Comment Number	Permit Part	Comments on the July 25, 2018 Draft Public Notice Jordan Valley Municipalities UPDES Permit for Discharges form Municipal Separate Storm Sewer Systems (MS4s) UTS000001 and Fact Sheet Statement of Basis
1	4.0	Storm Water Management Program …"Co-Permittees that were newly designated during the previous Permit term have 5 Years from the date of their submitted NOI to develop, fully implement and enforce their Storm Water Management Program (SWMP).:Millcreek would like to confirm that the State recognizes the city of Millcreek as a newly designated Co-Permittee of the JVM permit and will have 5 years from their submitted NOI to "develop, fully implement and enforce their Storm Water Management Program (SWMP). Millcreek submitted their NOI to the State on August 28th, 2017 and received coverage under the current JVM permit as of December 5, 2017. Would August 28th, 2022 be the date required for Millcreek to fully implement and enforce their SWMP?
2	1.3	Could a line be added saying; Local agencies are only required to comply with minimum standards. Additional regulations are not encouraged or enforced by DWQ.
3	3.2.1	What is the base line? Who sets it, and what research supports the findings?
4	3.2.1.2	Is it the expectation of the state to have MS4's conduct research and testing, or is there a base line and standard set by the state? Is funding provided from the EPA or DEQ, or is the MS4 expected to generate revenue to complete these studies? Is the MS4 required to hire a qualified person, meaning education and certification to perform these studies?
5	3.2.1.3	For the MS4's to identify a sector and elevate their priority level, it needs to be supported by solid research. For example, if industry is made top priority, will there be peer reviewed research documenting their impact compared to other sectors.
6	4.1.2.2	Am I understanding this correctly to say the MS4 is required to find all the funding and then compile a report of expenses to the state? If the state is not contributing and the funding in no way impacts state budgets or resources, is it necessary to require additional expense from MS4's to compile a report?
7	4.1.3.4	Needs to clearly state enforcement from the director will only be applied when the MS4 fails to meet minimum standards set by the state. Higher city standards are not encouraged, but if they are set and not met it will not trigger action.
8	4.2.1	Would it not be more cost effective to engage in a state-wide campaign? The need for education is not bound by city boundaries nor is there a productive marketing strategy that limits education efforts to people of one city. A state-wide effort could reach across all boundaries and touch all stake holders. Is there any research suggesting different communities have a dramatic different set of education needs?
9	4.2.2	The effort for public involvement needs to include policy making boards, commissions or task forces. The general public needs to have access to decision makers, not just information or advisory opinions that may or may not be implemented. These policy making bodies need to be detailed in the permit with enforcement action attached to MS4's failing to comply.
10	4.2.2.3	120 days is far more than is needed to post a document to the web site. This should be done in 30 days. If public notification, education and involvement is truly a goal, speedy notice is paramount. When a city increases a fee, they are able to post that increase on the web site and demand compliance in 24 hours or less. I am sure they have the ability to complete this task in a more reasonable time frame.
11	4.2.3.9	This would be better as a state-wide hot line, maned and tracked by DWQ. It is difficult, if not impossible, for a city to effectively communicate this type of information to citizens and entity's that come and go within the city. A singe state wide number and point of contact is the only way to reach all stake holders.
12	4.2.4.1	Could the last sentence be removed? The state should set a standard. If that standard applies to an acre or larger, or lots that are part of a common plan, the permit should not address additional requirements on non-conforming lots. This permit is specific in its application. The last sentence reaches beyond the scope of the permit, granting permission to MS4's. Is it the intent of DWQ to grant permission and encourage additional regulation?
13	4.2.4.3	At the end of first sentence could we strike the word "local"? If local MS4s are going to require storm water compliance above and beyond state requirements, they need to have scientific evidence supporting their requirements. With out proper supporting research, they are adding regulatory burden with no idea of its need or outcome.
14	4.2.4.3.1	Could we change the word "meeting" in the first sentence to "review". Is it necessary to have the contractor and a city inspector meet on site? This is a time consuming and expensive meeting. Most contractors can lay out a plan and submit it with photos. If there are questions from either party a live meeting could be scheduled.
