;

1. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

2. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

3. Such report and certification be signed in accordance with R317-8-3.4; and

4. Permits for storm water discharges associated with industrial activity from inactivite mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(e) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under R317-8-4.1(12)(a),(d),(e), and (f) at least annually.

(9) Pretreatment Program for POTWs. If applicable to the facility the permit will incorporate as a permit condition, requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the UPDES rules.

(b) Submit a local program when required by and in accordance with R317-8-8.10 to assure compliance with pretreatment standards to the extent applicable in the UPDES rules. The local program will be incorporated into the permit as described in R317-8-8.10. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(c) For POTWs which are "sludge-only facilities", a requirement to develop a pretreatment program under R317-8-8 when the Director determines that a pretreatment program is necessary to assure compliance with State rules governing sludge use or disposal.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Authorized under the Utah Water Quality Act as amended and the UPDES rule for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible, or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Utah Water Quality Act, as amended.

(11) Reissued Permits.

(a) Except as provided in R317-8-4.2(11)(b), when a permit is renewed or reissued, interim limitations, standards or conditions must be at least as stringent as the final limitations, standards,

or conditions in the previous permit unless the 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 R317-8-5.6.

(b) In the case of effluent limitations established on the basis of Section 19-5-104 of the Utah Water Quality Act, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated by EPA under section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(c) Exceptions--A permit with respect to which R317-8-4.2(11)(b) applies may be renewed, reissued or modified to contain a less stringent effluent limitation applicable to a pollutant, if--

1. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; and

2. a. Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

b. The Director determines that technical mistakes or mistaken interpretations of law were made in issuing the permit;

3. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

4. The permittee has received a permit modification under R317-8-5.6; or

5. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(d). Limitations. In no event may a permit with respect to which R317-8-4.2(11)(b) applies be renewed, reissued or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of the water quality standard applicable to such waters.

(12) Privately Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this rule will be imposed as applicable. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit

with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits or to require separate applications, and the basis for that decision will be stated in the fact sheet for the draft permit for the treatment works.

(13) Grants. Any conditions imposed in grants or loans made by the Director to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations will be required as applicable.

(14) Sewage Sludge. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which rules have been established, in accordance with any applicable regulations.

(15) Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit will be conditioned to require that the discharge comply with any applicable federal regulation promulgated by the Secretary of the department in which the Coast Guard is operating, and such condition will establish specifications for safe transportation, handling, carriage, and storage of pollutants, if applicable.

(16) Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with R317-8-6.9 will be included.

(17) State standards for sewage sludge use or disposal. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under Section 19-5-104 of the Utah Water Quality Act, and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director may initiate proceedings under these rules to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

~~[(18) Qualifying State or local programs.~~

~~(a) For storm water discharges associated with small construction activity identified in R317-8-3.9(6)(e), the Director may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. Where a qualifying State or local program does not include one or more of the elements in this paragraph then the Director must include those elements as conditions in the permit. A qualifying State or local erosion and sediment control program is one that includes:~~

~~1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;~~

~~2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;~~

~~3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions of appropriate control measures, copies of approved State, local requirements, maintenance procedures, inspections procedures, and identification of non-storm water discharges); and~~

~~4. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.~~

~~(b) For storm water discharges from construction activity identified in R317-8-3.9(6)(d)10., the Director may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. A qualifying State or local erosion and sediment control program is one that includes the elements listed in paragraph (18)(a) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.~~]

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R317-8-11. MUNICIPAL, INDUSTRIAL, AND CONSTRUCTION STORM WATER DISCHARGES

11.1 APPLICABILITY OF RULE R317-8, RULE COMPATIBILITY, AND FEDERAL RULE INCORPORATION.

(1) Section R317-8-11, including the federal regulations incorporated by reference, shall be applicable to municipal (Subsections R317-8-11.3(c)1, R317-8-1.10(12), and R317-8-11.3(8)), industrial (Subsections R317-8-11.3(6)(c) and (d)), and construction (Subsection R317-8-11.3(6)(e)) storm water discharges.

(2) Where any requirements, definitions, or conditions in Section R317-8-11 conflict with the requirements, definitions, or conditions pertaining to storm water discharges in other parts of Rule R317-8, the requirements, definitions, and conditions in Section R317-8-11 shall govern.

11.2 DEFINITIONS APPLICABLE TO STORM WATER DISCHARGES

Refer to Subsection R317-8-1.6.

11.3 STORMWATER DISCHARGE REQUIREMENTS

(1) Permit requirement.

(a) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

1. a discharge with respect to which a permit has been issued prior to February 4, 1987;

2. a discharge associated with industrial activity;

3. a discharge associated with construction activity that disturbs five or more acres;

4. a discharge from a large municipal separate storm sewer system;

5. a discharge from a medium municipal separate storm sewer system;

6. a discharge which the Director determines contributes to a violation of water quality standards or is a significant contributor of pollutants to waters of the State. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director

may consider the following factors:

a. the location of the discharge with respect to waters of the State;

b. the size of the discharge;

c. the quantity and nature of the pollutants discharged to waters of the State; and

d. other relevant factors.

(b) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by Subsection R317-8-11.3(1)(a) to obtain a permit, operators shall be required to obtain a UPDES permit if:

1. the discharge is from a small MS4 required to be regulated pursuant to 40 CFR 122.32 (see Subsection R317-8-1.10(12));

2. the discharge is a storm water discharge associated with construction activity pursuant to Subsection R317-8-11.3(6)(e);

3. the Director or authorized representative determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address any pollutants of concern; or

4. the Director or authorized representative determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, by product, or waste products located on the site of such operations.

(d) Large, medium, and small municipal separate storm sewer systems.

1. Permits must be obtained for discharges from large, medium, and small municipal separate storm sewer systems.

2. The Director may either issue one system-wide permit covering discharges from municipal separate storm sewers within a large, medium, or small municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large, medium, or small municipal separate storm sewer system including: discharges owned or operated by the same municipality; located within the same jurisdiction; discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or individual discharges from municipal separate storm sewers within the system.

3. The operator of a discharge from a municipal separate storm sewer which is part of a large, medium, or small municipal separate storm sewer system must either:

a. participate in a permit application as permittee or co-permittee with one or more other operators of discharges from the large, medium, or small municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

c. a regional authority may be responsible for submitting a permit application under the following guidelines:

i. the regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time the application is due;

ii. the permit applicant or co-applicants shall establish their ability to make a timely submission of the municipal application;

iii. each of the operators of municipal separate storm sewers within the systems described in Subsections R317-8-1.6(4), R317-8-1.6(8), 40 CFR 122.32 with substitutions per Subsection R317-8-1.10(12), or R317-8-11.3(8) that are under the purview of the designated regional authority, shall comply with the application requirements of Subsection R317-8-11.3(3).

4. One permit application may be submitted for the entirety or a portion of municipal separate storm sewers within adjacent or interconnected large, medium, or small municipal separate storm sewer systems. The Director may issue one system-wide permit covering the entirety or a portion of municipal separate storm sewers in adjacent or interconnected large, medium, or small municipal separate storm sewer systems.

5. Permits for the entirety or a portion of the discharges from large, medium, or small municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

6. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(e) Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are designated under Subsection R317-8-11.3(1)(a)6 on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director may issue: a single UPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the State; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

1. Storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.

2. Where there is more than one operator of a single system of such conveyances, each operator of storm water discharges

associated with industrial activity must submit applications.

3. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain UPDES permits and are not subject to this section.

(h) Operators of small MS4s designated pursuant to Subsections R317-8-11.3(1)(b)1, R317-8-11.3(1)(b)3, and R317-8-11.3(1)(b)14 shall seek coverage under a UPDES permit in accordance with 40 CFR 122.33, 122.34, and 122.35 with appropriate substitutions per Subsection R317-8-1.10(11) through R317-8-1.10(13). Operators of non-municipal sources designated pursuant to Subsections R317-8-11.3(1)(b)2, R317-8-11.3(1)(b)3, and R317-8-11.3(1)(b)4 shall seek coverage under a UPDES permit in accordance with Subsection R317-8-11.3(2)(a).

(i) Operators of storm water discharges designated pursuant to Subsections R317-8-11.3(1)(b)3 and R317-8-11.3(1)(b)4 shall apply to the Director for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Director as described in 40 CFR 124.52.

(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with construction activity.

(a) Individual application. Dischargers of storm water associated with industrial activity and with construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating under Subsection R317-8-11.3(1)(a)6 and is not a municipal separate storm sewer, and which is not part of a group application, shall submit a UPDES application in accordance with Subsection R317-8-3.1 and supplemented by the provisions of the remainder of this section.

1. Except as provided in Subsections R317-8-11.3(2)(a)2 through R317-8-11.3(2)(a)4, the operator of a storm water discharge associated with industrial activity subject to this section shall develop before application, or in the time frame indicated by the permit:

a. a site map showing topography of the facility, or indicating the outline of drainage areas served by any outfalls covered in the application if a topographic map is unavailable, including: each of its drainage and discharge structures; the drainage area of each storm water outfall; each area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

b. a narrative description of the following: significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading

and access areas; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

c. a certification that each outfall that should contain storm water discharges associated with industrial activity has been tested or evaluated for the presence of non-storm water discharges which are not covered by a UPDES permit, tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests, and a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

e. quantitative data based on samples collected during storm events from each outfall containing a storm water discharge associated with industrial activity for the following parameters:

i. any pollutant limited in an effluent guideline to which the facility is subject;

ii. any pollutant listed in the facility's UPDES permit for its process wastewater if the facility is operating under an existing UPDES permit;

iii. any pollutant listed in the facility’s UPDES permit for its storm water discharges.

iv. any information on the discharge required under Subsections R317-8-3.5(7)(d) and R317-8-3.5(7)(e);

v. an estimate of the total amount of discharge for the storm events sampled, and the method of flow measurement or estimation; and

vi. the date and duration in hours of the storm events sampled, rainfall measurements or estimates in inches of the storm event which generated the sampled runoff and the duration in hours between the storm event sampled and the end of the previous measurable, greater than 0.1 inch rainfall, storm event;

f. operators of a discharge which is composed entirely of storm water are exempt from Subsections R317-8-3.5(2) through R317-8-3.5(5), R317-8-3.5(7)(a), R317-8-3.5(7)(c), and R317-8-3.5(7)(f); and

g. operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in Subsection R317-8-11.3(2)(a)1.e instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in Subsection R317-8-11.3(2)(a)1e within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the UPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Subsections R317-8-3.2(3)(b), R317-8-3.2(3)(c), and R317-8-3.2(5).

2. An operator of an existing or new storm water discharge that is associated with construction activity solely under Subsection

R317-8-11.3(6)(e), is exempt from the requirements of Subsections R317-8-3.5 and R317-8-11.3(2)(a)1. Such operator shall develop before application or in the time frame indicated by the permit a narrative description of:

a. the location, including a map, and the nature of the construction activity;

b. the total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. proposed measures, including best management practices, to control pollutants in storm water discharges during construction;

d. proposed stabilization, erosion control, and sediment control measures to control pollutants in storm water discharges that will occur after construction operations have been completed;

e. plans for correct installation and maintenance of storm water controls;

f. a schedule for inspections to verify that storm water controls and best management practices are operating effectively; and

g. the name of the receiving water.

3. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with Subsection R317-8-11.3(2)(a)1, unless the facility:

a. has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987;

b. has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. contributes to a violation of a water quality standard.

4. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

5. Applicants shall provide such other information the Director may reasonably require to determine whether to issue a permit and may require any facility subject to Subsection R317-8-11.3(2)(a)2 to comply with Subsection R317-8-11.3(2)(a)1.

(3) Application requirements for large, medium, and small municipal separate storm sewer discharges. The operator of a discharge from a large, medium, or small municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under Subsection R317-8-11.3(1)(a)6, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area, including adjacent or interconnected municipal separate storm sewer systems, such operators may be a co-applicant to the same application.

