



State of Utah

SPENCER J. COX
Governor

DEIDRE HENDERSON
Lieutenant Governor

Department of
Environmental Quality

Kimberly D. Shelley
Interim Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

Water Quality Board
Jennifer Grant, Chair
Gregg A. Galecki, Vice Chair
Steven K. Earley
Brandon Gordon
Michael D. Luers
Emily Niehaus
Kimberly D. Shelley
Dr. James VanDerslice
James Webb
Dr. Erica Brown Gaddis
Executive Secretary

Utah Water Quality Board Meeting
Via Adobe Connect

https://utdeq.adobeconnect.com/wqb

February 24, 2021
Board Meeting Begins at 8:30 am

AGENDA

Work Meeting

Hardship CriteriaKen Hoffman

Water Quality Board Meeting – Roll Call

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

B. Minutes:

Approval of Minutes for January 27, 2021 Water Quality Board MeetingJennifer Grant

C. Executive Secretary’s Report Erica Gaddis

D. Funding Requests:

1. Financial Report Krystol Carfaro

E. Rule Making:

1. Request to Initiate Rule Making for R317-8-10, Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs).Don Hall

F. Public Comment Period

G. Meeting Adjournment

Next Meeting March 24, 2021
8:30 am

Via Adobe Connect

https://utdeq.adobeconnect.com/wqb

DWQ-2021-002566

Revised 2/16/2021

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I, **Jennifer Grant**, Chair of the **Water Quality Board**, have determined that the **February 24th, 2021** 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 high risk category. This limits the size of public gatherings to fewer than 10 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 16th Day of February, 2021.


Jennifer Grant (Feb 16, 2021 14:46 MST)

Jennifer Grant, Chair
Water Quality Board

DWQ-2021-002848



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MINUTES

**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
UTAH WATER QUALITY BOARD**

Via Adobe Connect

January 27, 2021
8:30 am Board Meeting

UTAH WATER QUALITY BOARD MEMBERS PRESENT

Steven Earley	Emily Niehaus
Gregg Galecki	Kim Shelley
Brandon Gordon	James VanDerslice
Mike Luers	James Webb

Excused Jennifer Grant
 Kim Shelley

DIVISION OF WATER QUALITY STAFF MEMBERS PRESENT

Harry Campbell	Ken Hoffman
Emily Cantón	Brenda Johnson
Krystol Carfaro	John Mackey
Skyler Davies	Winnie Pan
Judy Etherington	Andrew Pompeo
Dan Griffith	Lonnie Shull
Angela Gunderson	Mark Stanger
	Jeff Studenka

OTHERS PRESENT

Meg Oswald	AGs Office
Marian Rice	Salt Lake City Dept of Public Utilities
David Tuck	Payson City
Travis Jockumen	Payson City
Brian Baker	Payson City
Bill Wright	Payson City
Cathy Jensen	Payson City
Kent Wilkerson	Mountain Green
Taylor Nielsen	Mountain Green
Jeff Richens	Price City

OTHERS PRESENT (Continued)

Jason Broome	Forsgren
Cliff Linford	Sunrise Engineering
Michael McFadden	Sunrise Engineering
Jay Whimpey	
John Merrett	
Robert Worley	
Shellie Turnbow	
Melissa Reynolds	
Theron Miller	

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

Mr. Galecki read the Electronic Meeting Notice with regards to the Water Quality Board meeting being held electronically, January 27, 2021 without an anchor location.

APPROVAL OF MINUTES OF DECEMBER 2, 2020 BOARD MEETING

Motion: Mr. Gordon moved to approve the minutes of the December 2, 2020 Board meeting.

Dr. VanDerslice seconded the motion. The motion passed unanimously with the correction of Tom Ward attending for Sandy City/Provo River Water Users.

EXECUTIVE SECRETARY REPORT

Mr. Mackey addressed the Board as Dr. Gaddis was at a the NRAE Appropriations Sub Committee Meeting.

National and Regional

- EPA still in transition.
 - A Regional Administrator has not been appointed.
 - There has been an indication that the President will look at the Waters of the United States (WOTUS) as well as the changes that were made to the 401 rule.
- Financial Capability Assessment Guidance issued January 2021.

State and Division Issues and Initiatives

- Social Services Committee advanced proposal to transfer lab allocation of \$900,000 to Department of Environmental Quality.
- HB0215 Jordan River Improvement Amendments.
- Representative Branmer proposing a Utah Lake Authority to be formed. This would replace the Utah Lake Commission.
- Possible agency merger between Department of Environmental Quality and Division of Natural Resources and possibly others.

Division Updates

- Kim Shelley has been moved forward for confirmation by the Senate to be the Executive Director.
- Number of vacancies filled.
 - 2 new employees in the Compliance and Enforcement Section.
 - 1 new employee in the Individual Permitting Section.

- 1 new employee in the General Permitting Section.
- 1 new employee in the Engineering Section.
- Most employees continue to telework.