15	4.2.4.4	Section 4.2.4.4 limits an individual or entity from preparing the swppp and performing the inspection but does not clearly limit an individual from forming a second company using the same principals to perform both functions. There needs to be a bright separation between the two entities. It cannot be two companies owned and operated by the same owners.
16	4.2.4.4.1	Can this section specifically state an electronic inspection including photos, written report and proper auditing complies with the monthly requirement? Use of technology will lessen the burden on all stake holders and increase compliance.
17	4.2.4.4.2/ 4.2.4.4.1	There is an opportunity to use technology to complete this task, but it needs to be made available to stake holders
18	4.2.4.5	How does one find out what training fills this requirement? Is there some standard or just a requirement of course attendance?
19	4.2.5.1	This section requires BMP selection but seems to give that authority to the MS4. For post construction management to be effective builders and developers need to have at least an equal voice in the selection process. Each has their expertise and motivating factors. The two working as a partnership will produce a better product
20	4.2.5.2	There needs to be something in the enforcement section stating MS4's will have action taken against them for not involving builders and developers in BMP selection and state that all available methods can be used.
21	4.2.5.3	What level of expertise is used to make this finding? Is the city compliance manager with 8 hours of SWPPP training and an undefined amount of annual continuing education training considered qualified to make the determination?
22	4.2.5.3.4	Is 90th percentile the correct number for our claimant and limited buildable land? What exactly does "infeasible" mean? If enough money is committed this could be accomplished on any project, however, there comes a point where the amount of money required to meet storm water retention makes the project infeasible, how is that amount arrived at? Could we change the last sentence to something other than "technically feasible"? Technically feasible is very different than financially feasible.
23	4.2.5.4.2	This needs to state that the "preferred design options" are not the only options available to contractors. If the contractor provides an effective LID the MS4 will be required to accept that option.
24	4.2.5.5.1	The LID (a swell in an individual yard) is one way to retain water. Is this section saying that private residences will need to have something attached to their deed giving the city a right to enter their property at any time for inspections, and that the city will be required to make those inspections? What will enforcement look like? Is it DEQ's position that if one homeowner makes a change and sells the home before the changes are detected by the MS4 the second homeowner will be responsible?
25	4.2.5.6	How does one find out what training fills this requirement? Is there some standard or just a requirement of course attendance? How is the content and quality controlled? If this is the mechanism for training individuals with the power to make and enforce burdensome regulations, should we not have well defined education requirements?
26	4.4.3	It would be better if the words "at least" were stricken. The state needs one standard. This permit should not suggest or encourage more stringent requirements.
27	4.5.1.2.2	If a city is required to have the expertise on staff to set up the original SWMP why are they not competent to identify and replace or remove ineffective components? This should say "changes adding, subtracting or replacing…"
28	6.1	Can a city choose to not become permitted?
29	6.2	Are these penalties given to the individual or the municipality? If a city is improperly staffed to complete all required reporting, is a citation issued to the city or a responsible individual? What or who determines the responsible individual?
30	6.4	I do not know what it says. Would it be possible to clarify?
31	3.2.1	Determining each discrete potential source of nitrogen and/or phosphorus is impracticable if not impossible. Instead, the City requests that DWQ provide guidance enumerating the particular "target sources" for outreach.
32	4.2.6.6.6	The City asks that DWQ recognizes the practical problems in its consideration of how feasible it maybe for a Permittee to haul all materials it removes from storm water conveyances.
33	4.2.5.3.4	The 90% storm event is not clearly defined in the Permit. The Fact Sheet Statement of Basis provides useful information that should be included within the permit itself.
34	4.2.5.3.4	What is there is not reliable precipitation data near the municipality? A municipality adjacent to the mountains will receive different precipitation than one that is not.

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35	4.2.5.3.4	How is lack of good representative data addressed? How often should it be updated?
36	4.2.5.3.4	Will the infeasibility waiver of the 90% retention requirement requirements will be at the discretion of the overseeing municipality? We are the most familiar with our local topography, landscape, and soil conditions, and are most suited to determining feasibility.