(a) Permit applications shall include:

1. General information consisting of:

i. the name, mailing address, and telephone number of the

principal executive officer, ranking elected official, or duly authorized employee in charge of municipal resources used for implementing the SWMP;

ii. the operator type and legal status as a Federal, State, private, or other public entity other than Federal or State;

iii. latitude and longitude at the center of land for which authorization to discharge is being requested;

iv. the number of people that are served by the municipal separate storm sewer system; and

v. name, title, and telephone of the person responsible for overseeing implementation and coordination of the storm water management program.

2. Outfalls and receiving waters. A list of each separate storm sewer outfall and their associated receiving waters that receive discharges from the permittee's MS4. Summary description of the overall water quality concerns, priorities, 303(d) list impaired waters.

3. Best management practice identification. A summary of the chosen best management practices and description of the program elements that will be implemented (or already exist) to meet each of the storm water minimum control measures.

4. Measurable goals. Identification of goals with start and end dates for each of the storm water minimum control measures and the timeframe by which the permittee will achieve required actions, including interim milestones.

5. Certification. A certification statement that is signed in accordance with Section R317-8-3.4.

6. Contract certification for co-permittees. If more than one entity will be implementing the storm water management program then a contract certification is required. Each coordinating entity must be identified and sign to certify that local agreements and contracts have been developed and agreed upon. Permittees which are applying as co-permittees shall each submit an application and individual storm water management program document which will clearly identify the areas of the MS4 for which each of the co-permittees are responsible.

(b) A storm water management program shall be developed which covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. Separate programs may be submitted by each co-applicant. Programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls and contain:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

a. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

b. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

c. Require compliance with conditions in ordinances, permits,

contracts or orders; and

d. Carry out inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Mapping. A current map of the storm sewer system showing the location of each storm sewer outfall, the name and location of each State water that receives discharges from those outfalls, storm drain pipe and other storm water conveyance structures within the MS4.

3. Characterization data. When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent in accordance with Subsection R317-8-3.5(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR 136. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges as required by the permit including:

a. quantitative data from representative outfalls;

b. estimates of the annual pollutant load of the cumulative discharges to waters of the State from identified municipal outfalls, the event mean concentration of the cumulative discharges to waters of the State from identified municipal outfalls during a storm event, and a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

c. a proposed schedule to provide estimates for each major outfall identified in either Subsection R317-8-11.3(3)(b)2 or R317-8-11.3(3)(a)2 of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under Subsection R317-8-11.3(3)(b)3; and

d. a proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

4. Structural and source controls. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit and a proposed schedule for implementing such controls. At a minimum, the description shall include:

a. a description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

b. a description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing

construction site runoff are addressed in Subsection R317-8-11.3(3)(b)7;

c. a description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

d. a description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible.

e. a description of a program to monitor pollutants in runoff from operating or closed municipal landfills, treatment, storage or disposal facilities for municipal waste, or other high priority facilities owned or operated by the MS4. The description shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under Subsection R317-8-11.3(3)(b)6); and

f. a description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

5. An illicit discharge schedule. A description of a program, including a schedule, to detect and remove illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

a. a description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address each type of illicit discharge, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: firefighting where such discharges or flows are identified as significant sources of pollutants, water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water);

b. a description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

c. a description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources

of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

d. a description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

e. a description of a program to promote, publicize and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

f. a description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

g. a description of controls to limit overflows from municipal sanitary sewers to municipal separate storm sewer systems where necessary.

6. Priority areas. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall identify priorities and procedures for inspection and establishing and implementing control measures for such discharges.

7. Construction management program. A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

a. a description of procedures for site planning which incorporate consideration of potential water quality impacts;

b. a description of requirements for nonstructural and structural best management practices;

c. a description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

d. a description of appropriate educational and training measures for construction site operators.

8. Long-term storm water management for new development and redevelopment. The program shall include:

a. requirements for construction activities, as defined in Subsection R317-8-11.3(6)(e)1, associated with new development to retain storm water on site and prevent the off-site discharge of precipitation from rainfall events less than or equal to the 80th percentile rainfall event or a predevelopment hydrologic condition, whichever is less;

b. requirements for construction activities, as defined in Subsection R317-8-11.3(6)(e)1, associated with redevelopment projects which will increase the impervious surface by greater than

10% to retain storm water on site and prevent the off-site discharge of the net increase in the volume associated with precipitation from rainfall events less than or equal to the 80th percentile rainfall event; and

c. a process for addressing and documenting infeasibilities associated with Subsections R317-8-11.3(3)(b)8.a and b.

9. Applicability. Where requirements under Subsections R317-8-11.3(3)(b)3.b and R317-8-11.3(3)(b)4 through R317-8-11.3(3)(b)8 are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under Subsection R317-8-11.3(1)(a)6, R317-8-1.6(4)(b) or R317-8-1.6(8)(b) from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer located in incorporated places with populations greater than 100,000 and less than 250,000 according to the latest decennial census by Bureau of Census, or located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the latest decennial census by the Bureau of Census, from any of the permit application requirements except where authorized.

(4) Application deadlines. Any operator of a point source required to obtain a permit under Subsection R317-8-11.3(1)(a) that does not have an effective UPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) Storm water discharges associated with industrial activities.

1. Except as provided in Subsection R317-8-11.3(4)(a)2, for any storm water discharge associated with industrial activity identified in Subsections R317-8-11.3(6)(d)1 through R317-8-11.3(6)(d)10 that is not authorized by a storm water general permit, a permit application made pursuant to Subsection R317-8-11.3(2) must be submitted to the Director by October 1, 1992;

2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Director by March 10, 2003.

(b) For any discharge from a large municipal separate storm sewer system the application shall be submitted to the Director by November 18, 1991.

(c) For any discharge from a medium municipal separate storm sewer system the application shall be submitted to the Director by May 18, 1992.

(d) A permit application shall be submitted to the Director within 180 days of notice, unless permission for a later date is granted by the Director for:

1. A storm water discharge which the Director determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State, or

2. A storm water discharge subject to Subsection R317-8-11.3(2)(a)5.

(e) Facilities with existing UPDES permits for storm water

discharges associated with industrial activity shall maintain existing permits. New applications for individual permits shall be submitted 180 days before the expiration of such permits. New applications for general permit coverage shall be submitted within 30 days of permit expiration date unless otherwise specified in the permit. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in Subsection R317-8-11.3(4)(a).

(f) For any storm water discharge associated with construction activity identified in Subsection R317-8-11.3(6)(e)1, see Subsection R317-8-3.1(2). Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(g) For any discharge from a regulated small MS4, the permit application made under 40 CFR 122.33, with substitutions as described by Subsection R317-8-1.10(11), must be submitted to the Director by:

1. March 10, 2003 if designated under 40 CFR 122.32 (a)(1), with substitutions as described by Subsection R317-8-1.10(10), unless your MS4 serves a jurisdiction with a population under 10,000 and the Director has established a phasing schedule under 40 CFR 123.35 (d)(3); or

2. Within 180 days of notice, unless the Director grants a later date, if designated under 40 CFR 122.32(a)(2) and 40 CFR 122.33(c)(2) with substitutions as described by Subsection R317-8-1.10(10) and (11).

(5) Petitions.

(a) Any operator of a municipal separate storm sewer system may petition the Director to require a separate UPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the Director to require a UPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharge to combined sewers that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the UPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Director for the designation of a large, medium, or small municipal separate storm sewer system as defined by Subsections R317-8-1.6(4), R317-8-1.6(7), and R317-8-1.6(14).

(e) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of the petitions to designate a small MS4 in which case the Director shall make a final determination on the petition within 180 days after its receipt.

(6) Provisions Applicable to Storm Water Definitions.

(a) The Director may designate a municipal separate storm sewer system as part of a large system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under Subsection R317-8-1.6(4)(a) or (b). In making the determination under Subsection R317-8-1.6(4)(b) the Director may consider the following factors:

1. physical interconnections between the municipal separate storm sewers;

2. location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in Subsection R317-8-1.6(43)(a);

3. quantity and nature of pollutants discharged to waters of the State;

4. nature of the receiving waters; and

5. other relevant factors; or

6. the Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in Subsection R317-8-1.6(4).

(b) The Director may designate a municipal separate storm sewer system as part of a medium system due to the interrelationship between the discharges of designated storm sewer and the discharges from the municipal separate storm sewers described under Subsection R317-8-1.6(8)(a) or R317-8-1.6(8)(b). In making the determination under Subsection R317-8-1.6(8)(b) the Director may consider the following factors:

1. physical interconnections between the municipal separate storm sewers;

2. location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in Subsection R317-8-1.6(8)(a);

3. quantity and nature of pollutants discharged to waters of the State;

4. nature of the receiving waters; and

5. other relevant factors; or

6. the Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in Subsections R317-8-1.6(8)(a), R317-8-1.6(8)(b), and R317-8-1.6(8)(c).

(c) Storm water discharges associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program under Rule R317-8. For the categories of industries identified in this section, the term includes storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or

by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste water as defined in 40 CFR 401; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas, including tank farms, for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities, including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in Subsections R317-8-11.3(d)1 through R317-8-11.3(d)10, include those facilities designated under Subsection R317-8-11.3(1)(a)6.

(d) The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this section and as referenced in Subsection R317-8-11.3(1)(a)2 and R317-8-11.3(6)(c):

1. facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, or toxic pollutant effluent standards under 40 CFR subchapter N except facilities with toxic pollutant effluent standards which are exempted under Subsection R317-8-11.3(6)(d)10;

2. facilities classified as Standard Industrial Classifications 24 except 2434, 26 except 265 and 267, 28 except 283 and 285, 29, 311, 32 except 323, 33, 3441, 373;

3. facilities classified as Standard Industrial Classifications 10 through 14, mineral industries, including active or inactive mining operations, except for areas of coal mining operations no longer meeting the definition of a reclamation area because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990, and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations. Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner or operator. Inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim;

4. hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. landfills, land application sites, and open dumps that receive or have received any industrial wastes, waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under subtitle D of RCRA;

6. facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, classified as Standard Industrial Classification 5015 and 5093;

7. steam electric power generating facilities, including coal handling sites;

8. transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-25, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, such as vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under Subsections R317-8-11.3(6)(d)1 through R317-8-11.3(6)(d)7 or R317-8-11.3(6)(d)9 through R317-8-11.3(6)(d)10 are associated with industrial activity;

9. treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with requirements for disposal of sewage sludge; and

10. facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, 4221-25.

(e) Storm water discharge associated with construction activity means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre. Construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Director may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

a. the value of the rainfall erosivity factor, "R" in the Revised Universal Soil Loss Equation, is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), page 21-64, dated January 1997. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A

copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Director that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

b. storm water controls are not needed based on a "total maximum daily load" (TMDL) approved by EPA that addresses the pollutants of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from each source, and a margin of safety. For this paragraph, the pollutants of concern include sediment or a parameter that addresses sediment, such as total suspended solids, turbidity or siltation, and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Director that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis; and

2. any other construction activity designated by the Director based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

(7) Conditional exclusion for no exposure of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snow melt and runoff, and the discharger satisfies the conditions in Subsections R317-8-11.3(7)(a) through R317-8-11.3(7)(d). "No exposure" means that industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snow melt, and runoff. Industrial materials or activities include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(a) Qualification. To qualify for this exclusion, the operator of the discharge must:

1. provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

2. complete and sign, according to Subsection R317-8-3.4, a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in Subsection R317-8-11.3(7)(b);

3. submit the signed certification to the Director once every five years;

4. allow the Director or authorized representative to inspect the facility to determine compliance with the "no exposure" conditions;

5. allow the Director or authorized representative to make any "no exposure" inspection reports available to the public upon request; and

6. for facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

1. drums, barrels, tanks, and similar containers that are tightly sealed, meaning banded or otherwise secured and without operational taps or valves, provided those containers are not deteriorated and do not leak;

2. adequately maintained vehicles used in material handling; and

3. final products, other than products that would be mobilized in storm water discharge e.g., rock salt.

(c) Limitations.