FUNDING REQUESTS

Financial Report: Ms. Cantón updated the Water Quality Board on the Loan Funds and Hardship Grant Funds as indicated in the packet.

Mountain Green Sewer Improvement District Wastewater Treatment Project Introduction: Mr. Davies introduced the Board with a request for funding assistance in the amount of \$13,429,000. The MGSID will supply the other \$500,000 necessary to complete the project. This funding would provide a high impact per capita for the investment of Water Quality Board funding.

Price River Water Improvement District Wastewater Treatment Project Introduction: Mr. Hoffman and Ms. Wondimu introduced the Board with a request for funding assistance in the amount of \$1,600,000 for the modification of their water reclamation facility to bring it into compliance with the Technology Based Effluent Phosphorus Limit (TBPEL) that went into effect January 1, 2020. They are currently operating under a due diligence variance that was authorized to give them time to complete the necessary upgrades.

Payson City Wastewater Treatment Project Introduction: Ms. Wondimu and Mr. Pompeo introduced the Board with a request for funding assistance in the amount of \$23,000,000 for the modification of their water reclamation facility to bring it into compliance with the Technology Based Effluent Phosphorus Limit (TBPEL) that was placed into rule and went into effect January 1, 2020. They are currently operating under a due diligence variance that was authorized to give them time to complete the necessary upgrades.

OTHER BUSINESS

Wastewater Operator Certification Council 2021-2024 Appointment Recommendations: Ms. Etherington introduced the Board with a request to approve *Chad Burrell*, the Pretreatment and Safety Coordinator for Snyderville Basin Water Reclamation District, be appointed to fill the vacancy "representing certified wastewater treatment operators"; and *Rob Jaterka*, the District Inspector for Magna Water District, be appointed to fill the second vacancy "representing certified collection system operators." Both individuals hold Grade IV certifications in their representative classifications, and other wastewater certifications with over twenty years of experience in wastewater. The terms for the new appointments would begin February 1, 2021, and continue through January 31, 2024.

Motion: **Mr. Earley moved to approve the Wastewater Operator Certification Council 2021-2024 Appointment Recommendations.**

Dr. VanDerslice seconded the motion. The motion passed unanimously with Mr. Luers recusing himself.

PUBLIC COMMENTS

No public comments.

MEETING ADJOURNMENT

Motion: **Mr. Webb moved to adjourn the meeting.**

Dr. VanDerslice 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 – February 24, 2021 at 8:30 am
Via Adobe Connect
<https://utdeq.adobeconnect.com/wqb/>

Gregg Galecki, Vice Chair
Utah Water Quality Board

LOAN FUNDS FINANCIAL STATUS REPORT FEBRUARY 2021

	State Fiscal Year 2021	State Fiscal Year 2022	State Fiscal Year 2023	State Fiscal Year 2024	State Fiscal Year 2025	State Fiscal Year 2026
STATE REVOLVING FUND (SRF)						
Funds Available						
Capitalization Grants Awards (FFY18 - 20)	24,758,000	-	-	-	-	-
State Match (FFY18 - 20)	3,534,401	-	-	-	-	-
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	50,404,883	50,015,742	15,000,321	2,743,430	4,978,671	12,554,238
Interest Earnings at 0.5534%	116,225	276,787	83,012	15,182	27,552	69,475
Loan Repayments (5255)	3,973,928	17,243,792	16,240,097	16,349,059	15,948,015	15,904,662
Total Funds Available	92,817,037	77,136,321	40,923,430	28,707,671	30,554,238	38,128,375
Project Obligations						
Central Valley Water Reclamation Facility	(23,324,000)	(24,976,000)	(6,800,000)	-	-	-
Duchesne City	(27,295)	-	-	-	-	-
Moab City	(80,000)	-	-	-	-	-
Provo City	(17,230,000)	(28,000,000)	(20,000,000)	(8,800,000)	-	-
South Salt Lake City (A)	(630,000)	(2,160,000)	(234,000)	-	-	-
Loan Authorizations						
Millville City	(1,150,000)	-	-	-	-	-
San Juan Spanish Valley SSD	(360,000)	-	-	-	-	-
South Davis Sewer District (with NPS)	-	(7,000,000)	(7,146,000)	-	-	-
Planned Projects						
*Mountain Green	-	-	(2,000,000)	(5,929,000)	(6,000,000)	-
*Payson City	-	-	(2,000,000)	(9,000,000)	(12,000,000)	-
Total Obligations	(42,801,295)	(62,136,000)	(38,180,000)	(23,729,000)	(18,000,000)	-
SRF Unobligated Funds	\$ 50,015,742	\$ 15,000,321	\$ 2,743,430	\$ 4,978,671	\$ 12,554,238	\$ 38,128,375