37	4.2.4.4.1.	The acronym for Certified Professional in Erosion and Sediment Control should be CPESC in Section 4.2.4.4.1.
38	1.2.2.2	Non-Stormwater Discharges – Listed is "Individual residential car washing." a. This is a contradiction to section 4.2.1.2 which encourages education and outreach to stop car washing. Car washing introduces detergents, sediments, oils, and other harmful pollutants so it should not be an allowable discharge. Even though individual car washing is small on a larger scale it can be harmful. Also, this opens the door for others to think that car washing that enters the storm drain is not big deal, and doesn't cause water quality concerns.
39	4.2.4.4	"An individual or entity who prepares a SWPPP for a construction project may not perform the construction site inspections required of Part 4.2.4.4.1 and 4.2.4.4.3 on behalf of the Co-Permittee." a. We agree that there is an appearance of a possible conflict of interest in these cases. If a company is run in such a way that different individuals or sections of the company are setup to do these inspections then there would not be a conflict of interest. If there is any breach or conflict in this case then that would fall under business ethics and not the stormwater permit. There are other mechanisms to go after business ethics then putting that in the permit so that it hurts honest businesses. The goal is clean water and if an MS4 wants to use an entity to help them comply with the permit and achieve clean water then they should be allowed to do so. There are several companies throughout the state that do work for both the MS4 and for construction contractors. If this rule is put into place it has the potential to harm these businesses.
40	4.2.5.5.3	"Inspections and any necessary maintenance must be conducted annually by either the Co-Permittee or through a maintenance agreement, the property owner/operator." a. We would urge that the language be changed from "annually" to "as required by the control or specified in the control/BMP specification," or similar language. The reason we suggest this is many control/BMP specifications require semi-annual or more frequent inspections and maintenance. This is so the control works properly to protect water quality. There are numerous stormwater controls here in Utah that require inspections more frequently than once per year. b. Here is an example from the Contech CDS system specification about inspections. These systems have been and are being installed in Utah.: i. "Inspection is the key to effective maintenance and is easily performed. Pollutant transport and deposition may vary from year to year and regular inspections will help ensure that the system is cleaned out at the appropriate time. At a minimum, inspections should be performed twice per year (e.g. spring and fall) however more frequent inspections may be necessary in climates where winter sanding operations may lead to rapid accumulations, or in equipment washdown areas. Installations should also be inspected more frequently where excessive amounts of trash are expected."
41	1.2.1.1	The MSD operates "unincorporated" areas of Salt Lake County. Please see attached MSD Organizational chart for reference.
42	1.2.1.1	Salt Lake County Flood Control owns parts of specific storm sewer pipes but county owned pipes have no county operated land area associated with them. The sections of pipe owned usually meet pipes owned by other municipalities who regulate the land areas under their own phase 2 permits. See attached Countywide facility map. https://slco.org/uploadedFiles/depot/publicWorks/fFloodControl/WaQSPFloodFacMap.pdf
43	1.2.1.2.2	The Greater Salt Lake Municipal Services District (GSLMSD) would like to be considered a "new" permittee so it has a chance to implement its new SWMP and MCM's responsibly and update ordinances as required. The GSLMSD is a new political jurisdiction and as such, requires time to familiarize members with the rules and regulations of this permit. These rules and regulations may create the need for a fee to help subsidize the cost of implementation. Having the 5 year implementation time frame to meet milestones allows providers time to ascertain costs and create considerate justifications to the new political subdivision with transparency and clarity for members.
44	2.3	See previous comment. The GSLMSD is prepared to meet the requirements of section 2.0.
45	4.0	GSLMSD believes it should be considered a newly designated co-permittee.
46	4.2.6.6.6	Does this section consider to the practice of open channel dredging? If so, do the BMP's listed here apply? Dredging often produces thousands of cubic yards of material that must be de-watered for transport.
47	4.3	Countywide Flood Control facilities and county owned facilities are the only physical structures and land Salt Lake County owns and operates. Unless an individual county facility is considered "High Risk Runoff" facility this section needs language to modify the "requirement" language.
