

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**FILED**

Oct 08, 2024

5:00 pm

**U.S. EPA REGION 8  
HEARING CLERK**

<p>IN THE MATTER OF:</p> <p>Utah Department of Transportation,  Respondent</p>	<p>Docket No. CWA-08-2025-0002</p> <p><b>ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT</b></p> <p>Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a)</p>
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**INTRODUCTION**

1. This Administrative Order for Compliance on Consent (Consent Order) is issued pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a). The authority to issue this Consent Order has been properly delegated to the undersigned U.S. Environmental Protection Agency (EPA) official.
2. The respondent in this Consent Order is the Utah Department of Transportation (UDOT).

**STATUTORY AND REGULATORY BACKGROUND**

**The Clean Water Act**

3. In order to restore and maintain the integrity of the nation's waters, Section 301(a) of the Clean Water Act (Act), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including Section 402 of the Act, 33 U.S.C. § 1342.
4. The Act defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).
5. The Act defines "pollutant" to include "sewage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).
6. The Act defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

7. The Act defines “point source” to include any “discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
8. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA (and states with authorization from the EPA) may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
9. The State of Utah has been approved under Section 402(b) of the Act to administer the NPDES program. 52 Fed. Reg. 27578-27579 (July 22, 1987). Permits the State of Utah issues in this capacity are sometimes known as UPDES permits.
10. Pursuant to Section 402(i) of the Act, 33 U.S.C. §1342(i), the EPA retains authority to take enforcement action under Section 309 of the Act, 33 U.S.C. § 1319, for violations in approved NPDES states.

#### **The Municipal Separate Storm Sewer Program**

11. The term “storm water” is defined as storm water runoff, snow melt runoff and surface runoff and drainage. 40 C.F.R. § 122.26(b)(13).
12. Storm water runoff occurs when rain or snowmelt flows over land or impervious surfaces, such as paved streets, parking lots, and building rooftops, and does not soak into the ground. The runoff picks up pollutants such as trash, chemicals, oils, and dirt/sediment.
13. The NPDES and UPDES permitting programs for the EPA and the State of Utah, respectively, are designed, among other things, to prevent storm water runoff from washing harmful pollutants into local surface waters.
14. The EPA and Utah programs referenced in paragraph 13, above, regulate storm water discharges from various sources, including municipal separate storm sewer systems.
15. The term “municipal separate storm sewer system” is defined in 40 C.F.R. § 122.26(b)(18). In summary, this term includes a conveyance or system of

conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (1) owned or operated by a State . . . or other public body such as a sewer district, flood control district or drainage district, or similar entity . . . that discharges to waters of the United States;
- (2) designed or used for collecting or conveying storm water;
- (3) which is not a combined sewer; and
- (4) which is not part of a Publicly Owned Treatment Works as defined at 40 C.F.R. § 122.2.

16. A municipal separate storm sewer system is also known as an “MS4.” 40 C.F.R. § 122.26(b)(19).
17. Under Section 402(p)(2) of the Act, a discharge from an MS4 serving a population of at least 100,000 (i.e., a medium or large MS4) requires an NPDES permit issued under Section 402 of the Act for storm water discharges. 33 U.S.C. § 1342(p)(2); see also 40 C.F.R. § 122.26(a).
18. Regulations governing the storm water program are set out at 40 C.F.R. Parts 122, 123, and 124. The EPA’s storm water regulations, like the Act itself, require operators of regulated MS4s to obtain NPDES permit coverage authorizing their discharges. 40 C.F.R. §122.26(d).
19. A “large municipal separate storm sewer system” (large MS4) is defined at 40 C.F.R. § 122.26(b)(4) and means in relevant part, “all municipal separate storm sewers that are . . . located in counties [with unincorporated urbanized areas with a population of 250,000 or more according to the 1990 Decennial Census] except municipal separate storm sewers that are located in the incorporated places, townships, or towns within such counties.”
20. A “medium municipal separate storm sewer system” (medium MS4) has a similar definition to the large MS4 definition stated in paragraph 19, above, but with a population threshold of 100,000. 40 C.F.R. § 122.26(b)(7).
21. “[S]mall municipal separate storm sewer systems” (small MS4s) are defined at 40 C.F.R. § 122.26(b)(16) as all separate storm sewers that are:

[o]wned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . [storm water] . . . . [;] (ii) [n]ot defined as “large or medium” municipal separate storm sewer systems[;] [and] [iii] . . . 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.