	State Fiscal Year 2021	State Fiscal Year 2022	State Fiscal Year 2023	State Fiscal Year 2024	State Fiscal Year 2025	State Fiscal Year 2026
UTAH WASTEWATER LOAN FUND (UWLF)						
Funds Available						
UWLF	21,301,891	14,328,272	15,506,379	12,161,166	15,078,257	18,335,792
Sales Tax Revenue	-	3,587,500	3,587,500	3,587,500	3,587,500	3,587,500
Loan Repayments (5260)	910,083	3,031,806	2,582,488	2,565,791	2,906,235	2,759,353
Total Funds Available	22,211,973	20,947,579	21,676,366	18,314,457	21,571,992	24,682,645
General Obligations						
State Match Transfers	(5,206,001)	(1,600,000)	(1,600,000)	(1,600,000)	(1,600,000)	(1,600,000)
DWQ Administrative Expenses	(820,700)	(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)	(1,457,000)	(2,205,000)	(1,779,000)	-	-	-
Loan Authorizations						
Spanish Fork	-	-	(4,500,000)	-	-	-
Planned Projects						
Price City (was fully funded by CIB)	-	-	-	-	-	-

*WQB Agenda Items

LOAN FUNDS FINANCIAL STATUS REPORT FEBRUARY 2021

Total Obligations	(7,883,701)	(5,441,200)	(9,515,200)	(3,236,200)	(3,236,200)	(3,236,200)
UWLF Unobligated Funds	\$ 14,328,272	\$ 15,506,379	\$ 12,161,166	\$ 15,078,257	\$ 18,335,792	\$ 21,446,445
Total Loan Fund Balance	64,344,014	30,506,700	14,904,596	20,056,928	30,890,030	59,574,820
Project Reserve	-	(5,000,000)	(10,000,000)	(15,000,000)	(20,000,000)	(25,000,000)
Total Available Loan Funds	64,344,014	25,506,700	4,904,596	5,056,928	10,890,030	34,574,820

HARDSHIP GRANT FUNDS FINANCIAL STATUS REPORT FEBRUARY 2021

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		684,710	630,040	456,501	403,889	256,826
Federal HGF Beginning Balance (5250)	6,144,469	-	-	-	-	-
State HGF Beginning Balance (5265)	2,161,110	-	-	-	-	-
Interest Earnings at 0.5534%	19,151	3,789	3,487	2,526	2,235	1,421
UWLF Interest Earnings at 0.5534%	49,119	79,293	85,812	67,300	83,443	101,470
Hardship Grant Assessments (5255)	412,912	739,214	641,688	560,370	477,839	396,397
Interest Payments - 5260	137,093	373,034	345,473	317,191	289,421	261,668
Advance Repayments		-	-	-	-	-
Total Funds Available	8,923,855	1,880,040	1,706,501	1,403,889	1,256,826	1,017,783
Financial Assistance Project Obligations						
Eagle Mountain City - Construction Grant	(510,000)	-	-	-	-	-
Emigration Sewer Imp Dist - Planning Grant	(26,158)	-	-	-	-	-
Kane Co Water Conservancy Dist (Duck Creek) - Hardship Grant	(3,034,500)	-	-	-	-	-
Lewiston City - Design and Construction	(314,000)	-	-	-	-	-
Millville City - Design and Construction	(1,500,000)	-	-	-	-	-
Salina City - Planning Grant/Advance	(99,500)	-	-	-	-	-
Spanish Fork - Hardship Grant	-	(250,000)	(250,000)	-	-	-
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)	-	-	-	-	-
(FY11) Gunnison Irrigation - Twelve Mile Canyon	-	-	-	-	-	-
(FY13) DEQ-Great Salt Lake Advisory Council	-	-	-	-	-	-
(FY12) Utah Department of Agriculture	(288,442)	-	-	-	-	-
(FY15) DEQ - Ammonia Criteria Study	(27,242)	-	-	-	-	-
(FY15) DEQ - Nitrogen Transformation Study	(14,500)	-	-	-	-	-
(FY17) DEQ - Ground Water Quality Study	-	-	-	-	-	-
(FY17) DEQ - Utah Lake Water Quality Study	(348,301)	-	-	-	-	-
(FY20) Wasatch Co Health Dept Ground WQ Study	(18,387)	-	-	-	-	-
BYU - Bioassays to Investigate Nutrient Limitation	(8,603)	-	-	-	-	-
USU - Historic Trophic State/Nutrient Concentrations Paleo	(130,697)	-	-	-	-	-
FY 2015 - Remaining Payments	(4,223)	-	-	-	-	-
FY 2018 - Remaining Payments	(64,739)	-	-	-	-	-
FY 2019 - Remaining Payments	(455,251)	-	-	-	-	-
FY 2020 - Remaining Payments	(490,827)	-	-	-	-	-
FY 2021 - Remaining Payments	(781,442)	-	-	-	-	-
Future NPS Annual Allocations		(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)	(1,000,000)
Planned Projects						
None at this time						
Total Obligations	(8,239,145)	(1,250,000)	(1,250,000)	(1,000,000)	(1,000,000)	(1,000,000)
HGF Unobligated Funds	\$ 684,710	\$ 630,040	\$ 456,501	\$ 403,889	\$ 256,826	\$ 17,783