48	5.2	Countywide Flood Control facilities and county owned facilities are the only physical structures and land Salt Lake County owns and operates. There is no practical way for Salt Lake County to sample stormwater moving through pipes that drain areas covered by other municipalities in this permit. This section requires language that identifies that fact.
49	3.2	Regarding the nitrogen and phosphorus changes, what are the benchmarks used?
50	3.2	How were they determined?
51	3.2	What stakeholders where involved to develop the benchmarks?
52	3.2	Why is nutrient reduction necessary? The answer is obvious to many of us, but we will have to explain to residents who may not be versed in the reasoning behind this.
53	3.2	Are these changes something that Utah DWQ initiated, or is it mandated by EPA as part of the State's permit requirement?
54	3.2	What studies have been done to verify that this is important enough to codify into a permit?
55	3.2	What is the economic cost versus environmental benefit of the regulation?
56	3.2	Do the current permit requirements already implement the appropriate BMPs to sufficiently reduce nitrogen and phosphorus levels?
57	3.2	What is the source(s) of the "significant increases of nitrogen and phosphorus in recent years?"
58	3.2	Which of "Utah's streams, lakes and rivers" are having water quality problems?
59	3.2	Are any of these water bodies impaired as a result of the "significant increases in nitrogen and phosphorus?"
60	3.2	Will the planned reduction of phosphorus emissions from wastewater treatment plants address the phosphorus loading issue already?
61	3.2	Is the State DWQ requiring unfunded mandates of the MS4 to "determine contributing and potentially contributing sources of nutrients discharged."
62	3.2	How are MS4s to determine these "potentially contributing sources"?
63	3.2	How does "distributing educational materials or equivalent outreach" solve the problem?
64	3.2	Are these issues Municipality specific, i.e., is the permit painting with too broad a brush instead of addressing the issues through existing streams, rivers, and lakes regulation?
65	NA	Is DWQ willing to assist in WLA assessments? Coalition trainings, funding, etc.? If so, please elabor
66	4.2.5.3.4	With a 90th percentile requirement, how would a city of 120,000 implement a monitoring plan? What are other US cities doing to document compliance?
67	NA	With completion of the Jordan River TMDL, will cities be required to monitor their 303(d) listed waters for WQMP compliance? If so, will there be assistance available, training, funding, etc.?

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68	various	The Draft Permit Does Not Fully Incorporate the Operative Legal Standard and is More Stringent than Federal and State Law. The Fact Sheet Acknowledges MEP as the Legal Standard, but the Draft Permit Does Not Incorporate It and Imposes Provisions that Undermine That Standard. The federal Clean Water Act ("CWA") requires that all municipal separate storm sewer ("MS4") permits include requirements to (1) "effectively prohibit" nonstormwater discharges into the MS4; and (2) require controls to reduce the discharge of pollutants to the maximum extent practicable. EPA's MS4 permitting regulations for small cities, which were promulgated in 1999 ("Phase II Regulations"), incorporate the maximum extent practicable ("MEP") standard as the goal of stormwater measures required in an MS4 permit. Utah's regulations pertaining to Phase II cities mirror the language of the federal regulations and incorporate identical language regarding the application of the MEP standard under the Clean Water Act and Utah Water Quality Act. The MEP standard requires municipalities to develop and adopt stormwater management programs with extensive measures aimed at reducing pollutants in their stoimwater discharges, but recognizes that cities do not have absolute control over sources and activities within their boundaries. EPA has explained that the intent of the MEP standard is to provide "flexibility [for MS4s] to optimize reductions in storm water pollutants" considering factors such as "receiving waters, specific local concerns, and other aspects included in a comprehensive watershed plan."' Because MEP is the operative legal standard adopted by both EPA and the State of Utah for MS4 programs, local MS4 permits should also incorporate this standard as the primary permit condition. Accordingly, permits issued by other western jurisdictions clearly incorporate MEP as the standard for permit compliance. The Statement of Basis for the Draft Permit acknowledges MEP as the operative legal standard "that establishes the level of pollutant reductions that operators of regulated MS4s must achieve through implementation of BMP's