1. Storm water discharges from construction activities identified in Subsection R317-8-11.3(6)(e) are not eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for a UPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

3. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

4. The Director retains the authority to require permit authorization and deny this exclusion upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(d) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the Director in determining if the facility qualifies for the no exposure exclusion:

1. the legal name, address and phone number of the discharger as identified in Subsection R317-8-3.1(3).

2. the facility name and address, the county name and the latitude and longitude where the facility is located;

3. an indication that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

a. using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

b. materials or residuals on the ground or in storm water inlets from spills or leaks;

c. materials or products from past industrial activity;
d. materials handling equipment, except adequately maintained vehicles;
e. materials or products during loading and unloading or transporting activities;
f. materials or products stored outdoors, except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants;
g. materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;
h. materials or products handled or stored on roads or railways owned or maintained by the discharger;
i. waste material, except waste in covered and non-leaking containers such as dumpsters;
j. application or disposal of process wastewater, unless otherwise permitted; and
k. particulate matter or visible deposits or residuals from roof stacks or vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.
4. No exposure certifications must include the following certification statement, and be signed in accordance with the signatory requirements of Section R317-8-3.3 "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of no exposure and obtaining an exclusion from UPDES storm water permitting. I certify under penalty of law that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document. I understand that I am obligated to submit a no exposure certification form once every five years to the Division of Water Quality and understand that I must obtain coverage under a UPDES permit prior to any point source discharge of storm water from the facility. Additionally, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
(8) The Director may designate small MS4s other than those described in 40 CFR 122.32(a)(1), with substitutions described in Subsection R317-8-1.10(12), to be covered under the UPDES storm water permit program, and require a UPDES storm water permit. Designations of this kind will be based on whether a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts; and shall apply to any small MS4 located outside of an urbanized area serving a population density of at least 1,000 people per square mile and a population of at least 10,000.
(a) Criteria used in designation may include:
1. discharge(s) to sensitive waters;
2. areas with high growth or growth potential;

3. areas with a high population density;
4. areas that are contiguous to an urbanized area;
5. small MS4s that cause a significant contribution of pollutants to waters of the State;
6. small MS4s that do not have effective programs to protect water quality by other programs; or
7. other appropriate criteria.

(b) Permits for designated MS4s under this paragraph shall be under the same requirements as small MS4s designated under 40 CFR 122.32(a)(1) with substitutions as described in Subsection R317-8-1.10(12) .

(9) Reporting requirements for municipal separate storm sewer systems. The operator of a large, medium, or small municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Director under Subsection R317-8-11.3(1)(a)6 must submit an annual report by October 1st each year. The report shall include:

1. the status of implementing the components of the storm water management program that are established as permit conditions;
2. a summary of data or indicators of overall plan effectiveness, including monitoring data, that is accumulated throughout the reporting year;
3. a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under Subsection R317-8-11.3(3)(b). Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;
4. a summary describing the number and nature of enforcement actions, inspections, and public education programs; and
5. identification of water quality improvements or degradation.

11.4 QUALIFYING STATE OR LOCAL PROGRAMS

(1) For storm water discharges associated with construction activity identified in Subsection R317-8-11.3(6)(e), the Director may include permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. Where a qualifying State or local program does not include one or more of the elements in this paragraph then the Director must include those elements as conditions in the permit. A qualifying State or local erosion and sediment control program is one that includes:

(a) requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(b) requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(c) requirements for construction site operators to develop and implement a storm water pollution prevention plan that includes site descriptions of appropriate control measures, copies of approved State, local requirements, maintenance procedures, inspections procedures, and identification of non-storm water discharges; and

(d) requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(2) For storm water discharges from construction activity identified in Subsection R317-8-11.3(6)(e), the Director may include

permit conditions that incorporate qualifying State or local erosion and sediment control program requirements by reference. A qualifying State or local erosion and sediment control program is one that includes the elements listed in Subsection R317-8-11.4(1) and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

KEY: water pollution, discharge permits
Date of Enactment or Last Substantive Amendment: ~~July 1, 2013~~2021
Notice of Continuation: September 12, 2017
Authorizing, and Implemented or Interpreted Law: 19-5; 19-5-104; 40 CFR 503

DWQ-2020-024302

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

MEMORANDUM

TO: Utah Water Quality Board

THROUGH: Erica Brown Gaddis, PhD, Executive Secretary

FROM: Chris Bittner, DWQ Standards Coordinator

DATE: December 2, 2020

SUBJECT: Adoption of Amendments to R317-2, Standards of Quality for Waters of the State

Board Action: Staff recommends that the Water Quality Board adopt the amendments as proposed in the September 15, 2020 Bulletin as a Board Order effective immediately.

The Board approved staff's request to commence rulemaking for the three proposed amendments at the June and August meetings. Staff initiated rulemaking with publication in the September 15, 2020 Utah Bulletin (No. 53043). A virtual public hearing was held on October 21, 2020 and the public comment period ended on October 30, 2020. The only comments received were from the EPA. EPA's preliminary comments conclude that the proposed amendments meet the federal requirements. EPA included one substantive comment for the Jordan River Use change.

The three proposed amendments are unchanged since they were originally proposed to the Board. Brief summaries are presented below including a response to the EPA comment on the Jordan River. Detailed information is provided as the attachments. Based on a lack of opposition and the impacts these changes will have on UPDES permits, staff recommends that the Board adopt these amendments effective immediately. A proposed Board action is provided in Attachment 1.

Summary of Proposed Standards Revisions

1. **Jordan River.** For a segment of the Jordan River, the revision is to change the designated aquatic life use from Class 3A, cold water aquatic life, to Class 3B, warm water aquatic life. This segment of the Jordan River is unable to attain the cold water use because of natural conditions as modified by dams and diversions. The proposed change is in R317-2-13.5.a. as shown in the shaded row in the table below:

Table. Jordan River Segment Proposed for Change from Cold Water Aquatic Life Use (3A) to Warm Water Aquatic Life (3B)

Segment	Designated Uses				
Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek		2B		3B	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B	~~3A~~	3B	4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B		3B	4

In their preliminary comments, the EPA supports that the proposed change is consistent with federal requirements. EPA also notes an alternative option, a site-specific temperature criterion, for addressing the Jordan River temperature impairment. Staff previously considered this option but concluded that the use change to Class 3B is the most appropriate option. A more detailed response is available as Attachment 2, Public Participation.

The *Cold Water Aquatic Life Use Attainability Analysis for the Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion, Utah and Salt Lake Counties, Utah* provides the detailed analyses for the use change.

2. **Colorado River Salinity Standards.** The proposed changes are to add the 2014, 2017, and 2020 reviews of the Colorado River Salinity Standards to the previous reviews (1981-2011) in R317-2-4. No adverse comments were received.

3. **Kanab Creek.** Site-specific total dissolved solids (TDS) criteria, based on natural conditions, are proposed for two segments of upper Kanab Creek. The higher TDS criteria are protective of the existing and anticipated future agricultural uses of Kanab Creek's water and therefore, consistent with the agricultural use and value of the water.

   The proposed alternative TDS criteria to be added to Footnote 4 of Table 2.14.1, R317-2-14 are:

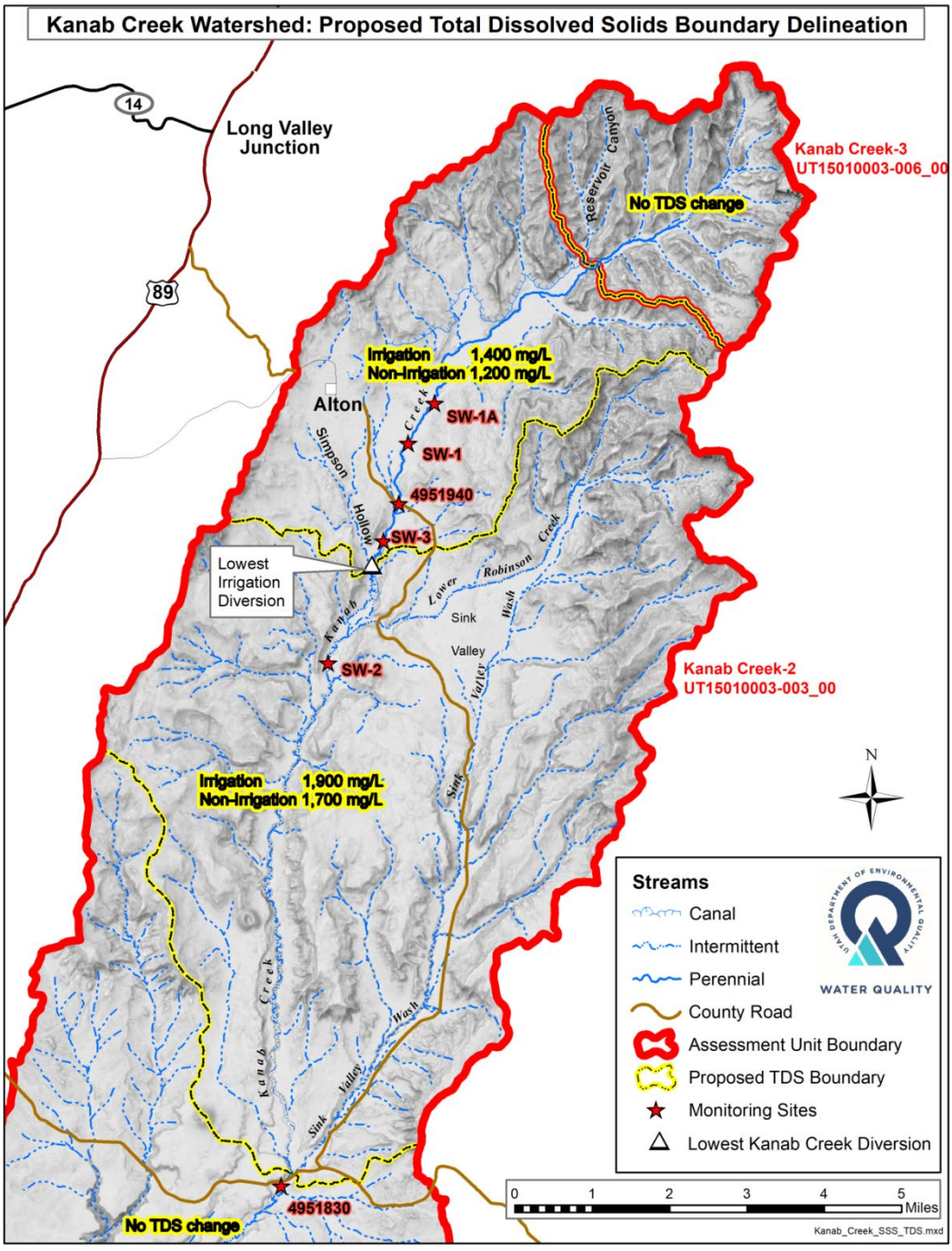
   > Kanab Creek and tributaries above Simpson Hollow Wash to irrigation diversion at confluence with Reservoir Canyon: April through November, daily maximum 1,400 mg/l. Assessments shall be based on TDS concentrations measured in Kanab Creek.
   >
   > Kanab Creek and tributaries from immediately below the confluence with Sink Valley Wash to the confluence of Simpson Hollow Wash: April through November, daily

maximum 1,900 mg/l; December through March, daily maximum 1,700 mg/l. Assessments shall be based on TDS concentrations measured in Kanab Creek.

The Figure below illustrates the boundaries for the proposed TDS criteria and the approximate location where Kanab Creek perennial flows change to intermittent. No adverse comments were received.

More detailed analyses are available in the Kanab Creek - Use and Value Assessment and Revised Criteria for Total Dissolved Solids.