State of Utah
Wastewater Project Assistance Program
Project Priority List

As of February 12, 2021

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	Payson		120	35	17	8	60
3	Spanish Fork Water Reclamation Facility	x	117	50	19	8	40
4	Millville City	x	114	45	46	3	20
5	Mountain Green		108	50	14	4	40
6	Fairview City		107	50	15	2	40
7	San Juan Spanish Valley SSD	x	86	25	0	1	60
8	Wellington City	x	74	10	21	3	40
9	Lewiston City	x	67	10	16	1	40



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MEMORANDUM

TO: Utah Water Quality Board

THROUGH: Erica Gaddis, PhD, Executive Secretary
John Mackey, Assistant Director, DWQ
Jeanne Riley, Storm Water Section Manager, DWQ

FROM: Donald Hall, AFO/CAFO Program Coordinator, General Permits Section

DATE: February 24, 2021

SUBJECT: **Changes to Proposed Rule Amendments to the Utah Pollutant Discharge Elimination System (UPDES) Concentrated Animal Feeding Operation (CAFO) Rule, Utah Administrative Code, R317-8-10**

The Division of Water Quality (Division) seeks approval from the Water Quality Board (Board) to change proposed rule amendments to the Utah Concentrated Animal Feeding Operations (CAFO) Rule in R317-8-10. Proposed rule amendments in R317-8-10 and R317-8-1-1.10(18) were previously approved by the Board for rulemaking at the October 28, 2020 Board meeting. As a result of public comments received from the Utah Department of Agriculture and Food, staff recommends that the proposed rule amendment is revised as described below and the Board proceeds with rulemaking.

The Division proposes to make two content changes based on public comments. These proposed changes, if approved by the Board, will be public noticed for 30 days. According to Utah Division of Administrative Rules requirements, the public notice of rule changes to the proposed rule will not require an additional public comment. If the Board approves these two changes, it is approving the rule as amended without public comment during the public notice period.

The state CAFO Rule in R317-8-10 implements the federal CAFO Rule of the National Pollutant Discharge Elimination System Program (NPDES). The Division oversees permitting of CAFOs and provides compliance assistance programs for animal feeding operations (AFOs) in accordance with these rules. AFOs are the smaller animal production facilities not subject to UPDES permitting.

The subject changes to the CAFO Rule were developed in cooperation with the Utah Department of Agriculture and Food (UDAF) and were presented to the Utah Conservation Commission on

February 10, 2021 for consultation and input. The proposed changes were unanimously approved by the Commission.

Purpose of Proposed Rule Changes in R317-8-10.2 Definitions

1. Certified Nutrient Management Planner Definition

Currently, the definition states that NRCS or the Division will provide the training programs for certification of certified nutrient management planners. The proposed change will state that the certification of planners can come through training programs provided by NRCS or “an alternate training program approved by the Director.”

Training programs approved by the Director could be programs provided by DWQ, UDAF, or other approved certification programs. The Division anticipates cooperation with UDAF in providing planner training and certification. This could be UDAF training approved by the Director or a program jointly provided by UDAF and DWQ. The change also could allow other entities such as Utah State University Extension to provide a certification training upon approval by the Director. There has been a shortage of certified nutrient management planners in the state. The definition change will facilitate new training programs to certify additional planners to meet the nutrient management planning needs of AFOs and CAFOs in the state.

2. Small CAFO Definition

The Division received comment that the Director should consult with the Chair of the Utah Conservation Commission, instead of notifying the Commission in writing, when the Director is going to designate a small AFO as a CAFO. The definition currently says the director will notify the Commission in writing when an AFO will be designated as a CAFO. If approved, the new definition will state that the Director will consult with the Chair of the Utah Conservation Commission when an AFO is under consideration to be designated as a CAFO. CAFO designation means an AFO must obtain a CAFO permit resulting from illegal discharges to water of the State. No AFOs have ever been designated as CAFOs in Utah.

The proposed changes address concerns raised during the public comment period. Staff requests that the Board consider approval of the changes as described above and shown in the attached rule markup and proceed with rulemaking.

R317. Environmental Quality, Water Quality.

R317-8. Utah Pollutant Discharge Elimination System (UPDES).

R317-8-10. Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs).

10.1 Applicability of Rule R317-8, Rule Compatibility, and Federal Rule Incorporation.

(1) Section R317-8-10, including the federal regulations incorporated by reference, shall be applicable to animal feeding operations and concentrated animal feeding operations.

(2) Where any requirements, definitions, or conditions in Section R317-8-10 conflict with the requirements, definitions, or conditions pertaining to animal feeding operations or concentrated animal feeding operations in other parts of Rule R317-8, the requirements, definitions, and conditions in Section R317-8-10 shall govern.