included in their SWMPs." The Draft Permit also includes a definition of MEP, citing the Clean Water Act. However, the balance of the Draft Permit is devoid of any provision effectively setting forth MEP as the standard for compliance. Indeed, the DWQ has removed the only reference to MEP from the 2013 permit in the Draft Permit and has included conflicting provisions that impose absolute liability on co-permittees for discharges from the MS4. In so doing, the Draft Permit runs afoul of Section 19-5-105(1) of the Utah Code, which prohibits the DWQ from implementing a rule that is more stringent than a corresponding federal rule without first proceeding through notice-and-comment rulemaking. The Draft Permit contains limitations on coverage and prohibited discharges that undermine the MEP standard and create potential liability for co-permittees notwithstanding their implementation of SWMPs that otherwise meet the requirements of the permit. For instance, Permit Section 1.4 provides absolutely that the Draft Permit does not authorize "[d]ischarges that are mixed with sources of non-storm water unless such non-stormwater discharges are in compliance with a separate UPDES Permit[.]" It further provides that it does not authorize storm water discharges associated with industrial activity and construction activity, or "discharges that cause or contribute to instream exceedances of water quality standards[.]" While coverage under an MS4 permit does not negate the need for the discharger to obtain appropriate permit coverage for their activities within the City, any responsibility the City has for those discharges is covered by the other extensive requirements of the Draft Permit. The City should not be held strictly responsible for third-party discharges that are conveyed through its MS4 notwithstanding its own compliance with the other terms of the Draft Permit. This is inconsistent with the MEP standard. Likewise, Section 4.2.3.6 further provides that discharges to the MS4 are prohibited and any such discharges violate this Permit and remain in violation until they are eliminated." Again, neither the Clean Water Act nor the Utah Water Quality Act or their associated regulations irnpose absolute liability on municipalities notwithstanding their compliance with the MEP standard through implementation of effective stormwater management programs. Co-permittees are required to prohibit illicit discharges within their boundaries and to take enforcement action for any violations, but the Draft Permit should not impose strict liability on co-permittees notwithstanding such efforts. Finally, the Draft Permit includes a very broad narrative standard at Section 5.1 that makes virtually any discharge not composed entirely of clean water a permit violation. The Phase II regulations do not require that MS4 permits contain narrative standards, and storm water permits for other jurisdictions do not include them. Including a narrative standard leaves the City without any protection for its MS4 discharge under the permit and creates the potential for exposure to third parties under the CWA citizen suit provision — notwithstanding compliance with all other permit requirements and reducing the discharge of pollutants to the MEP. The City requests that the DWQ amend the Draft Permit to incorporate MEP as the operative standard for permit compliance and the overarching requirement for copermittees' storrnwater management programs. The above-referenced provisions regarding permit coverage that conflict with the MEP standard should be removed from the Draft Peiinit and/or qualified to reflect that standard. The City specifically recommends clarifying that MEP is the operative legal standard by adding the following—or substantially similar—language to Section 4.1 : *A co-permittee shall develop, implement, and enforce a SWMP designed to reduce the discharge of pollutants from an MS4 to the maximum extent practicable to protect water quality. The SWMP shall include management practices; control techniques; system, design, and engineering methods; and other provisions that the Director determines appropriate for the control of pollutants. A co-permittee shall protect water quality by ensuring, to the maximum extent practicable, that no discharge will cause or contribute to an exceedance of any applicable water quality standard*. Likewise, to clarify and emphasize that the six minimum control measures are designed to achieve the MEP standard, the sentence on page 15, Section 4.2 of the Draft Permit introducing the six minimum control measures should be revised to read, "To achieve pollutant reductions to the maximum extent practicable, co-permittees shall include the following six minimum control measures in the SWMP."