DWQ-2020-022902


Kanab Creek Watershed: Proposed Total Dissolved Solids Boundary Delineation
14
89
Long Valley Junction
Alton
Reservoir Canyon
Kanab Creek-3
UT15010003-006_00
No TDS change
Irrigation 1,400 mg/L
Non-Irrigation 1,200 mg/L
SW-1A
SW-1
4951940
SW-3
Simpson Hollow Creek
Lowest Irrigation Diversion
Lower Robinson Creek
Kanab Sink Valley Wash
SW-2
Kanab Creek-2
UT15010003-003_00
Irrigation 1,900 mg/L
Non-Irrigation 1,700 mg/L
Kanab Creek
Sink Valley Wash
4951830
No TDS change
N
Streams
Canal
Intermittent
Perennial
County Road
Assessment Unit Boundary
Proposed TDS Boundary
Monitoring Sites
Lowest Kanab Creek Diversion
WATER QUALITY
0 1 2 3 4 5 Miles
Kanab_Creek_SSS_TDS.mxd

ATTACHMENTS

Attachment 1: Proposed Board Order……..6
Attachment 2: Public Participation…….……..…7
Attachment 3: Utah Bulletin mark-up of proposed amendments…….……..26

ATTACHMENT 1

ORDER
BEFORE THE UTAH WATER QUALITY BOARD IN THE MATTER OF REVISING STANDARDS OF QUALITY FOR WATERS OF THE STATE (R317-2, UTAH ADMINISTRATIVE CODE)

This matter came for hearing before the Utah Water Quality Board pursuant to notice given under the provisions of *Sections 19-5-110, Utah Code Annotated,* 1953, as amended, on the 2nd day of December, 2020 for the purpose of considering amendments to the *Utah Administrative Code R317-2,* "Standards of Quality for Waters of the State." The proposed amendments were published in the September 15, 2020 Utah Bulletin, No. 53043.

The Board having taken cognizance of the oral and written statements received, and having fully considered all of the facts in the matter, it is therefore ORDERED that the revised "Standards of Quality for Waters of the State" (*R317-2, UAC*) be reissued effective immediately with the changes as adopted by the Board.

ATTACHMENT 2
Public Participation

Comment Responses 8
EPA Comments 9
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Comment Responses

1. *The EPA notes that the completed UAA supporting the proposed aquatic life use revision may also be used to justify adopting a site-specific maximum temperature (and temperature change) criterion under 40 C.F.R. § 131.11(b)(1)(ii). This option would allow the Board to retain the cold water aquatic life use designation and its associated ammonia and dissolved oxygen criteria in this segment of the Jordan River. However, the EPA acknowledges the UAA meets the requirements at 40 C.F.R. § 131.10(j)(2) and so supports the proposed aquatic life use revision to Class 3B at the Board's discretion. Hence, the EPA supports the Board's adoption of either a site-specific temperature criterion or the proposed aquatic life use revision based on the supporting materials.*

DWQ previously considered deriving site-specific temperature criteria as opposed to the use change. DWQ continues to support the use change as the most appropriate option because of the aquatic community present in the Jordan will be adequately protected by the Class 3B use designation. Secondarily, a site-specific criterion has potential disadvantages.

As have been derived elsewhere in Utah, a site-specific temperature criterion could be based on existing/ambient water temperature conditions. With a site-specific criterion, the Jordan River would be impaired again if water temperatures increase in the future because of climatic factors. The process to derive a site-specific criterion would have to be repeated with no apparent improvement for water quality.

The higher temperature associated with the use change is not likely to result in additional degradation compared to a site-specific criterion. The primary influences on water temperature in the Jordan River are natural conditions. A more stringent site-specific criterion would only affect dischargers and would have no effect on the Jordan River water temperatures. The two publicly-owned treatment works that discharge to the Jordan River currently only have incidental treatment for effluent temperature. A more stringent temperature criterion may require treatment for temperature but a less stringent temperature criterion is unlikely to change the temperatures of the effluent. These dischargers are also subject to the antidegradation requirements of R317-3 which already requires that the least degrading, feasible treatment option be selected independent of the temperature criterion.

EPA notes that the change to Class 3B will also result in less stringent ammonia because the ammonia criteria are currently different for Classes 3A and 3B. DWQ anticipates that the ammonia criteria will be updated in the near future with the EPA (2013) recommendations. These recommendations do not differentiate between cold and warm water aquatic life with the exception of the acute criteria. When trout species are present, the acute criteria are more stringent but trout species are not residents of this segment of the Jordan River. The proposed use change is unlikely to affect the EPA (2013) ammonia criteria.

EPA Comments

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
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http://www.epa.gov/region08

October 30, 2020

Ref: 8WD-CWQ

Christopher Bittner
Utah Division of Water Quality
195 North 1950 West
P.O. Box 144870
Salt Lake City, Utah 84114-4870

Re: EPA Comments on Utah's Proposed Revisions to Water Quality Standards

Dear Mr. Bittner:

This letter provides the U.S. Environmental Protection Agency (EPA) Region 8 Water Quality Unit comments on the Utah Division of Water Quality's (UDWQ) proposed revisions[1] to R317-2, *Standards of Quality for Waters of the State* adding:

- R317-2-4: 2014, 2017 and 2020 reviews to the Colorado River Salinity Standards;
- R317-2-13.5.b: Jordan River aquatic life use revision; and
- R317-2-13.2.b and R317-2-14, Table 2.14.1: Kanab Creek resegmentation and site-specific total dissolved solids criteria.

The EPA offers these comments in response to the UDWQ's public comment opportunity on proposed revisions to R317-2 from September 15 to October 30, 2020.[2] Our review addresses the information and supporting materials included in the notice and currently posted on the UDWQ website.[3] The public hearing for the proposed revisions to water quality standards (WQS) was held on October 21, 2020.

The EPA's Water Quality Standards Regulation at 40 C.F.R. Part 131 specifies the requirements for revisions to water quality standards.[4] The EPA is offering comments to assist UDWQ in ensuring that Utah's proposed revisions and supporting documentation comply with these WQS requirements before revisions are adopted by the Utah Water Quality Board (Board). Please note that our comments are

[1] See PUBLIC NOTICE OF PROPOSED AMENDMENTS TO UTAH ADMINISTRATIVE CODE R317-2, *STANDARDS OF QUALITY FOR WATERS OF THE STATE*, UDWQ, September 15, 2020, and supporting materials.
[2] The EPA is transmitting comments in a separate letter addressing the UDWQ proposal for 2020 triennial review and revisions to R317-2, *Standards of Quality for Waters of the State*.
[3] https://deq.utah.gov/water-quality/water-quality-laws-and-rules-proposed-rule-changes.
[4] See also EPA's Water Quality Standards Handbook, section 3.1 available at: https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter3.pdf.

preliminary in nature and should not be interpreted as a final EPA decision under Clean Water Act (CWA) § 303(c).

GENERAL COMMENTS

The EPA has discussed the proposed WQS revisions with UDWQ and with other parties involved with the individual proposals. We appreciate UDWQ and others discussing complex details of these proposals, the significant preliminary work done to characterize and document these water quality issues, and the thoughtful analyses addressing potential resolutions. As a part of its public outreach, the UDWQ posted summaries of each water quality issue as well as in-depth data, analyses and supporting materials for the more technical water quality questions. These proposals and supporting documents are clear and of an appropriate technical scope and depth to address each water quality issue. Generally, we concur that it is reasonable and appropriate to consider the three proposed WQS revisions as warranted and acceptable options under the CWA (i.e., the proposed revisions appear to be appropriate WQS considerations for the given water quality issue.) Below are comments identifying our findings and any outstanding concerns in reviewing the proposed revisions and supporting materials.

SPECIFIC COMMENTS

R317-2-4: Adding 2014, 2017 and 2020 Reviews of the Colorado River Salinity Standards

The EPA offers no specific comments to the proposed addition by reference of the 2014, 2017 and 2020 Colorado River Basin Salinity Control Forum's (Forum) reviews into R317-2-4 Colorado River Salinity Standards. The Forum reviews the numeric criteria and Plan of Implementation for controlling salinity within the seven member states, including Utah, and publishes its recommendations[5] every three years. The EPA supports this addition into R317-2-4 Colorado River Salinity Standards.

R317-2-13.5.b: Revising the Aquatic Life Use for a Segment of the Jordan River

UDWQ proposes revising R317-2-13.5.b to change the aquatic life use designated for the Jordan River from the confluence with Little Cottonwood Creek upstream to the Narrows Diversion. The proposed use change is from the current Class 3A (cold water) to Class 3B (warm water)[6] use. The proposal summary[7] states:

> For the segment of the Jordan River from the confluence with Little Cottonwood Creek to the Narrows Diversion, proposed change is from Class 3A (cold water aquatic life) to Class 3B (warm water aquatic life) because natural conditions, as affected by the dams and diversions, prevent attainment of the Class 3A use. This change in use changes the maximum allowable water temperature from 20° C to 27° C. The upstream segment and source of water for the affected segment is already appropriately classified as Class 3B. Water temperatures in the upstream as well as the affected segment commonly exceed 20° C in the July and August. The affected segment was originally misclassified and this change corrects that mistake.

[5] See: https://www.coloradoriversalinity.org/.
[6] See: R317-2-6. Use Designations, Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain; and Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.
[7] *Water Quality Standards Proposed Revisions Summary*, Proposed Amendments to R317-2-4, R317-2-13, and R317-2-14, *Standards of Quality for Waters of the State*, Section 2, published in the September 15, 2020 issue of the Utah Bulletin.

The proposed aquatic life use change would consequently revise the applicable aquatic life criteria to less stringent water quality requirements for maximum temperature, maximum temperature change, dissolved oxygen, and ammonia in this segment of the Jordan River as shown in Table 1 below. Because the proposed aquatic life use change would assign less stringent criteria to this segment it is required to be supported by a Use Attainability Analysis (UAA) per the requirements at 40 C.F.R. § 131.10(j)(2). Accordingly, the proposed revision is supported by *Cold Water Aquatic Life Use Attainability Analysis for the Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion, Utah and Salt Lake Counties, Utah.*[8]

Table 1. Applicable Aquatic Life Criteria that Change Before and After the Proposed Use Revision.

Pollutant	**Criterion Under Class 3A**	**Criterion Under Class 3B**
Maximum Temperature	20° C	27° C
Maximum Temperature Change	2° C	4° C
Ammonia – Acute (1-hr avg. Total Ammonia Nitrogen, in mg/L)	$= (0.275/(1+^{107.204-pH})) + (39.0/1+10^{pH-7.204}))$ e.g., 24.1*	$= 0.411/(1+10^{7.204-pH})) + (58.4/(1+10^{pH-7.204}))$ e.g., 36.1*
Dissolved Oxygen (mg/L) -Instantaneous Minimum - Acute (7-day avg.) - Chronic (30-day avg.)	 8.0 / 4.0 ** 9.5 / 5.0 ** 6.5	 5.0 / 3.0 ** 6.0 / 4.0 ** 5.5

*Acute Ammonia – equations and example values shown for "Early Fish Life Stages Absent" and at pH = 7.0: for Class 3A = 24.1 mg/L Total Ammonia Nitrogen; for Class 3B = 36.1 mg/L TAN.
**Dissolved Oxygen – Instantaneous Minima and Acute values show two values for: Early Life Stages Present / Early Life Stages Absent.

The UAA provides background information, temperature and fisheries data, and temperature modeling under multiple scenarios of potential temperature controls. The UAA summarizes the Jordan River and its temperature regime as follows:

> The Jordan River flows from Utah Lake to Great Salt Lake. In addition to being located in an urban area, the Jordan River is extensively modified for water supply and flood control. Starting from the Narrows Diversion, approximately 10 miles downstream of Utah Lake to the confluence with Little Cottonwood Creek, the river is designated as Class 3A, cold water aquatic life. However, uses in the headwaters, upstream reaches, and downstream reaches, are Class 3B, warm water aquatic life. ... This UAA assessed water temperatures coming into the impaired segments, models the effects of best management practices such as additional shading, and evaluates historic fish community data. The conclusion is that the cold water use is not

[8] *Cold Water Aquatic Life Use Attainability Analysis for the Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion, Utah and Salt Lake Counties, Utah*, v. 1.0, Utah Department of Environmental Quality, March 20, 2020.