22. Pursuant to Section 402(p)(6) of the Act, the EPA has promulgated regulations providing that discharges from small MS4s are regulated if they are located within an urbanized area, as defined by the latest Decennial Census. 40 C.F.R. §122.32(a)(1).
23. The Act provides that all permits for discharges from MS4s “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 such other provisions as the [EPA] or the State determines appropriate for control of such pollutants.” 33 U.S.C. § 1342(p)(3)(B)(iii).

### **FINDINGS OF FACT AND LAW**

The following findings apply at all times relevant to this matter, unless otherwise stated.

#### **UDOT’S MS4**

24. UDOT is an agency of the State of Utah and a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
25. UDOT owns, operates, and maintains roadways, streets, and highways throughout the State of Utah. UDOT also owns, operates, and maintains an MS4 that serves these roads, streets, highways, and supporting facilities throughout the State of Utah. Unless the context otherwise requires, any references in this Consent Order to “the MS4” are to UDOT’s MS4.
26. UDOT maintains over 6,000 miles of highways.

27. UDOT is divided into four regional offices.
28. Personnel in each UDOT region oversee administration, construction, and maintenance of all state roads, highways, and freeways within their areas.
29. UDOT's statewide MS4 includes areas meeting the definitions of large, medium, and small MS4s.
30. Storm water discharges from UDOT's MS4 through a system of pipes and ditches.
31. The pipes and ditches identified in paragraph 30, above, are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
32. Storm water discharges from UDOT's MS4 contain "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), including but not limited to sediment, oils, metals, and nutrients.
33. Storm water discharges from UDOT's MS4 into the Weber River, Logan River, Jordan River, and Santa Clara River, among others. These water bodies are "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
34. The Weber River, Jordan River, and Logan River are relatively permanent tributaries of the Great Salt Lake, which is a traditionally navigable water. These rivers and the Great Salt Lake are therefore "navigable water[s]" and "waters of the United States" under 33 U.S.C. § 1362(7). The Santa Clara River is a relatively permanent tributary of the Virgin River, which is a traditionally navigable water, and therefore each of these rivers is a "navigable water" under 33 U.S.C. § 1362(7).
35. The Weber River, Jordan River, Santa Clara River, and other waters receiving storm water discharges from UDOT's MS4 are impaired by pollutants and have been listed by Utah pursuant to 303(d) of the Act, 33 U.S.C. § 1313(d) as impaired.
36. Discharges from UDOT's MS4 constitute "discharge(s)" of "pollutants" from a "point source" to "navigable waters" within the meaning of Section 502(12), (6), (14), and (7) of the Act, 33 U.S.C. § 1362(12), (6), (14), and (7).

#### **UDOT's MS4 Permit**

37. Effective August 31, 2021, the Utah Department of Environmental Quality (UDEQ) issued UPDES Permit No. UTS000003 (the Permit) to UDOT, authorizing UDOT "to

discharge, in accordance with monitoring requirements and other provisions as set forth in this Permit, from all portions of municipal separate storm sewer systems owned and operated by the Utah Department of Transportation Statewide, to waters of the State.”

38. Part 1.1 of the Permit states, “This permit authorizes the discharge, to Waters of the State of Utah, of storm water from all existing outfalls of the drainage system operated by the Utah Department of Transportation (UDOT) Statewide. The discharge of storm water from new drainage system outfalls operated by UDOT is authorized only if installation and operation are in accordance with the requirements of this Permit. This authorization is subject to all of the terms and conditions of this Permit. This Permit does not authorize discharges prohibited under Part 1.4 of this Permit.”
39. Part 4.0 of the Permit requires UDOT to develop, implement, and enforce a storm water management program (SWMP) designed to reduce the discharge of pollutants from UDOT’s MS4 and, among other things, to include the six minimum control measures (MCMs).
40. The six MCMs required by the Permit are as follows:
  - (1) Public Education and Outreach on Storm Water Impacts;
  - (2) Public Involvement/Participation;
  - (3) Illicit Discharge Detection and Elimination;
  - (4) Construction Site Storm Water Runoff Control;
  - (5) Long-Term Storm Water Management in New Development and Redevelopment (Post-Construction Storm Water Management); and
  - (6) Pollution Prevention and Good Housekeeping for UDOT Facilities and Operations.
41. Part 4.2 of the Permit sets forth detailed requirements for implementing each of the six MCMs referenced in paragraph 40, above.