69		The Draft Permit's Post-Construction Measures Require Notice and Comment Rulemaking and Are More Stringent than Federal Law. Certain terms of the Draft Permit also go well beyond the current substantive requirements of both the CWA and the Utah Water Quality Act and their associated regulations. The Phase II Regulations (and analogous Utah regulations contained in R317-8-3.9) outline the substantive post-construction requirements that may be included in the City's permit. The post-construction Phase II regulations require the permit "to identify the minimum elements and require the development, implementation, and enforcement of a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4." The Phase II regulations further authorize the following structural and nonstructural BMPs addressing post-construction development: • Structural BMPs: storage practices, such as wet ponds and extended-detention outlet structures; filtration practices, such as grassed swales, sand filters, and filter strips; infiltration practices, such as infiltration basins and infiltration trenches; and implementation practices, such as pre-construction review of BMP designs; inspections during construction to verify that BMPs are built as designed; post-construction inspection and BMP maintenance; and penalty provisions for noncompliance with design, construction, or operation and maintenance. • Non-structural BMPs: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian lands, maintain and increase open space, provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higherdensity urban areas and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water-quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious area. The Draft Permit includes some of these authorized BMPs, but it also now specifically requires that by "September 1, 2019, the prograrn, shall include a process which requires the evaluation of an LID approach for new development or redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale." If the developer cannot use an LID approach, "the Co-Permittee must document an explanation of the reasons preventing this approach and the rationale for the chosen alternative controls on a case by case basis for each project." By contrast, the 2013 permit only required the co-perrmittees to encourage developers to implement, and the City to evaluate, an LID approach.' Nowhere is such a requirement regarding LID mandated by the Phase II (or analogous Utah) regulations. Co-permittees are likely to face significant push back from the development community in attempting to irnplement this requirement and even legal challenges to their authority to do so. Second, the Draft Permit requires the City to "develop a plan to retrofit existing developed sites that are adversely impacting water quality." The retrofit plan must (1) emphasize controls that infiltrate, evapotranspire, or harvest and use stormwater discharges; and (2) include a ranking of control measures to determine those best suited for retrofitting and those that could later be considered for retrofitting. EPA recently deferred a rulemaking that was expected to address retrofits in favor of providing incentives, technical assistance, and tools to municipalities instead of a regulatory mandate. Retrofit requirements for existing development are not authorized by the Phase II (or analogous Utah) regulations, and DWQ has made no effort to revise its regulations via notice-and-comment rulemaking to impose such requirernents. Moreover, irnplementing retrofits is fraught with potential legal challenges for the co-permittees and requires significant resources. Accordingly, the retrofit requirement should be removed from the Draft Permit. Finally, the Draft Permit requires the City to require developers to manage essentially all rainfall onsite. The Draft Permit provides that by "September 1, 2019, new development or redevelopment projects . . . must manage rainfall on-site, and prevent the off-site discharge of the precipitation from all rainfall events less than or equal to the 90th percentile rainfall event," without regard to water quality impacts. To support this requirement, "[e]ach Co-Permittee must develop and define specific hydrologic method or methods forcalculating runoff volumes and flow rates to ensure consistent sizing of structural BMPs in their jurisdiction and to facilitate plan review." The applicable regulations do not authorize the DWQ to require the City to impose such a rigorous requirement on private-property owners to maintain all rainfall at or below a 90th percentile rain event onsite. Moreover, the DWQ has not provided any clear guidance to co-permitees on how to implement the proposed 90th-percentile requirement in the Draft Permit. Without adequate legal support and guidance for implementation, compliance with the requirement will not be achievable. While the DWQ has authority to interpret the Phase II (and analogous Utah) regulations, substantive legal additions to those regulations must be implemented by amending the rules through notice-and-comment rulemaking. "To be sure, a legislative rule is not created simply because an agency supplies crisper and more detailed lines than the authority being interpreted." However, when an agency "creates a new legal norm based on the agency's own authority to engage in supplementary lawmaking . . . the agency creates a legislative rule" requiring notice and comment rulemaking. The Draft Permit imposes new substantive requirements that do not have an external legal basis in statute or in an existing lawfully promulgated legislative rule. Further, an agency may not circumvent the notice-and-comment requirements by "labeling a substantive legal addition to a rule a mere interpretation." The