> attainable primarily because naturally occurring water temperatures upstream are too warm. Although the dams and diversions affect water temperatures, the data support that absent these effects, the cold water use would remain unattainable.[9]

The Jordan River is assigned a warm water aquatic life use (Class 3B) upstream of the Narrows Diversion and downstream of the confluence with Little Cottonwood Creek, so the Class 3A cold water aquatic life section lies between Class 3B warm water segments. This includes the upstream warm, shallow Utah Lake and the 10-mile Jordan River segment below Utah Lake that supply the mainstem flows into the Class 3A segment.[10] Ambient temperature data demonstrate that the upstream and within-segment Jordan River summer temperatures consistently exceed the Class 3A 20° C maximum temperature criterion in summer months, especially during July - August.[11] The UAA discusses the impacts of cooler groundwater entering the Class 3A segment but provides evidence that these gains of seasonally colder water are insufficient to cool the warmer temperatures in the mainstem Jordan River and tributary flows (transporting warm irrigation return flows during sumer months) especially during July - September.[12]

Temperature modeling was done for the Class 3A segment by the Utah Water Research Laboratory at Utah State University. This modeling shows the summer Jordan River temperatures would remain consistently above the 20° C cold water aquatic life criterion even after removal of thermal loads from permitted Publicly Owned Treatment Works (POTWs) discharges, and after full implementation of Best Management Practices (BMPs, e.g., for maximal practical channel shading, and reductions of warm summer irrigation return flows through tributaries).[13]

The UAA examined historic fisheries records, fish surveys and fish-stocking reports for the Jordan River. Salmonids were stocked by the Utah Division of Wildlife Resources in the lower Jordan River as a put-and-take recreational fishery between 1980-2000, but there is evidence that these fish were unable to propagate sufficiently to establish a reproducing population while warm water species thrived.

> The rarity of cold water species observed through multiple surveys imply that the Jordan River failed to fully support a cold-water aquatic life use in the post-1960s as intended.[14]

The UAA concludes that the above data and evidence demonstrate that the Class 3B warm water aquatic life use is the highest attainable condition for the Jordan River from the confluence with Little Cottonwood Creek upstream to the Narrows Diversion:

> Historic evidence and current data show that the segments of the Jordan River currently classified as 3A cold water aquatic life use were misclassified. Historic fish data demonstrate that these segments have never supported a cold water fishery as intended and temperature modeling demonstrates that the highest attainable use will remain a warm-water fishery into the foreseeable future.[15]

---

[9] *Ibid*, at p. 2, Executive Summary.
[10] *Ibid*, at Figures 1, 3 and 4.
[11] *Ibid*, at Water Temperature in the Jordan River, Table 3 and Figure 5.
[12] *Ibid*, at Figure 6.
[13] *Ibid*, at Temperature Modeling, Table 4 and Appendix 1 Two-Zone Dynamic Temperature Model Development and Calibration for the Jordan River.
[14] *Ibid*, at Aquatic Life in the Jordan River.
[15] *Ibid*, at p. 2, Executive Summary.

The EPA's review finds that the UAA supporting the proposed revision to the aquatic life use designated for the Jordan River from the confluence with Little Cottonwood Creek upstream to the Narrows Diversion clearly presents and analyzes the Jordan River temperature and fisheries data. The modelling and analyses presented clearly demonstrate that the 20° C maximum temperature criterion protective of the Class 3A use is not attainable during peak summer temperatures. The UAA concludes that natural conditions are the dominant driver of the higher temperatures, exacerbated by dams and diversions. The thermal loading appears to be due to a combination of 40 C.F.R. § 131.10(g) factors (1) - natural conditions; (3) - human caused conditions that cannot be remedied; and (4) - dams, diversions and other hydrologic modifications. Any or a combination of these three factors is an allowable justification for the proposed revision under the CWA and 40 C.F.R. Part 131.

Lastly, the UAA provides documentation that appears to demonstrate that a cold water aquatic life use is not an existing use in this segment of the Jordan River. The UAA provides records of large numbers of cold water fish stocked over consecutive years, but few of these fish being enumerated in fishery surveys. This demonstrates that those cold water fish did not establish permanent, self-reproducing populations. The lack of an existing cold water aquatic life use is also evidenced by the high summer temperatures consistently creating an inhospitable habitat for cold water species during peak summer heat in July - August. While there is fish survey evidence that some cold water aquatic life species do occasionally occur in this segment of the Jordan River their occurrence may be just transient or intermittent. The data provided allow Utah to exercise its discretion to decide this is a warm water aquatic life habitat system and there is not a viable existing cold water aquatic life use. The proposed Class 3B warm water aquatic life use should be protective of the existing warm water fishery use in this segment.

The EPA notes that the completed UAA supporting the proposed aquatic life use revision may also be used to justify adopting a site-specific maximum temperature (and temperature change) criterion under 40 C.F.R. § 131.11(b)(1)(ii). This option would allow the Board to retain the cold water aquatic life use designation and its associated ammonia and dissolved oxygen criteria in this segment of the Jordan River. However, the EPA acknowledges the UAA meets the requirements at 40 C.F.R. § 131.10(j)(2) and so supports the proposed aquatic life use revision to Class 3B at the Board's discretion. Hence, the EPA supports the Board's adoption of either a site-specific temperature criterion or the proposed aquatic life use revision based on the supporting materials.

R317-2-13.2.b and Table 2.14.1: Adding Kanab Creek Site-Specific Total Dissolved Solids Criteria
UDWQ proposes resegmentation of Kanab Creek in R317-2-13.2.b and adding site-specific water quality criteria for Total Dissolved Solids (TDS) to Table 2.14.1 Numeric Criteria for Domestic, Recreation and Agricultural Uses, at Footnote 4 protecting agricultural uses in a portion of the Kanab Creek watershed, as follows:

> Kanab Creek and tributaries above Simpson Hollow Wash to irrigation diversion at confluence with Reservoir Canyon: April through November, daily maximum 1,400 mg/l. Assessments shall be based on TDS concentrations measured in Kanab Creek.
>
> Kanab Creek and tributaries from immediately below the confluence with Sink Valley Wash to the confluence of Simpson Hollow Wash: April through November, daily maximum 1,900 mg/l;

December through March, daily maximum 1,700 mg/l. Assessments shall be based on TDS concentrations measured in Kanab Creek.[16]

The proposed resegmentation and revisions to the Kanab Creek TDS criteria are supported by *Kanab Creek - Use and Value Assessment and Revised Criteria for Total Dissolved Solids* (Criteria Support document).[17] The document provides a use and value demonstration (see 40 C.F.R. § 131.10(a)) documenting Utah's consideration of the use and value of Kanab Creek water for agricultural purposes. The Criteria Support document also provides UDWQ's scientific rationale in developing and proposing the site-specific TDS criteria as protective of the agricultural use in this portion of the Kanab Creek watershed, pursuant to 40 C.F.R. § 131.10(g)(1) and (3).

Table 2. Kanab Creek Segmentation and Applicable TDS Criteria Before and After Proposed Revision.

Current Kanab Creek Segment	**New Kanab Creek Segment**	**TDS Criteria (mg/L)**
Kanab Creek and Tributaries* from Arizona state line upstream to irrigation diversion at Reservoir Canyon	KC&T from Arizona state line upstream to immediately below the confluence with Sink Valley Wash	1,200 (unchanged)
	KC&T from immediately below the confluence with Sink Valley Wash upstream to confluence with Simpson Hollow Wash	~~1,200~~ 1,900 – April through Nov 1,700 – Dec through March
	KC&T above Simpson Hollow Wash upstream to irrigation diversion at confluence with Reservoir Canyon	1,200 – Dec through March (unchanged) 1,400 - April through Nov
KC&T from Reservoir Canyon upstream to headwaters	KC&T from Reservoir Canyon upstream to headwaters (unchanged)	1,200 (unchanged)

* KC&T – Kanab Creek and tributaries.

Table 2 above shows the geographic boundaries of Kanab Creek segments and the applicable TDS criteria before and after the proposed revisions. The current downstream segment of Kanab Creek would be divided into three segments. The new furthest downstream segment - Kanab Creek and its tributaries from the state line upstream to Sink Valley Wash, and the furthest upstream segment - Kanab Creek and its tributaries from Reservoir Canyon to its headwaters, would not be affected by the proposed revision and retain the statewide agricultural use criterion of 1,200 mg/L TDS. The proposed site-specific TDS criteria would apply seasonally to two segments of Kanab Creek as shown in Table 2. The Criteria Support document labels the three upstream segments of Kanab Creek[18] (all Kanab Creek segments and tributaries upstream of the confluence with Sink Valley Wash) as "upper Kanab Creek."

The document finds natural interaction with the underlying Tropic Shale and Dakota formation to be the principal source of salt loading into upper Kanab Creek, and the data analysis supports this finding.[19]

[16] *Water Quality Standards Proposed Revisions Summary*, Proposed Amendments to R317-2-4, R317-2-13, and R317-2-14, *Standards of Quality for Waters of the State*, Section 3, published in the September 15, 2020 issue of the Utah Bulletin.
[17] *Kanab Creek – Use and Value Assessment and Revised Criteria for Total Dissolved Solids*, Criteria Support Document, v. 1.4, Utah Department of Environmental Quality, June 6, 2020.
[18] *Ibid*, see p.4, Figure 2. The document labels "upper Kanab Creek" as Kanab Creek and all tributaries upstream of "The Falls" (at County Road crossing approximately 5 miles East of Glendale, UT and 9 miles South of Alton, UT). Upper Kanab Creek includes the three most upstream segments of Kanab Creek after the proposed resegmentation, including the two segments where the proposed site-specific TDS criteria would apply.
[19] *Ibid*, at Data Sources and Analyses, and Results and Recommendations sections.

This loading is reported to be exacerbated by a smaller amount of anthropogenically influenced TDS loading likely due to irrigation return flows to Kanab Creek.

> This increase in TDS concentrations is likely both natural and somewhat exacerbated by agricultural irrigation use through longer contact times between the water and soils and alluvium derived from the marine Tropic Shale and Dakota formations. However, given the limited amount of water available for irrigation and the small amount of overall irrigated acreage in the area, any agricultural irrigation return flow contributions to the increased TDS concentrations are likely a relatively small percentage of the TDS loading to Kanab Creek. Both the natural and anthropogenic contributions to elevated TDS concentrations in this part of Kanab Creek are considered to be due to contact with the soils and alluvium derived from the marine Tropic Shale and Dakota formations, and are unalterable.[20]

The EPA questions whether there may be some additional limited sources of anthropogenic salt loading in upper Kanab Creek (e.g., from road crossings, mining, and other land disturbances) but concludes that these are likely very minor sources in comparison to the natural and agriculturally-associated sources cited in the supporting document. Hence, the EPA supports the UDWQ's source assessment of the salts that are currently entering upper Kanab Creek and the finding that these salt loading sources make this a combination of natural and irreversible human caused conditions per 40 C.F.R. § 131.10(g)(1) and (3), respectively.

The EPA's review finds that the Criteria Support document clearly presents and analyzes the watershed information and TDS data for Kanab Creek, and it demonstrates Utah's consideration of the use and value of Kanab Creek water for agriculture. There is a demonstration that natural and currently irreversible anthropogenic salt loading in upper Kanab Creek appear to be the dominant sources. Lastly, the document provides a scientifically defensible rationale for resegmenting Kanab Creek with site-specific TDS criteria seasonally applied to two of the segments, and that the site-specific TDS criteria should be protective of the existing agricultural use in Kanab Creek. Hence, the EPA supports the proposed revisions.

Conclusion

In its specific comments, the EPA has offered general support for the proposed revisions along with suggestions for consideration before a final WQS proposal and supporting rationale are adopted by the Board and submitted to the EPA for review and approval under the CWA § 303(c). We hope our comments are helpful to UDWQ and the Water Quality Board. We acknowledge the clear presentations of technical data, information and analyses provided in the materials supporting the proposed revisions. The EPA commends the UDWQ's work in making these materials available to the public and appreciates UDWQ's and the Board's efforts to ensure that Utah's rulemaking complies with the EPA's water quality standards requirements at 40 C.F.R. Part 131. If there are questions concerning our

[20] *Ibid*, at Results and Recommendations, p.22.

comments, please contact George Parrish (at 303-312-7027 or via email at parrish.george@epa.gov). We look forward to working with UDWQ to address these issues.