**Prior Enforcement Action**

42. On June 17-21, 2013, the EPA and UDEQ conducted a joint inspection of UDOT’s MS4 (2013 inspection). The 2013 inspection included interviewing personnel,

reviewing records, as well as visiting UDOT maintenance facilities, sites with ongoing construction, and recently constructed detention ponds.

43. Having found violations as result of the 2013 inspection, the United States instituted a judicial enforcement action against UDOT. See *United States of America v. Utah Department of Transportation*, Case No. 2:19-cv-677-TC, United States District Court for the District of Utah. The consent decree in that action was entered on December 3, 2019.
44. Under the consent decree referenced in paragraph 43, above, UDOT agreed to undertake various corrective measures and, according to paragraph 10 of the consent decree, “to fully comply with all requirements of the Clean Water Act, including terms and conditions of applicable UDPES permits.”
45. Paragraph 93 of the consent decree referenced in paragraph 43, above, provides, “This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions.”

#### **2023 Audit**

46. In March of 2023, EPA and UDEQ conducted a joint audit of UDOT’s MS4 (2023 audit). The 2023 audit included a remote interview process on March 1 and 2, 2023, field site visits to all four UDOT regions on March 6-9, 2023, and a virtual closing conference on March 16, 2023.
47. The 2023 audit focused on UDOT’s overall program management and its implementation of the following four MCMs:
  - Illicit Discharge Detection and Elimination;
  - Construction Site Storm Water Runoff Control;
  - Long-Term Storm Water Management in New Development and Redevelopment (Post-Construction Storm Water Management); and
  - Pollution Prevention and Good Housekeeping for UDOT Facilities and Operations.

#### **Alleged Violations**

##### **Count 1:**

## Illicit Discharge and Elimination

48. Part 4.2.3 of the Permit requires UDOT to implement and enforce an Illicit Discharge and Elimination (IDDE) program “to systematically find and eliminate sources of non-storm water discharges to the MS4 and to implement defined procedures to prevent illicit connections and discharges according to the minimum performance measures listed [in Part 4.2.3 of the Permit].”
49. Among the minimum performance measures listed in Part 4.2.3 of the Permit are requirements to:
- (a) “[e]ffectively prohibit, through regulatory mechanism, non-storm water discharges to the MS4, including spills . . . into the storm water system [and to] require removal of such discharges . . . .” (Part 4.2.3.2 of the Permit);
  - (b) “[i]mplement . . . a written plan to detect and address non-storm water discharges to the MS4, including spills . . . .” (Part 4.2.3.3 of the Permit);
  - (c) “initiat[e] an investigation immediately upon being alerted of a potential illicit discharge” (Part 4.2.3.5 of the Permit); and
  - (d) “[i]mplement standard operating procedures (SOPs) or similar type of documents for ceasing the illicit discharge, including . . . technical assistance for removing the source of the discharge or otherwise eliminating the discharge; follow-up inspections; and escalating enforcement and legal actions if the discharge is not eliminated. . . .” (Part 4.2.3.6 of the Permit).
50. Part 5.3 of UDOT’s IDDE Plan states, in part, “UDOT’s MS4 Permit UTS000003 requires that UDOT have a regulatory mechanism to prohibit illicit discharges into UDOT's right-of-way or on UDOT Property and to require removal of any such discharge. UDOT must require cessation of any discharges as soon as they are detected (UTS000003, Part 4.2.3.6).”
51. The 2023 audit found that UDOT had not implemented and enforced an IDDE plan consistent with Permit requirements. For example:
- (a) For a November 15, 2021, spill of approximately 3,000 gallons of green hub oil onto a dirt median with a connection to an MS4 conveyance discharging into Meadow Creek, UDOT did not deploy temporary best management practices,