10.2 Definitions.

"25-year, 24-hour storm event" means the 25-year, 24-hour storm event and "100-year, 24-hour storm event" means the 100-year, 24-hour storm event as defined in 40 CFR 412.2(i).

"Animal Feeding Operation" (AFO) means a lot or facility (other than aquatic animal production facility) where the following conditions are met:

(a) animals have been, are, or will be stabled, housed, or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period;

(b) crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

(c) two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the storage or disposal of waste.

"Certified Nutrient Management Planner" means a person who ~~is certified, after appropriate NRCS or division training, is approved and certified~~ by the Utah Natural Resources Conservation Services (NRCS) or by an alternative certification program approved by the Director, to develop and approve nutrient management plans and comprehensive nutrient management plans.

"Concentrated Animal Feeding Operation" (CAFO) means:

(a) an AFO that is a Large CAFO; or

(b) an AFO that is a Medium CAFO; or

(c) an AFO that is Designated as a CAFO.

"Approved Agriculture Certificate of Environmental Stewardship Program (ACES)" means a program approved by the Water Quality Board as meeting the substantive standards of this rule and the Utah Water Quality Act, Title 19, Chapter 5.

"Designated CAFO" means an AFO that is designated as a CAFO by the Director according to criteria in 40 CFR 122.23(c) and thereby required to obtain a UPDES permit.

"Discharge" has the same meaning as "Discharge of a Pollutant" in Subsection R317-8-1.5, except that in Section R317-8-10, "discharge" shall refer only to the addition of pollutants to surface waters of the state.

"Large CAFO" means an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

(a) Beef, calves, heifers, or veal: 1,000 or more

(b) Cows (milking and dry): 700 or more

(c) Layers, broilers (wet system): 30,000 or more

(d) Other than layers (dry system): 125,000 or more

(e) Layers (dry system): 82,000 or more

(f) Turkeys: 55,000 or more

(g) Swine (55 pounds or more): 2,500 or more

(h) Swine (less than 55 pounds): 10,000 or more

(i) Sheep: 10,000 or more

(j) Horses: 500 or more

(k) Ducks (dry system): 30,000 or more

(l) Ducks (wet system) 5,000 or more

"Large Weather Event" in Subsection 19-5-105.5(3)(b)(iii) means either:

(a) a single event or a series of precipitation events, including snow, received over a 30 day period at an AFO or CAFO that yields precipitation greater than the area's monthly average precipitation for the 30-day period, plus either:

(i) a 100-year, 24-hour storm event for poultry, swine, or veal AFO or CAFO; or

(ii) a 25-year, 24-hour storm event for any other AFOs or CAFOs; or

(b) rapid snow or ice melt at the AFO or CAFO that occurs during a 7-day period which results in the runoff of a volume of water equivalent to (a).

"Medium AFO" means a lot or facility that is an AFO that stables, houses or confines the type and number of animals that fall within any of these ranges:

(a) Beef, calves, heifers, or veal: 300-999

(b) Cows (milking and dry): 200-699

(c) Layers or broilers (wet system): 9,000-29,999

(d) Other than layers (dry system): 37,500-124,999

(e) Layers (dry system): 25,000-81,999

(f) Turkeys: 16,500-54,999

- (g) Swine (55 pounds or more): 750-2,499
- (h) Swine (less than 55 pounds): 3,000-9,999
- (i) Sheep: 3,000-9,999
- (j) Horses: 150-499
- (k) Ducks (dry system): 10,000-29,999
- (l) Ducks (wet system): 1,500-4,999

"Medium CAFO" means a Medium AFO where the conditions specified in 40 CFR 122.23(b)(6)(ii) are met.

"Reasonable Measures" in Subsection 19-5-105.5(3)(b)(iii) means the measures described in Subsection R317-8-10.8.

"Small AFO" means a lot or facility that is an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

- (a) Beef, calves, heifers, or veal: 1-299
- (b) Cows (milking and dry): 1-199
- (c) Layers, broilers (wet system): 1-8,999
- (d) Other than layers (dry system): 1-37,499
- (e) Layers (dry system): 1-24,999
- (f) Turkeys: 1-16,499
- (g) Swine (55 pounds or more): 1-749
- (h) Swine (less than 55 pounds): 1-2,999
- (i) Sheep: 1-2,999
- (j) Horses: 1-149
- (k) Ducks (dry system): 1-9,999
- (l) Ducks (wet system): 1-1,499

"Small CAFO" means a Small AFO where the following conditions are met:

- (a) the Small AFO discharges:
 - (i) through a man-made ditch, flushing system, or other similar man-made device; or
 - (ii) into surface waters of the state which waters originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined at the operation; and
- (b) the Director has designated the Small AFO as a CAFO according to criteria in 40 CFR 122.23(c) after ~~providing written notification to~~ consulting with the Chair of the Utah Conservation Commission.