DWQ appears to rely on aspirational EPA guidance recommending additional post-construction control measures that are not currently set forth in the regulations. But the DWQ may not rely on guidance as a substitute for either statutory authority or rules adopted pursuant to notice-and-comment rulemaking. Courts have repeatedly held that agency guidance is not binding and may not be used to impose additional regulatory requirements in the absence of notice-and- The DWQ appears to rely on aspirational EPA guidance recommending additional post-construction control measures that are not currently set forth in the regulations.28 But the DWQ may not rely on guidance as a substitute for either statutory authority or rules adopted pursuant to notice-and-comment rulemaking. Courts have repeatedly held that agency guidance is not binding and may not be used to impose additional regulatory requirements in the absence of notice-and-comment rulernaking. The DWQ could implement regulations authorizing the use of control measures such as the LID, retrofit, and rainfall-control measures discussed above that go further than the applicable federal regulations, but under Utah law it cannot do so absent notice-and-comment rulemaking. Notably, Section 19-5-105 of the Utah Water Quality Act prohibits the DWQ from promulgating any rule that is more stringent than the corresponding federal rule: "[N]o rule that the board makes for the purpose of the state administering a program under the federal Clean Water Act . . . may be more stringent than the corresponding federal regulations." The DWQ cannot promulgate a rule more stringent than the corresponding federal rule unless the board "makes a written finding after public comment and hearing and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health and the environment of the state." Here, the Draft Permit runs afoul of this statutory requirement by imposing prescriptive post-construction terms that are not only more stringent than the corresponding federal requirements, but also more stringent than existing Utah regulations. Such requirements cannot be imposed without amending the DWQ's own regulations and making the required finding under the Utah Water Quality Act. Accordingly, the DWQ should remove these provisions from the Draft Permit until it has met the requirements of state law. The City requests that all conditions and requirements that are not required by either the state or federal Phase II Regulations be removed from the Draft Permit. If the DWQ intends to adopt such prescriptive requirements, it must do so through a rulemaking subject to public notice and comment and by making the required finding under section 19-5-105 of the Utah Code.
70	3.2	The Nutrient Requirements Are Unclear in Advance of a Final Jordan River TMDL. Section 3.2 of the Draft Permit requires that each co-permittee's management program "specifically address the reduction of water quality impacts associated with nitrogen and phosphorous in discharges from the MS4." It further provides that copermittees may meet the requirement through a contribution to a collaborative program to evaluate, identify, target and provide outreach that addresses nitrogen and phosphorous sources state-wide or in a specific watershed. The reduction provisions would require the City to determine and target discharging sources, to prioritize which targeted sources are likely to obtain a reduction in nitrogen and phosphorous through education, and to distribute educational materials (or equivalent outreach) to the prioritized targeted sources. The DWQ, in coordination with the co-permittees and other affected parties, has been working on developing a TMDL since 2010 to address impairment in the Jordan River, including from nutrient issues. The first phase of the TMDL was completed in 2013, but the DWQ recently delayed completion of the next phase pending development of a water quality model, and it currently projects completion by 2020. The TMDL is expected to prescribe measures similar to those being called for by Section 3.2 of the Draft Permit. Although the City is not generally opposed to implementing such measures, the proposed provision is unclear as to what is being prescribed, and it is further unclear why contributing to a state-wide program should be an option for compliance with the provision. The City requests that the DWQ provide further guidance on what measures would meet the permit requirement given that the TMDL has not yet been finalized. The Draft Permit also does not include any phase-in timeframe for compliance, requiring the City to update its SWMP immediately upon the permit taking legal effect. The Draft Permit should be amended to clearly allow the City a minimum of 180 days to update the City's SWMP to implement Section 3.2.
71	4.0	Several Provisions of the Draft Permit Are Impracticable and Impose Overly Burdensome Requirements. The Timeframes for Submittals Are Impracticable and Do Not Allow for the City's Required Approval Process. Section 4.0 of the Draft Permit provides that 141 requirements contained in this renewal permit are effective immediately unless an alternative timeframe is indicated." This section acknowledges that co-permittees will need to update their SWMPs to reflect the new provisions but provides no timeframe for which to implement these updates. For instance, as indicated above, the Draft Permit would require the City to address the reduction of water quality impacts associated with nitrogen and phosphorus in discharges frorn the MS4 as part of its SWMP immediately, which is not possible. Section 4.0 of the Draft Permit should be amended to provide a 180-day timeframe for co-permittees to update their SWMPs to implernent any new permit requirements.