- or BMPs, to prevent oil from migrating into surface waters until 21 days after the spill, UDOT did not contact the responsible party until 203 days after the spill to inform it UDOT would require cleanup, and, as of the 2023 audit, no remediation had occurred beyond the installation of temporary BMPs. Moreover, during the 2023 audit, EPA inspectors observed that some temporary BMPs needed repair and others were no longer in place, and that UDOT's records of the spill were inaccurate.
- (b) For a December 2, 2022, spill of approximately 100 gallons of diesel spill onto a median along Interstate 84, as of the 2023 audit, no remediation had occurred. In response to the 2023 audit, UDOT subsequently provided documentation demonstrating this spill had been cleaned up by August 24, 2023, 265 days after the date of the incident.
  - (c) On March 8, 2023, EPA inspectors observed a sheen flowing into a storm sewer drain downgradient of UDOT's Murray Maintenance Station.
  - (d) For 11 other spills, as part of the 2023 audit, EPA inspectors found that UDOT's records included no information as to the status of remediation at the time of the audit. In response to the 2023 audit, UDOT subsequently provided information indicating that these spills had been left unresolved for a range of one to six months.

52. UDOT's failures to implement and enforce an IDDE program constitute violations of Part 4.2.3 of the Permit.

**Count 2:**  
**Construction Site Runoff**

53. Part 4.2.4 of the Permit requires UDOT to implement and enforce "a Statewide program to reduce pollutants in any storm water runoff to the MS4 from construction sites with a land disturbance of greater than or equal to one acre."
54. The program referenced in paragraph 53, above, is required to include, among other things:
- (a) contract provisions or other regulatory mechanisms to require erosion and sediment control practices at construction sites, with regulatory mechanisms

- to include “sanctions to ensure compliance” and minimum performance measures such as requiring construction contractors to prepare a Storm Water Pollution Prevention Plan (SWPPP) and to obtain coverage under state storm water permits for discharges from construction activities (Parts 4.2.4.1, 4.2.4.1.1, and 4.2.4.1.2 of the Permit);
- (b) “a written enforcement strategy,” to include, among other things, “appropriate, escalating enforcement procedures and actions” and “[d]ocumentation and tracking of all enforcement actions” (Parts 4.2.4.2, 4.2.4.2.1, and 4.2.4.2.2 of the Permit);
  - (c) regular construction site inspections by UDOT personnel, including standard operating procedures for documenting inspections, a prohibition against a person responsible for preparing a SWPPP for a construction project performing inspections on behalf of UDOT, a requirement to use an inspection form posted on UDEQ’s website, a minimum monthly frequency for inspecting sites of at least one acre of land disturbance, and documentation of follow-up actions, such as enforcement, to ensure compliance (Part 4.2.4.4 of the Permit); and
  - (d) ensuring that staff, including construction site inspectors, are trained annually to ensure they can conduct activities for which they are responsible (Part 4.2.4.5 of the Permit).

55. The 2023 audit found that UDOT had not implemented a construction site storm water runoff control program consistent with Permit requirements, including UDOT’s SWMP. For example:

- (a) at a construction site known as the West Davis Corridor project, erosion and sediment controls were being bypassed, causing discharges of sediment to Farmington Creek, Shepard Creek, Baer Creek, and Holmes Creek, and, according to a UDOT representative, the contractor had intentionally excavated a channel that was discharging sediment to Baer Creek;
- (b) UDOT personnel were not documenting and tracking all construction site program enforcement or escalating enforcement for repeat noncompliance;

- (c) UDOT personnel were not documenting necessary corrective actions on inspection forms;
  - (d) UDOT personnel were not using the approved UDEQ inspection form, were allowing construction contractors to lead inspections and fill in inspection checklists on behalf of UDOT, were signing inspection forms that had been filled in by contractors and that were missing required information, and were failing to conduct inspections at all stages of construction, including the end of construction;
  - (e) UDOT was failing to take enforcement actions for violations in a timely manner (including not having issued any written warning letter regarding a July 29, 2021 discharge from a construction site into Mill Creek);
  - (f) UDOT was failing to ensure that construction site contractors were obtaining permit coverage; and
  - (g) UDOT construction storm water inspectors demonstrated a lack of knowledge of basic program elements, such as construction storm water BMPs, construction general permit requirements, proper inspection procedures, or site conditions.
56. UDOT's failures to implement and enforce a program to control construction site runoff constitute violations of Part 4.2.4 of the Permit.