"Surface Waters of the State" for purposes under Section R317-8-10 means Waters of the State as defined in Subsection R317-8-1.5 that are not ground water, except ground water that has hydrologic connection to surface waters of the state.

10.3 UPDES Permit Requirement.

- (1) The following animal feeding operations are required to apply for a UPDES permit:
 - (a) Large CAFOs that discharge;
 - (b) Medium CAFOs; and
 - (c) Designated CAFOs.
- (2) CAFOs with land application discharges are subject to the requirements provided in 40 CFR 122.23(e) and 40 CFR 122.42(e)(1)(xi) through (ix). CAFOs that do not meet these requirements must apply for a UPDES permit.
- (3) An AFO shall be designated as a CAFO per the criteria in 40 CFR 122.23(c).

10.4 Timing of UPDES Permit Application.

- (1) An animal feeding operation that has an operational change that results in a requirement to obtain a UPDES CAFO permit shall submit an application no later than 90 days after the time a facility has conditions that require CAFO permit coverage.
- (2) No later than 180 days before the expiration of a permit, or as provided by the Director, a permitted CAFO must submit an application to renew its permit in accordance with 40 CFR 122.21(d) unless the CAFO will not discharge upon expiration of the permit.
- (3) For facilities in operation prior to April 14, 2003 that have an operational change where the facility becomes a Large CAFO that discharges, or a Medium or Designated CAFO, must seek to obtain UPDES permit coverage no later than 90 days after the time a facility has conditions that require CAFO permit coverage.
- (4) New source CAFOs that require CAFO permit coverage and CAFOs constructed after April 14, 2003 that require CAFO permit coverage must seek to obtain UPDES CAFO permit coverage no later than 180 days prior to the time a facility commences operation with the conditions that require CAFO permit coverage.
- (5) A CAFO that is required to obtain an individual permit or that is a Designated CAFO, shall apply for a permit within 60 days of notification of permit requirement by the Director, unless otherwise determined by the Director.

10.5 UPDES CAFO Permit Application Requirements.

In order to apply for a UPDES CAFO permit, an AFO or CAFO shall submit to the Director an application containing the information specified in 40 CFR 122.21(i). Application forms may be obtained from the Division of Water Quality. If the applicant is seeking coverage under a general permit, it shall submit a notice of intent and nutrient management plan to the Director, along with any information required under the general permit. If the Director has not issued a general permit for which the AFO or CAFO is eligible, the owner or operator must submit an application, including a nutrient management plan, for an individual permit to the Director.

10.6 Nutrient Management Plans.

- (1) Nutrient Management Plan (NMP) or Comprehensive Nutrient Management Plan (CNMP) content and requirements for compliance under this rule will include, as applicable and needed for an AFO or CAFO, the following:

- (a) the federal requirements incorporated by rule in Subsection R317-8-1.10;
- (b) the requirements of 40 CFR 122.42(e)(1)(i) through (ix) and the technical standards needed to implement those requirements at an AFO or CAFO as specified in rule R317-8-10.7; and
- (c) for permitted AFOs and CAFOs, the NMP or CNMP must also include and be consistent with the requirements of the UPDES permit.

(2) NMPs or CNMPs shall be developed and implemented for the following AFOs and CAFOs, as applicable, and must be approved by a certified nutrient management planner:

- (a) AFOs and CAFOs seeking CAFO permit coverage or with CAFO permit coverage;
- (b) AFOs and CAFOs with permit by rule coverage;
- (c) AFOs and CAFOs with coverage under a compliance assistance program approved by the Director for purposes of compliance to reasonable measures under Subsection 19-5-105.5(3)(b)(ii);
- (d) AFOs and CAFOs participating in the ACES Program;
- (e) AFOs and CAFOs seeking to receive grant or loan funding through a division funding program; and
- (f) AFOs and CAFOs under an enforcement action issued by the Director.

(3) NMPs or CNMPs for AFOs and CAFOs listed in Subsections R317-8-10.6(2)(a), (e), and (f), shall be signed or stamped by a Utah Professional Engineer or signed by a Natural Resources Conservation Service employee/engineer with proper engineering job approval authority delegated from the Natural Resources Conservation Service, when new or existing structures or facilities need to be designed, constructed or substantially altered at an AFO's or CAFO's production area or land application area.

10.7 Technical Standards.

(1) Technical standards for NMP or CNMP preparation, content, and implementation are:

- (a) the practices, standards, and requirements of the Utah Natural Resources Conservation Service (NRCS) Practice Standard 590, Nutrient Management, dated October 2019 and the Utah Manure Application Risk Index (UMARI); and
- (b) the NRCS practice standards, policies, specifications, and best management practices needed for NMP or CNMP preparation, content, or implementation for compliance with 40 CFR 122.42(e)(1)(i) through (ix), as needed for a specific AFO or CAFO.

(2) Implementation of these standards requires evaluation and nutrient management planning specific to each individual AFO or CAFO.