Sincerely,

ANDREW TODD

Digitally signed by ANDREW TODD
Date: 2020.10.30 13:38:19 -06'00'

Dr. Andrew Todd, Chief
Water Quality Section

Public Notice

State of Utah
GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

September 15, 2020

DIVISION OF WATER QUALITY
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO UTAH ADMINISTRATIVE CODE
R317-2, STANDARDS OF QUALITY FOR WATERS OF THE STATE

PURPOSE OF PUBLIC NOTICE

The purpose of this public notice is to solicit public comment regarding the proposed amendments to Utah Administrative Code R317-2, Standards of Quality for Waters of the State. The proposed amendments include adding the triennial updates to the Colorado River Salinity Standards, changing the aquatic life use in a segment of the Jordan River, Salt Lake and Utah Counties, from Class 3A to Class 3B, and changes to total dissolved solids criteria for segments of Kanab Creek near Alton, Utah. Detailed explanations and supporting documents for the proposed amendments are posted on our website at: https://deq.utah.gov/water-quality/water-quality-laws-and-rules-proposed-rule-changes and will be published in the September 15, 2020 Utah Bulletin.

BACKGROUND

The Utah Water Quality Board is considering amendments to Utah Administrative Code R317-2, Standards of Quality for Waters of the State. After considering the comments received, the Board may adopt the proposed changes, revise the changes prior to adoption, or may choose not to adopt the amendments. If the Board decides to revise the changes, a Change in Proposed Rule will be filed with the Utah Division of Administrative Rules and public noticed.

PUBLIC COMMENTS

Public comments are invited any time prior to the deadline, the close of business on October 30, 2020. A public hearing will convene on Wednesday, October 21, 2020, 6:00-7:00 PM to accept comments. In accordance with federal and state directives regarding COVID-19, the hearing will be virtual and can be accessed at https://utdeq.adobeconnect.com/publichearing/ . Written comments can be submitted to: Utah Division of Water Quality, Attn: Chris Bittner, PO Box 144870, Salt Lake City, Utah 84114-4870 or by email at: cbittner@utah.gov.

DWQ-2020-015550

195 North 1950 West • Salt Lake City, UT
Mailing Address: PO Box 144870 • Salt Lake City, UT 84114-4870
Telephone (801) 536-4300 • Fax (801) 536-4301 • TDD (801) 536-4284
www.deq.utah.gov

Public Hearing

UTAH DEPARTMENT of ENVIRONMENTAL QUALITY
WATER QUALITY

Hearing Officer Statement

Public Hearing:

An opportunity for interested parties to make comments on:

1) The amendments proposed to Utah's Standards of Quality for Waters of the State (R317-2) are made available in the September 15, 2020 Utah Bulletin Filing No. 53043 and on DWQ's website at https://deq.utah.gov/water-quality/water-quality-laws-and-rules-proposed-rule-changes.

2) The review topics for the 2020 Triennial Review of Utah's Water Quality Standards. Additional information is provided on DWQ's website at https://deq.utah.gov/water-quality/triennial-review-water-quality

Date, Time, Location:

Wednesday, October 21, 2020; 6:00 -7:00 PM

In response to state and local directives to reduce the spread of COVID-19, the hearing is virtual and is accessed at https://utdeq.adobeconnect.com/publichearing/

Hearing Officer:

Chris Bittner
Utah Division of Water Quality

Hearing Officer Statement:

Good Evening:

My name is Chris Bittner and I am the standards coordinator for the Utah Division of Water Quality. I am conducting this public hearing on behalf of the Utah Water Quality Board. The purpose of this hearing is to receive comments on the proposed amendments to the Standards of Quality for Waters of the States, R317-2 and recommendations for standards revisions to be considered for the 2020 Triennial Review. This is a formal hearing conducted under the laws of the State of Utah.

We welcome you and thank you for taking the time to provide comments.

- We are solely receiving your comments today. There will be no attempt by us to address your concerns in this forum and no actions will be taken. However, we may ask for clarifications. Comments may also be submitted in writing until October 30, 2020.
- The Water Quality Board will evaluate all of the comments received during the public comment period. After considering the comments, the Board may adopt the amendments as proposed, not adopt the amendments, or change the amendments.
- Any major changes to the proposed rule will require a re-notification of the public and a second public notice period.
- Minor changes do not require a second notice period and will be incorporated into the proposed rule considered for adoption by the Water Quality Board at a regularly scheduled meeting.

This hearing is being recorded.

How to comment:

I will proceed down the list of names. When you are recognized, please state your name and affiliation for our records, followed by your comments. This will be followed by a similar process for anyone attending by phone only.

Attendance:

Name	Affiliation
Brenda Johnson	UDWQ
George Parrish	EPA Region 8

Hearing Transcript:

I am George Parrish with US Environmental Protection Agency Region 8 office in Denver and I work on the Water Quality Standards team and I am the liaison for Utah's Water Quality Standards work for EPA. And I have reviewed the proposals and I have one question I'd like to ask just to make sure I am reading things correctly. I'll get to that in a minute, but I have two fully supportive comments I'd like to make to start with. So the first revision that I'll address is the incorporation by reference of the Colorado River Salinity Control Forum recommendations for 2014, 2017, and 2020 that are being incorporated into Utah's 317-2-4 which I believe is called the Colorado River Salinity Standards of Utah's water quality standards, and I just want to voice EPA's support for this state adopting the reviews by reference of the forum and I don't have any other comments for that specific topic.

(Mr. Bittner): Thank you.

(Mr. Parrish): And then the next thing I'll speak to is the proposed revision to the TDS criteria that applied to, let me back up, this is in regards to Kanab Creek and the changes that 317-2-13.2b where Kanab Creek, which currently is divided into two river segments, will be subdivided further into four segments and then under table 214.1 which includes the criteria for agriculture uses, there's a proposed site specific total dissolved solids, which I'll call TDS from here on, criterion proposed for two of those new segments. Though the EPA has reviewed the proposal, and the supporting materials that were distributed as part of this Water Quality Standards hearing, and we support the proposed subdividing of Kanab Creek into the new set of four segments for Kanab Creek, those divisions based on the data, information provided, the geological background, flow information and water quality criteria, clearly demarcate differences in the water quality that exists in each of those proposed segments. Though a shorter way of saying that is the data and science seem to make sense for dividing the Kanab Creek in four segments as proposed.

And then on what would be the two middle segments above what's called The Falls in the supporting documentation, the criteria support document, there are proposed seasonal TDS criteria to be applied to Kanab Creek. Again, EPA reviewed the existing agriculture uses in Kanab Creek: the crops that are grown, the loading assessment of how salts are coming into Kanab Creek and the identified sources of those salts, and the EPA agrees that it is permissible under the Clean Water Act for the state of Utah to revise the TDS criteria that apply to those two middle segments of Kanab Creek as proposed. We feel the supporting documentation justifies what's proposed, and so we don't have any suggestions for improvement or recommendations.

The EPA does have some concerns about whether continued salt loading will occur in Kanab Creek and that salt loading may increase with some of the natural anthropogenic contributions that come into the creek. And so we encourage the Board to work with the local governments and stake holders, including the Division of Water Quality, to try and identify improved best management practices for agriculture, mining in the area and for non-point sources from things like roads, road crossings and land use practices. That concern is because we're afraid that if the water becomes much saltier, that could decrease the ability of the agriculture users in the watershed to continue to grow the crops that are currently grown. And our concern also is over whether that could do long term damage to the soils in the watershed where irrigated agriculture is occurring.

And then lastly, I just have a brief question and some comments on the proposed revision that would revise the aquatic life use for a segment of the Jordan River from the confluence with Little Cottonwood Creek upstream to the narrows diversion. And Chris or Brenda, is it okay for me to ask a question, or is this hearing not set up for that kind of back and forth?

(Mr. Bittner): It's not setup for that kind of back and forth, George.

(Mr. Parrish): Okay, I will follow up with that later. Thank you.

(Mr. Bittner): If we get to the point where there are no more comments to be made by anybody, we will go off the record until closing the hearing at 7:00, and we can discuss questions then.

(Mr. Parrish): Okay, so generally the EPA has reviewed the proposed revision of the aquatic life use in this segment of the Jordan River. The proposed change would revise the existing cold water, well I shouldn't say existing, the current designated cold water use a 3A to the class 3B warm water use. And to support that revision, the Division of Water Quality has included materials under the cold water aquatic life use attainability analysis for the Jordan River from the confluence with Little Cottonwood Creek at the Narrows Diversion, Utah and Salt Lake Counties, Utah. I will from here on refer to that as the UAA for use attainability analysis. The EPA has reviewed the UAA provided in support of this proposal. And we agree with the conclusion that the segment of the Jordan River in question was probably mistakenly classified as a cold water fishery, and that there probably never was a self-reproducing cold water aquatic life community, especially for the fish species that were occasional stocked in the river for Utah residents to be able to fish as a recreational activity.

The data provided, the historic information and the modeling that was done of the stream temperatures, under a number of scenarios that might try to bring down the summertime temperatures in this segment of the Jordan River, all support the conclusion that that is not attainable, the cold water use in this segment of the Jordan River. And so, the proposal is to revise that aquatic life use to a warm water aquatic life use. And the EPA on its review so far appears to agree with the conclusion that this segment should be classified as a warm water aquatic life use. And that would be the end of my comments. I thank the Division of Water Quality for doing such a professional and informed job describing and documenting the three proposed revisions and for listing those supporting materials on the Department of Environmental Quality's website. Thank you.

Newspaper Notices

State of Utah
GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

September 23, 2020

Newspaper Agency
Attn: Lenea Tapusoa
143 South Main Street
Salt Lake City, UT 84110

Email: naclegal@utahmediagroup.com

This letter will confirm authorization to publish the attached NOTICE in the Deseret News and Salt Lake Tribune in the first available edition. Please mail the invoice and affidavit of publication to:

Department of Environmental Quality
Division of Water Quality
Attn: Susan Woeppel
PO Box 144870
Salt Lake City, Utah 84114-4870

If there are any questions, please contact Brenda Johnson at 801-536-4329. Thank you for your assistance.

Sincerely,

Brenda L Johnson
Administrative Team Lead
Division of Water Quality

BLJ/blj

Enclosures: 1. Public Notice

DWQ-2020-019682

195 North 1950 West • Salt Lake City, UT
Mailing Address: PO Box 144870 • Salt Lake City, UT 84114-4870
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Email	swoeppel@utah.gov		

Total Amount	**$115.88**
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Amount Due	**$115.88**

Text: DWQ-2020-015550 R317-2 PUBLIC NOTICE

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Ad Size 2 X 33 li **Color**

WYSIWYG Content

NOTICE OF PROPOSED AMENDMENTS TO UTAH ADMINISTRATIVE CODE R317-2, STANDARDS OF QUALITY FOR WATERS OF THE STATE

The Utah Water Quality Board is considering amendments to UAC R317-2, Standards of Quality for Waters of the State. The proposed amendments include adding the update years to the Colorado River Salinity Standards, changing the aquatic life use in a segment of the Jordan River, Salt Lake and Utah Counties, from Class 3A to Class 3B, and changes to total dissolved solids criteria for segments of Kanab Creek near Alton, Utah. Detailed explanations and supporting documents for the proposed amendments are posted on our website at: https://deq.utah.gov/water-quality/water-quality-laws-and-rules-proposed-rule-changes and will be published in the September 15, 2020 Utah Bulletin. A copy or additional information may also be requested by calling Chris Bittner at (801) 536-4371.