**Count 3:**  
**Post-Construction Runoff**

57. Part 4.2.5 of the Permit requires UDOT to implement and enforce a program to “address post-construction storm water runoff to the MS4 from private and public new development and redevelopment construction projects meeting the thresholds [in Part 4.2.5 of the Permit].”
58. The program referenced in paragraph 57, above, is required to include the following minimum performance measures, among others:
- (a) contract provisions or another regulatory mechanism requiring long-term postconstruction storm water controls at new development and redevelopment sites (Part 4.2.5.2 of the Permit);

- (b) procedures for ensuring long-term storm water controls are being adequately maintained (Part 4.2.5.2.3 of the Permit);
  - (c) procedures for site inspection and enforcement of post-construction storm water control measures (Part 4.2.5.2.3 of the Permit); and
  - (d) maintaining an inventory of all post-construction structural storm water controls measures (Part 4.2.5.4 of the Permit)
59. The 2023 audit found that UDOT was not implementing and enforcing a program to address post-construction storm water runoff to the MS4 from private and public new development and redevelopment projects. For example:
- (a) UDOT was unable to provide copies of contracts or other mechanisms for assuring maintenance of long-term BMPs until nine months after the 2023 audit;
  - (b) UDOT was not properly maintaining or adhering to a regular maintenance schedule for long-term BMPs on sites under its control;
  - (c) UDOT did not have a complete inventory of long-term BMPs it owned or operated, or an inventory of long-term BMPs that had been transferred to other entities; and
  - (d) UDOT was not conducting inspections of long-term BMPs that had been transferred to other owners and did not have procedures specific to conducting inspections at long-term BMPs.
60. UDOT's failures to implement and enforce a program to control post-construction runoff constitute violations of Part 4.2.5 of the Permit.

**Count 4:**  
**Pollution Prevention and Good Housekeeping**

61. Part 4.2.6 of the Permit requires UDOT to “implement a program for Permittee-owned or operated facilities, operations, and structural storm water controls that includes standard operating procedures (SOPs) or similar types of documents, and a training component [with] the ultimate goal of preventing or reducing runoff or pollutants to the MS4 and waters of the state . . . .” All components of this program must be included in UDOT's SWMP. Among the requirements of this program are:

- (a) preparing a SWPPP for each facility listed in its storm water management plan as “high priority” and to include a site map in each facility’s SWPPP (Part 4.2.6.5 of the Permit);
- (b) conducting inspections at “high priority” facilities, including monthly visual inspections, semi-annual comprehensive inspections, and annual observations of storm water discharges (Part 4.2.6.6 of the Permit);
- (c) developing and implementing procedures to protect water quality at each facility owned or operated by UDOT and for UDOT’s activities (Part 4.2.6.7 of the Permit);
- (d) developing and implementing procedures and schedules for sweeping roads and parking lots owned by UDOT and for maintaining the storm drain system, including regular inspections, cleaning, and repairs of catch basins, storm water conveyance pipes, ditches, and irrigation canals, culverts, structural storm water controls, and structural runoff treatment and/or flow control facilities, with the greatest frequency for highest priority areas (Part 4.2.6.7.2 of the Permit);
- (e) ensuring vehicle wash water is not discharged to the MS4 or waters of the state (Part 4.2.6.7.4 of the Permit);
- (f) developing a spill prevention plan in conjunction with the local fire department (Part 4.2.6.7.5 of the Permit); and
- (g) ensuring that maintenance station inspectors receive annual training addressing, among other things, requirements of the Permit, inspection procedures, ways to prevent or minimize impacts to water quality, and SWPPPs for facilities owned or operated by UDOT (Part 4.2.6.9 of the Permit).