10.8 Reasonable Measures for Large Weather Events and Agriculture Discharges.

(1) As provided in Subsection 19-5-105.5(3)(b)(iii), no penalty shall apply with respect to an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures to prevent an agriculture discharge.

(2) An AFO or CAFO will be considered to have taken reasonable measures as provided by Subsection 19-5-105.5(3)(b)(iii), if it has implemented a NMP or CNMP according to Subsection R317-8-10.6, as applicable to an AFO or CAFO, and is participating in any of the following:

- (a) a UPDES CAFO permit;
- (b) permit by rule as outlined in Subsection R317-10.8(3);
- (c) a compliance assistance program approved by the Director; or
- (d) the ACES Program.

(3) An AFO will be permitted by rule if:

- (a) it has obtained and is in compliance with a site-specific NMP that implements Technical Standards and the requirements of 40 CFR 122.42(e)(1)(i) through (viii), and the practices and protocols identified under those provisions;
- (b) it keeps records adequate to demonstrate that it has met the requirements in Subsection R317-8-10.8(3) and has, upon request, made those records available for review by the Director or the Director's representative; and
- (c) the facility has provided to the Director a notice of intent to be covered by this permit by rule provision and has confirmed that it is meeting the requirements of Subsection R317-8-10(3).

KEY: water pollution, discharge permits

Date of Enactment or Last Substantive Amendment: 2021

Notice of Continuation: September 12, 2017

Authorizing, and Implemented or Interpreted Law: 19-5; 40 CFR 122; 40 CFR 124; 40 CFR 412; 40 CFR 503

DWQ-2021-002759

Response to Comments from the Utah Department of Agriculture and Food (UDAF) Received During the Public Notice of the Proposed State CAFO Rule Amendments

Comment:

UDAF has a general concern that the intent of [Utah Code Ann. § 19-5-105.5](#) that requires the Division to consult with the Utah Conservation Commission (UCC) on matters involving agricultural water is not being fully respected. We encourage DWQ to review the entirety of the proposed rule to identify areas where the Division should reach out and seek the cooperation or advice of the UCC. In addition, UDAF considers Subsection (3)(a) of the statute which addresses agriculture discharge to apply to designation of AFOs as CAFOs, which means that the Director should consult with the Commissioner of Agriculture in his role as the chair of the UCC. To bring the rule in line with the statute we propose the following changes, which we hope will also serve to clear up any possible misinterpretations of the rule by producers:

R317-8-10.2 – Change the definition of “Designated CAFO” so it reads: “‘Designated CAFO’ means an AFO that is designated as a CAFO by the Director in accordance with the criteria in 40 CFR 122.23(c) and Subsection R317-8-10.3(3) and is thereby required to obtain a UPDES permit.”

R317-8-10.2 – Change the definition of “Small CAFO” so it reads: “‘Small CAFO’ means a small AFO that has been designated as a CAFO in accordance with this rule.”

R 317-8-10.3 – Rewrite (3) so it reads: “(3) An AFO may be designated as a CAFO by the Director per the criteria in 40 CFR 122.23(c) following consultation with the Chair of the Utah Conservation Commission.”

Response:

The Division met the statutory burden to consult with the UCC and the UCC chair throughout the rulemaking process by providing the draft rule and updated drafts, considering and incorporating comments and suggested edits to the draft rule where appropriate, and meeting with UDAF staff and the UCC chair on several occasions. The Division appreciates the opportunities for meaningful consultation with UDAF, the UCC chair, and the UCC throughout this rulemaking process and hopes to continue that successful working relationship in the future not limited to rulemaking. However, the statute does not require the Division to consult on any and all matters involving agricultural water as the comment asserts. Rather, Utah Code Section 19-5-105.5 requires the Director or the board to consult with the commission or the commission chair on three specific occasions. First, with respect to drafting rules. (19-5-105.5(1)(a)) Second, with respect to mitigation of damages resulting from agricultural discharges approved by the director (19-5-105.5(3)(b)(i)), and third, with respect to penalties imposed on agricultural discharges determined by the director (19-5-105.5(3)(b)(ii)). The Division agrees that it must seek consultation in these three specific instances, and that there may be instances arising under R317-8-10 that fall under one of these three categories, or that there may be instances outside these categories where consultation would be beneficial and will be voluntarily sought. However, the Division does not agree that it is required to write consultation requirements into each of those instances arising

under R317-8-10, nor does it agree that it failed to undertake sufficient consultation through the course of this rulemaking.