A public hearing will be convened via the internet to receive comments at the following time.
DATE: October 21, 2020
TIME: 6:00-7:00 PM
LOCATION:
https://utdeq.adobeconnect.com/publichearing/

Written comments will be accepted until 6:00 p.m., October 30, 2020. Comments should be mailed to Chris Bittner, Utah Division of Water Quality, PO Box 144870, SLC, Utah 84114-4870, faxed to (801) 536-4301 or e-mailed to cbittner@utah.gov.
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Order Confirmation for 0001300190

Client	DIV OF ENVIRONMENTAL QUALITY		
Client Phone	8015386146	Account #	9001365712
Address	DIV OF WATER QUALITY	Ordered By	BRENDA
	SALT LAKE CITY, UT 841144870	Account Exec	ltapusoa2
		PO Number	DWQ-2020-015550 R3
Email	swoeppel@utah.gov		

Total Amount	**$119.24**
Payment Amt	**$0.00**
Amount Due	**$119.24**

Text: DWQ-2020-015550 R317-2

Ad Number	0001300190-01	**Ad Type**	Legal Liner
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NOTICE OF PROPOSED AMENDMENTS TO
UTAH ADMINISTRATIVE CODE R317-2,
STANDARDS OF QUALITY FOR WATERS OF THE STATE

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Deseret News	Legal Liner Notice	998
Scheduled Date(s):	09/27/2020	

ATTACHMENT 3
Utah Bulletin Proposed

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed August 15, 2020, 12:00 a.m. through September 01, 2020, 11:59 p.m.

Number 2020-18
September 15, 2020

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at https://rules.utah.gov/. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at https://rules.utah.gov/.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit https://rules.utah.gov/ for additional information.

Office of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

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KEY: TMDL, water pollution
Date of Enactment or Last Substantive Amendment: [~~July 1, 2019~~]2020
Notice of Continuation: August 30, 2017
Authorizing, and Implemented or Interpreted Law: 19-5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R317-2**	**Filing No. 53043**

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144870	
City, state, zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	**Phone:**	**Email:**
Chris Bittner	801 536-4371	cbittner@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R317-2. Standards of Quality for Waters of the State
3. Purpose of the new rule or reason for the change:
The rule is being amended to include the 2014, 2017, and 2020 reviews of the Colorado River Salinity Standards; change the designated use for a segment of the Jordan River, Salt Lake, and Utah Counties, from cold water to warm water aquatic life; to change the total dissolved solids criterion for a segment of Kanab Creek, Kane County; and correct typographical errors for the Fremont River and the word treatment.
4. Summary of the new rule or change:
In Section R317-2-4, the 2014, 2017, and 2020 reviews to the Colorado River Salinity Standards are added. These reviews do not result in any changes to existing requirements. In Subsection R317-2-13.5(a), the aquatic life use for the JORDAN RIVER from the confluence with Little Cottonwood Creek to the Narrows Diversion is changed from Class 3A to Class 3B. Class 3A is protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain, whereas Class 3B is warm water. This change is based on the natural conditions of the water

temperature. With the change to Class 3B, this segment will be the same as the upstream and downstream segments. The Utah Division of Wildlife Resources supports this change. In Subsection R317-2-13.2(a), two segments of KANAB CREEK are assigned less stringent site-specific criteria for total dissolved solids (TDS). The site-specific criteria are added to footnote 4 of Table 2.14.1. These criteria reflect natural conditions and are protective of the continued agricultural use of Kanab Creek for crop irrigation. Additional information regarding these changes is available at https://deq.utah.gov/water-quality/water-quality-laws-and-rules-proposed-rule-changes

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There are no direct costs because no state agency is a constrained party. With the exception of the Division of Water Quality (DWQ), no other state agencies are impacted indirectly. For the DWQ, the indirect fiscal impacts are neutral for the Jordan River and Kanab Creek changes. These changes do not affect the frequency of routine monitoring for the Jordan River. The additional segmentation for Kanab Creek would potentially require additional monitoring locations but in this instance, the additional locations are already routinely monitored by Division of Oil, Gas, and Mining.

B) Local governments:

The South Valley and Jordan Basin Water Reclamation Facilities are constrained parties. These facilities serve the cities of Midvale, West Jordan, Bluffdale, Copperton, Draper, Herriman, South Jordan, Sandy, Riverton and other areas in unincorporated parts of Salt Lake County. The change will result in substantial but inestimable fiscal benefits for these communities. The benefits are from avoiding the substantive expenditures that would be necessary to meet the existing temperature criterion associated with the Class 3A, cold water use. The constrained parties provided independently prepared cost estimates to comply with the existing standard. The South Valley Water Reclamation Facility estimated capital costs of $68,000,000 and annual operating and maintenance costs of $1,000,000. The Jordan Basin Water Reclamation Facility estimated capital costs of $19,000,000 and annual operating and maintenance costs of $1,000,000. The benefits for this change are inestimable over the next three years because expenditures to meet water quality standards are limited under the Clean Water Act when compliance would cause undue economic hardship.

C) Small businesses ("small business" means a business employing 1-49 persons):

Permitted discharges in Utah to the Colorado River are constrained parties for the requirements of the Colorado River Salinity Standards but the updates are neutral because they don't include new or additional requirements. For the changes to the Kanab Creek total dissolved criteria, the Alton Coal LLC is the only constrained party because their discharge permit limit for TDS is based on the criterion being changed. The Kanab Creek TDS criterion will be neutral or result in inestimable fiscal savings for the mine. The savings are inestimable because the mine infrequently discharges, and the discharge concentrations of TDS vary for these discharges. The change has no effects if the mine does not discharge. The discharges and TDS concentrations are dependent on: 1) the capacity of the available settling ponds, 2) the quantities of groundwater currently being intercepted in the active mining areas, 3) weather conditions/precipitation, and 4) the quantities of water used onsite for dust control. If the mine discharges, the change to less stringent criteria will allow higher total dissolved solids concentrations in the discharge that may result in fiscal benefits from avoiding unnecessary treatment. The change is neutral or beneficial for the two cattle ranching and farming businesses potentially affected by the change. The change is neutral because the change is based on the current water quality.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

No non-small businesses are constrained parties or will be impacted by indirect costs/benefits for the Jordan River or Kanab Creek. No non-small businesses use the water from the affected segments of either the Jordan River or Kanab Creek.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***):

The change to warm water use for the Jordan River reflects the natural conditions of the river and does not affect how the water can be used by other persons such as recreational users. The changes to the TDS concentrations criteria are based on the existing TDS concentrations in Kanab Creek. The water from Kanab Creek is used for irrigation and stock watering near Alton. These water users are not constrained parties. The indirect impacts to these water users are neutral or beneficial because the Kanab Creek water quality will continue to support these activities. The change would be beneficial if higher TDS water that would not currently be permitted to be discharged is allowed to be discharged. This would potentially increase the water available for irrigation.

F) Compliance costs for affected persons:

No additional compliance costs are associated with these changes.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	**FY2021**	**FY2022**	**FY2023**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These changes will result in fiscal benefits with no increase in costs.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Title 19, Chapter 5	FWPCA 33 USC 1251, 1311-1317, 1329	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	10/30/2020

B) A public hearing (optional) will be held:

On:	**At:**	**At:**
10/21/2020	06:00 PM	https://utdeq.adobeconnect.com/publichearing/

10. This rule change MAY become effective on:	11/06/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Erica B. Gaddis, DWQ Director	**Date:**	08/28/2020

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these rules to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996, 1999,

2002, 2005, 2008, [~~and~~]2011, 2014, 2017, and 2020 reviews of the above documents.

R317-2-13. Classification of Waters of the State (see R317-2-6).

13.1 Upper Colorado River Basin

a. Colorado River Drainage

TABLE

Paria River and tributaries, from state line to headwaters		2B	3C	4
All tributaries to Lake Powell except as listed below:		2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek		2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River		2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters		2B	3A	4
[~~Fremont~~]Fremont River and tributaries from confluence with Muddy Creek to Capitol Reef National Park, except as listed below:	1C	2B	3C	4
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park		2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A	
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2A	3A	4
Muddy Creek and tributaries, from Confluence with Fremont River to Highway U-10 crossing, except as listed below		2B	3C	4
Muddy Creek from confluence with Fremont River to confluence with Ivie Creek		2B	3C	4*
Muddy Creek and tributaries from the confluence with Ivie Creek to U-10		2B	3C	4*
Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek		2B	3C	4*
Ivie Creek and its tributaries from the confluence with Quitchapah Creek to U-10, except as listed below:		2B	3C	4*
Quitchupah Creek from the confluence with Ivie Creek to U-10		2B	3C	4*
Quitchupah Creek and tributaries, from Highway U-10 crossing to headwaters		2B	3A	4
Ivie Creek and tributaries, from Highway U-10 to headwaters		2B	3A	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A	4
San Juan River and tributaries from Lake Powell to state line except as listed below:	1C	2A	3B	4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B	3A	4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters		2B	3A	4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
Spring Creek and tributaries, from confluence with Vega Creek to headwaters		2B	3A	4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A	4
Colorado River and tributaries, from Lake Powell to state line except as listed below:	1C	2A	3B	4
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A	4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C	4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2A	3A	4
Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion	1C	2A	3B	4*
Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs	1C	2A	3B	4*
Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C	4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B	3A	4
LaSal Creek and tributaries from state line to headwaters		2B	3A	4
Lion Canyon Creek and tributaries, from state line to headwaters		2B	3A	4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C	4

Bitter Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C		4

(*) Site-specific criteria are associated with this use.

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line, except as listed below:	1C	2A	3B		4
Thompson Creek and tributaries from Interstate 70 to headwaters		2B	3C		4
San Rafael River and tributaries from confluence with Green River to confluence with Ferron Creek, except as listed below:		2B	3C		
San Rafael River from the confluence with the Green River to Buckhorn Crossing		2B	3C		4*
San Rafael River from Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek		2B	3C		4*
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir, except as listed below:		2B	3C		4
Ferron Creek from the confluence with San Rafael River to Highway 10		2B	3C		4*
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B	3A		4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing		2B	3C		4*
Huntington Creek and tributaries from Highway U-10 crossing to headwaters	1C	2B	3A		4
Cottonwood Creek and tributaries from confluence with Huntington Creek to Highway U-57 crossing, except as listed below:		2B	3C		4
Cottonwood Creek from the confluence with Huntington Creek to U-57		2B	3C		4*
Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters		2B	3C		4*
Cottonwood Creek and tributaries from Highway U-57 crossing to headwaters	1C	2B	3A		4
Cottonwood Canal, Emery County	1C	2B		3E	4
Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course, except as listed below		2B	3C		4
Price River and tributaries from confluence with Green River to confluence with Soldier Creek		2B	3C		4*
Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion		2B	3C		4*
Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B	3A		4
Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Treatment Plant intake		2B	3A		4
Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A		4
Range Creek and tributaries, from confluence with Green River to Range Creek Ranch		2B	3A		4
Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A		4
Rock Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Nine Mile Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pariette Draw and tributaries, from confluence with Green River to headwaters		2B	3B	3D	4
Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters		2B	3A		4
White River and tributaries, from confluence with Green River to state line, except as listed below:		2B	3B		4
Bitter Creek and tributaries from White River to headwaters		2B	3A		4
Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below		2B	3B		4
Uinta River and tributaries from confluence with Duchesne River to U.S. Highway 40 crossing		2B	3B		4
Uinta River and tributaries, from U.S. Highway 40 crossing		2B	3A		4
Power House Canal from confluence with Uinta River to headwaters		2B	3A		4
Whiterocks River and Canal, from Tridell Water Treatment Plant to headwaters	1C	2B	3A		4
Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A		4
Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B	3A		4

Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B		3E	4
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B		3E	4
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B		4
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B	3A		4
Big Brush Creek and tributaries from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B		4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B	3A		4
Jones Hole Creek and tributaries from confluence with Green River to headwaters		2B	3A		
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B	3A		4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam, except as listed below:		2A	3A		4
Sears Creek and tributaries, Daggett County		2B	3A		
Tolivers Creek and tributaries, Daggett County		2B	3A		
Red Creek and tributaries, from confluence with Green River to state line		2B		3C	4
Jackson Creek and tributaries, Daggett County		2B	3A		
Davenport Creek and tributaries, Daggett County		2B	3A		
Goslin Creek and tributaries, Daggett County		2B	3A		
Gorge Creek and tributaries, Daggett County		2B	3A		
Beaver Creek and tributaries, Daggett County		2B	3A		
O-Wi-Yu-Kuts Creek and tributaries, Daggett County		2B	3A		
Tributaries to Flaming Gorge Reservoir, except as listed below		2B	3A		4
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B		3C	4
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3A		
All tributaries of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B	3A		4

(*) Site-specific criteria are associated with this use.