72	various	The Timeframes for Training New Hires Are Vague and Impracticable. The Draft Permit would require the City "to ensure that all new hires are trained immediately upon hire and annually thereafter, at a minimum," in the IDDE program. It would also impose the immediate training requirement on all new hires "whose primary job duties are related to implementing the construction storm water program, including permitting, SWPPP review, construction site inspections, and enforcement." The term "immediately" is not defined in the Draft Permit.The Draft Permit should be amended to provide a 60-day timeframe to allow co-permittees time to effectively train new personnel.
73	4.1.3.3	The New Requirement for the SWMP to Document Roles and Responsibilities Must Provide for An Implementation Timeframe. The Draft Permit contains a new requirement in Section 4.1.3.3 for co-permittees to modify their SWMPs to "clearly identify the roles and responsibilities of all offices, departments, divisions, or sub-sections" and to include any necessary agreements, contracts, or memoranda of understanding between said entities. Because this provision may necessitate drafting and implementing agreements, the Permit should provide a 180 day timeframe for implementation.

Comment Number	Permit Part	Comments on the July 25, 2018 Draft Public Notice Jordan Valley Municipalities UPDES Permit for Discharges form Municipal Separate Storm Sewer Systems (MS4s) UTS000001 and Fact Sheet Statement of Basis
74	4.2.4.1.3.	The Draft Permit Requires the Co-Permittees to Ensure Continued Coverage Under UDEQ's Construction Permits. The Draft Permit includes new language requiring co-permittees to "ensure" that construction sites "obtain and maintain coverage under the UPDES Storm Water General Permits for Construction Activities" for the duration of the project.36 Although the City can impose a requirement on construction-site operators to obtain coverage, it is overly burdensome to require the City to ensure that that coverage is obtained and maintained. Responsibility for implementing that permit program lies with the DWQ.
75	FS p. 3, ¶ 1	There is a reference to clarifying that emergency firefighting activity is an allowable discharge, but this language was already included in the 2013 permit.
76	FS p. 3, Public Education and Outreach	The Fact Sheet indicates that audiences have been changed to remove the reference to "businesses," but this change is not reflected in Section 4.2.1 of the Draft Permit.
77	4.2.2.3	This provision requires co-permittees to post the latest version of the SWMP document on their websites within 120 days of the effective date of the Perrnit. It should be arnended to clearly reflect a 180-day implementation timefrarne, consistent with the City's requested changes to Section 4.0.
78	4.2.4.3.2	The phrase "sensitivity of receiving waterbodies" is vague and could be interpreted a number of ways. If this is a required factor that must be considered, it should be defined in the Draft Permit so co-permittees can ensure they are applying it consistently.
79	4.2.4.4	This provision now prohibits an individual or entity who prepares a SWPPP for a construction project to perform construction-site inspections. It's unclear what the objective of this change is and whether there have been problems in the past that make this change necessary. There are very few stormwater consultants with appropriate expertise available in the Salt Lake Valley. This restriction would further narrow the available field of qualified assistance.
80	4.2.3.3.4	This new section requires co-permittees to conduct annual inspections of priority areas. However, this permit condition should be removed as redundant. Other inspection requirements—including dry-weather screening, outfall inspections, IDDE tracing and elimination, and additional training requirements will achieve the same purpose as the annual inspection of priority areas proposed in this section. Accordingly, this section of the Draft Permit should be removed.
81	4.2.5.3.3	In addition to the concerns regarding LID requirements raised above, UDEQ has removed the language "where practicable" from this section, rnaking this an absolute requirement. This deletion is not required by the Phase II regulations and is inconsistent with the MEP standard.
82	4.2.6.6.4	The Draft Permit replaces the term "surface waters" with Waters of the State, which significantly broadens the scope of the provision. Does this mean that a discharge to the ground would be a violation of the permit?
83	7.23	The defined term "Indian Country" is not used anywhere in the permit and should be removed.