Although the Division disagrees with the comment's broad reading of the statute, in an effort to promote collaboration and a successful working relationship, the definition of a "Small CAFO" in R317-8-10.2 will be amended, subject to Board approval, to include a requirement that the Director consult with the UCC chair before designating an AFO or CAFO. The Division maintains that this change is not required by the statute, nor are the other changes requested by this comment. The Division declines to make the other requested changes because they are unnecessary to achieve the comment's request for more consultation and unnecessary to "bring the rule in line with the statute." It is unnecessary to add a consultation requirement to R317-8-10.3 in addition to the definitions given the statute's (and now the rule's) existing consultation requirements. The existing rule, prior to this rulemaking, did not specifically state any points at which the Director is required to consult with the UCC or the UCC chair. This did not mean the statute did not continue to require consultation nor that the rule was in conflict with the statute. The rule need not restate every statutory requirement as there is reason and place for both statute and rule with coinciding, not conflicting, requirements.

Comment:

We continue to reiterate that UDAF is a more appropriate agency to house a certification program for nutrient management planners. We are prepared to run this program and train, certify, and support nutrient management planners. UDAF understands and agrees that DWQ must approve individual nutrient management plans (NMPs) and Comprehensive Nutrient Management Plans (CNMPs) for certain regulatory purposes, such as the non-discretionary requirement that a CAFO's NMP be reviewed by DWQ. However, we disagree with the assertion that every NMP used for participation in any DWQ program needs to be reviewed by DWQ unless the planners are certified by DWQ. Instead, UDAF should be allowed to certify nutrient management planners and DWQ can determine if UDAF's certification program is adequate for its permits and programs. Such an arrangement is not at all without precedent: DWQ has always allowed NRCS to certify nutrient management planners—or, more accurately, it has accepted NRCS's certification program as one that trains and certifies planners that will meet DWQ's regulatory purposes (a somewhat important distinction since NRCS's certification program exists entirely outside of DWQ's determination that the program meets its regulatory needs). DWQ has not required that planners trained and managed by NRCS be certified by DWQ, nor that the NMPs produced by NRCS-certified planners be reviewed by DWQ for every DWQ program. It is only the lack of NRCS-certified planners that has made it necessary for a state agency to take on a certification program mirroring the NRCS program. Currently UDAF planners are housed at NRCS offices and contracted to do NRCS plans which makes this certification program a perfect fit for UDAF. UDAF does not want to infringe in any way on DWQ's authority in managing the AFO/CAFO regulatory program. The Director should still review and approve NMP/CNMP plans as required according to federal regulations, but should not treat the plans written by planners certified by NRCS any differently than those written by planners certified by UDAF, so long as UDAF's certification program meets the same standards as those that are expected and required for NRCS's certification program to be considered adequate by DWQ.

Rather than the language in the proposed rule which requires that nutrient management planners be trained and certified by DWQ, we propose that DWQ accept NMPs and CNMPs written by planners certified by NRCS or UDAF, provided that UDAF's certification process meets the standards established by the NRCS certifying planners trained by UDAF. This would comply with [Utah Code Ann. § 4-18-107\(2\)](#) which requires the UCC to make rules for nutrient management plans. The Director of DWQ can participate in that process in her role as a member of the UCC and can bring concerns about UDAF's certification program to the UCC to help ensure that UDAF's planner certification program continues to meet DWQ's standards for accepting the work of planners certified by UDAF. We are glad to work with DWQ to develop new rule language to reflect this arrangement and are devoted to working closely with our partners at DWQ as we develop a certification program.

Response:

In an effort to respond to this comment's concerns, R317-8-10.2 will be amended, subject to Board approval, to read: "Certified Nutrient Management Planner" means a person who is certified by the Utah Natural Resources Conservation Services (NRCS) or by an alternative certification program approved by the Director, to develop and approve nutrient management plans and comprehensive nutrient management plans.

The Division believes that this change is responsive to UDAF's concerns and it created the new language in consultation with UDAF. The Division agrees that UDAF could be capable of running a successful certification program for nutrient management planners but maintains that the Director must have some role in ensuring the efficacy of such a program and the resulting certifications for Clean Water Act implementation purposes.

Comment:

UDAF recommends adding language to Subsection R317-8-10.8(2) to allow an AFO or CAFO that has and is following an NMP or CNMP to qualify for the reasonable measures exemption under the statute and not be held liable for agriculture discharge resulting from a large weather event. This change is not in conflict with DWQ's regulatory obligations since [Utah Code Ann. § 19-5-105.5](#) says only that reasonable measures are to defined by DWQ rule; it provides no details on what should be required to meet that standard. We foresee scenarios where an operation will have an NMP and be complying with it but will otherwise not be in a regulatory or compliance program of any sort. When a large weather event—as defined in this rule—occurs, the operator should be allowed to demonstrate following the event that the operation has taken reasonable measures by having and complying with an NMP. Note that we are commenting solely on the standard for what constitutes reasonable measures in a large weather event, and make no comment regarding the permit by rule exemption.

Response:

The Division agrees that having and following a good NMP or CNMP should qualify a discharge for the reasonable measures provision under the statute. The regulatory compliance programs enumerated in this rulemaking provide a method for the Division and UDAF to ensure that NMPs or CNMPs are complete, current, well-written by a professional certified to do so, and being followed, such that operators are actually taking reasonable measures to avoid a discharge.