13.2 Lower Colorado River Basin

a. Virgin River Drainage

TABLE

Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B	3B		4
Virgin River and tributaries, from state line to Quail Creek diversion, except as listed below:		2B	3B		4
Virgin River from the Utah-Arizona border to Pah Tempe Springs		2B	3B		4*
Virgin River from the Utah-Arizona border to Pah Tempe Springs		2B	3B		4*
Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B		4
Santa Clara River and tributaries, from Gunlock Reservoir to headwaters		2B	3A		4
Leeds Creek from confluence with Quail Creek to headwaters		2B	3A		4
Quail Creek from Quail Creek Reservoir to headwaters	1C	2B	3A		4
Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B	3A		4
Ash Creek and tributaries, from Ash Creek Reservoir to headwaters		2B	3A		4
Virgin River and tributaries, from the Quail Creek diversion to headwaters, except as listed below:	1C	2B		3C	4
North Creek, from the confluence with Virgin River to headwaters	1C	2B		3C	4*
North Fork Virgin River and tributaries	1C	2A	3A		4
Kolob Creek, from confluence with Virgin River to headwaters		2B	3A		4
East Fork Virgin River, from town of Glendale to headwaters		2B	3A		4

(*) Site-specific criteria are associated with this use.

b. Kanab Creek Drainage

TABLE

[~~Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon~~		~~2B~~		~~3C~~	~~4~~
]Kanab Creek and tributaries, from state line to immediately below the confluence with Sink Valley Wash		2B		3C	4

Kanab Creek and tributaries, from immediately below the confluence with Sink Valley Wash to Simpson Hollow Wash		2B	3C	4*
Kanab Creek and tributaries, from immediately above Simpson Hollow Wash to irrigation diversion at confluence with Reservoir Canyon		2B	3C	4*
Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B	3A	4
Johnson Wash and tributaries, from state line to confluence with Skutumpah Canyon		2B	3C	4
Johnson Wash and tributaries, from confluence with Skutumpah Canyon to headwaters		2B	3A	4

(*) Site-specific criteria are associated with this use.

13.3 Bear River Basin
a. Bear River Drainage

TABLE

Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:		2B	3B	3D	4
Perry Canyon Creek from U.S. Forest boundary to headwaters		2B	3A		4
Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (Mayor's Pond)		2B		3C	4
Box Elder Creek, from Brigham City Reservoir (Mayor's Pond) to headwaters		2B	3A		4
Salt Creek from confluence with Bear River to Crystal Hot Springs		2B	3B	3D	
Malad River and tributaries, from confluence with Bear River to state line		2B		3C	
Little Bear River and tributaries, from Cutler Reservoir to headwaters, except as listed below:		2B	3A	3D	4
South Fork Spring Creek from confluence with Pelican Pond Slough Stream to U.S. Highway 89		2B	3A	3D	4*
Logan River and tributaries, from Cutler Reservoir to headwaters		2B	3A	3D	4
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters, except as listed below		2B	3A		4
Sheep Creek and tributaries from Confluence with Blacksmith Fork River to headwaters	1C	2B	3A		4
Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir		2B	3A		4
Clarkston Creek and tributaries, from Newton Reservoir to headwaters		2B	3A		4
Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters		2B	3A		4
Summit Creek and tributaries, from confluence with Bear River to headwaters		2B	3A		4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:		2B	3B		4
High Creek and tributaries from confluence with Cub River to headwaters		2B	3A		4
All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below		2B	3A		4
Swan Springs tributary to Swan Creek	1C	2B	3A		
Bear River and tributaries in Rich County		2B	3A		4
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)		2B	3A		4
Mill Creek and tributaries, from state line to headwaters (Summit County)		2B	3A		4

(*) Site-specific criteria are associated with this use.

13.4 Weber River Basin
a. Weber River Drainage

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters		2B	3A		4
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:		2B		3C 3D	4
Four Mile Creek from Interstate 15 to headwaters		2B	3A		4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below		2B	3A		4
Ogden River and tributaries, from confluence with Weber River to Pineview Dam, except as listed below:		2A	3A		4
Wheeler Creek from confluence with Ogden River to headwaters	1C	2B	3A		4
All tributaries to Pineview Reservoir	1C	2B	3A		4
Strongs Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C	2B	3A		

Spring Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Weber River and tributaries, from Stoddard diversion to headwaters, except as listed below	1C	2B	3A		4
Silver Creek and tributaries, from the confluence with Weber River to below the confluence with Tollgate Creek	1C	2B	3A		4
Silver Creek and tributaries, from confluence with Tollgate Creek to headwaters	1C	2B	3A		4*

13.5 Utah Lake-Jordan River Basin

a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City		2B	3B*	3D	4
State Canal, from Farmington Bay to confluence with the Jordan River		2B	3B*	3D	4
Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek		2B	3B*		4
Surplus Canal from Great Salt Lake to the diversion from the Jordan River		2B	3B*	3D	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B	[~~3A~~]	3B	4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B	3B		4
City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant		2B	3A		
City Creek, from City Creek Water Treatment Plant to headwaters	1C	2B	3A		
Red Butte Creek and tributaries, from Liberty Park pond inlet to Red Butte Reservoir		2B	3A		4
Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C	2B	3A		
Emigration Creek and tributaries, from 1100 East in Salt Lake City to headwaters		2B	3A		4
Parleys Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir	1C	2B	3A		
Parleys Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C	2B	3A		
Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate 15		2B		3C*	4
Mill Creek (Salt Lake County) and tributaries, from Interstate 15 to headwaters		2B	3A		4
Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant		2B	3A		4
Big Cottonwood Creek and tributaries from Big Cottonwood Water Treatment Plant to headwaters	1C	2B	3A		
Deaf Smith Canyon Creek and tributaries	1C	2B	3A		4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant		2B	3A		4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C	2B	3A		
Bells Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters	1C	2B	3A		
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A		
All permanent streams on east slope of Oquirrh Mountains (Coon, Barneys, Bingham, Butterfield, and Rose Creeks)		2B		3D	4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B		3D	

(*) Site-specific criteria are associated with this use.

b. Provo River Drainage

TABLE

Provo River and tributaries, from Utah Lake to Murdock Diversion		2B	3A		4
Provo River and tributaries, from Murdock Diversion to headwaters, except as listed below:	1C	2B	3A		4
Upper Falls drainage above Provo City diversion	1C	2B	3A		
Bridal Veil Falls drainage above Provo City diversion	1C	2B	3A		
Lost Creek and tributaries above Provo City diversion	1C	2B	3A		

c. Utah Lake Drainage

TABLE

Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters		2B	3A		4
American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters		2B	3A		4

Crouse Reservoir		2B	3A	4
East Park Reservoir		2B	3A	4
Fish Lake		2B	3A	4
Goose Lake #2		2B	3A	4
Matt Warner Reservoir		2B	3A	4
Oaks Park Reservoir		2B	3A	4
Paradise Park Reservoir		2B	3A	4
Pelican Lake		2B	3B	4
Red Fleet Reservoir	1C	2A	3A	4
Steinaker Reservoir	1C	2A	3A	4
Towave Reservoir		2B	3A	4
Weaver Reservoir		2B	3A	4
Whiterocks Lake		2B	3A	4
Workman Lake		2B	3A	4

x. Utah County

TABLE

Big East Lake		2B	3A	4
Salem Pond		2A	3A	4
Silver Flat Lake Reservoir		2B	3A	4
Tibble Fork Resevoir		2B	3A	4
Utah Lake		2A	3B 3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C	2B	3A	4
Deer Creek Reservoir	1C	2A	3A	4
Jordanelle Reservoir	1C	2A	3A	4
Mill Hollow Reservoir		2B	3A	4
Strawberry Reservoir	1C	2B	3A	4

z. Washington County

TABLE

Baker Dam Reservoir		2B	3A	4
Gunlock Reservoir	1C	2A	3B	4
Ivins Reservoir		2B	3B	4
Kolob Reservoir		2B	3A	4
Lower Enterprise Reservoir		2B	3A	4
Quail Creek Reservoir	1C	2A	3B	4
Sand Hollow Reservoir	1C	2A	3B	4
Upper Enterprise Reservoir		2B	3A	4

aa. Wayne County

TABLE

Blind Lake		2B	3A	4
Cook Lake		2B	3A	4
Donkey Reservoir		2B	3A	4
Fish Creek Reservoir		2B	3A	4
Mill Meadow Reservoir		2B	3A	4
Raft Lake		2B	3A	4

bb. Weber County

TABLE

Causey Reservoir		2B	3A	4
Pineview Reservoir	1C	2A	3A	4

13.13 Unclassified Waters

All waters not specifically classified are presumptively classified: 2B, 3D

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C(1)	Recreation and Aesthetics 2A	2B	Agriculture 4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
E. coli	206	126	206	
MAXIMUM (NO.)/100 ML) (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride	4.0			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
RADIOLOGICAL				

(MAXIMUM pCi/L)			
Gross Alpha	15		15
Gross Beta	4 mrem/yr	Radium 226, 228	
(Combined)	5		
Strontium 90	8		
Tritium	20000		
Uranium	30		
ORGANICS			
(MAXIMUM UG/L)			
2,4-D 94-75-7	70		
2,4,5-TP 93-72-1	10		
Alachlor 15972-60-8	2		
Atrazine 1912-24-9	3		
Carbofuran 1563-66-2	40		
Dichloroethylene (cis-1,2) 156-59-2	70		
Dalapon 75-99-0	200		
Di(2ethylhexl)adipate 103-23-1	400		
Dibromochloropropane 96-12-8	0.2		
Dinoseb 88-85-7	7		
Diquat 85-00-7	20		
Endothall 145-73-3	100		
Ethylene Dibromide 106-93-4	0.05		
Glyphosate 1071-83-6	700		
Xylenes 1330-20-7	10,000		
POLLUTION INDICATORS (5)			
BOD (MG/L)	5	5	5
Nitrate as N (MG/L)	4	4	
Total Phosphorus as P (MG/L)(6)	0.05	0.05	

FOOTNOTES:

(1) See also numeric criteria for water and organism in Table 2.14.6.

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.

(3) Reserved

(4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Blue Creek and tributaries, Box Elder County, from Bear River Bay, Great Salt Lake to Blue Creek Reservoir: March through October daily maximum 4,900 mg/l and an average of 3,800 mg/l; November through February daily maximum 6,300 mg/l and an average of 4,700 mg/l. Assessments will be based on TDS concentrations measured at the location of STORET 4960740.;

Blue Creek Reservoir and tributaries, Box Elder County, daily maximum 2,100 mg/l;

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to Highway U-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway U-10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to Highway U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to Highway U-10: 2,600 mg/l;

Kanab Creek and tributaries from immediately below the confluence with Sink Valley Wash to the confluence of Simpson Hollow Wash: April through November, daily maximum 1,900 mg/l. December through March, daily maximum 1,700 mg/l. Assessments shall be based on TDS concentrations measured in Kanab Creek.;

Kanab Creek and tributaries from immediately above Simpson Hollow Wash to irrigation diversion at confluence with Reservoir Canyon: April through November, daily maximum 1,400 mg/l. Assessments shall be based on TDS concentrations measured in Kanab Creek.;

Lost Creek from the confluence with Sevier River to U.S. National Forest boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to Highway U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to Highway U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l;

Quitchupah Creek and tributaries from the confluence with Ivie Creek to Highway U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Crafts Lake: 3,370 mg/l;

Silver Creek and tributaries, Summit County, from confluence with Tollgate Creek to headwaters: maximum 1,900 mg/L.

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to U.S. Highway 89 1,450 mg/l (Apr.-Sept.)
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded. These indicators are superseded by numeric criteria in waters where promulgated.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7)_ Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the