62. The 2023 audit found that UDOT was not implementing a program for preventing or reducing storm water runoff from Permittee owned or operated facilities. For example:

- (a) UDOT was not implementing pollution prevention and good housekeeping measures at maintenance stations;

- (b) the maps in UDOT's facility SWPPPs were incomplete or inaccurate;
- (c) UDOT was not conducting all required monthly, semi-annual, and annual inspections of its facilities and their outfalls;
- (d) UDOT was not implementing site-specific procedures to protect water quality at its facilities;
- (e) UDOT did not have a regular schedule for sweeping roads and parking lots or any procedures or cleaning frequencies for catch basins, storm water conveyance pipes, ditches, and irrigation canals, culverts, or structural storm water controls;
- (f) UDOT was allowing vehicle wash water to be discharged to the MS4;
- (g) UDOT had not developed spill prevention plans in conjunction with local fire departments; and
- (h) UDOT maintenance station inspectors demonstrated unawareness of proper inspection procedures and storm water or pollution prevention requirements, indicating inadequate training.

63. UDOT's failures to implement a program for Permittee-owned and operated facilities, operations, and structural storm water controls constitute violations of Part 4.2.6 of the Permit.

**Count 5:**  
**Securing Necessary Resources for Permit Compliance**

64. Part 4.1.7.2 of the Permit requires UDOT to secure the resources necessary to meet all requirements of the Permit.
65. The extent of the findings and deficiencies from the 2023 audit indicates that UDOT has not secured the resources necessary to meet all requirements of the Permit, in violation of Part 4.1.7.2 of the Permit.

**ORDER**

Based on the foregoing findings and pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), it is hereby ORDERED, and UDOT agrees, as follows.

66. Permit Compliance. UDOT shall comply with all requirements of the Permit and any renewal(s) of the Permit.

67. Adequate Resources. UDOT shall ensure it has adequate resources, including appropriate staffing and funding levels, for each operating year in an amount sufficient to implement all measures necessary to comply with the Permit and this Consent Order. Within one year after the Effective Date (see paragraph 74, below), and annually thereafter (see paragraph 76, below) UDOT shall conduct a review of its SWMP resources and evaluate whether its financial, personnel, equipment, and other resources are adequate for complying with the Permit. Within 30 days of completing the review, and annually thereafter, until the EPA notifies UDOT that resource analyses are no longer necessary, UDOT shall submit to the EPA and UDEQ a written summary of:

- (a) UDOT's review of its SWMP resources;
- (b) any additional resources UDOT needs to implement the SWMP and comply with its Permit, including a timeframe for UDOT to obtain these resources; and
- (c) a plan to ensure that UDOT will provide adequate financial, personnel, equipment, and other resources to implement the SWMP and to comply with the Permit.

EPA and UDEQ will provide UDOT written feedback on the annual written summary after the Third-Party Compliance Review Report is received.

68. Training. UDOT shall continue to conduct annual training to ensure all its relevant employees and contractors are knowledgeable concerning its Illicit Discharge Detection and Elimination, Construction Site Storm Water Runoff, Post-Construction Storm Water Management, and Pollution Prevention and Good Housekeeping programs. UDOT shall incorporate a test for each individual immediately following completion of annual training and require a test score of 80% or higher to ensure each participant demonstrates a thorough knowledge of these programs. Within 120 days after the Effective Date, UDOT shall provide the EPA and UDEQ copies of training materials and tests for review and approval. Annually thereafter, UDOT shall provide the EPA and UDEQ test results for all relevant

staff. If any changes are made to training materials and tests, UDOT must submit these materials to EPA and UDEQ for review and approval.

69. Third-Party Review. UDOT shall utilize one or more qualified independent, third-party consultant(s) (Reviewer(s)) to conduct an annual third-party review of UDOT's implementation of its Construction Site Storm Water Runoff Control program, its Post-Construction Storm Water Management program, and its Pollution Prevention and Good Housekeeping program, for the purpose of ensuring compliance with the Permit and this Consent Order.

(a) Third-Party Reviewer Selection.

- (i) UDOT shall require that each Reviewer act independently and objectively when performing all activities related to assessing UDOT's compliance with the Permit and the terms of this Consent Order.
- (ii) UDOT shall provide each Reviewer with full access to necessary personnel, documents, and sites needed for each Reviewer's verification.
- (iii) No Reviewer shall be employed by or otherwise contracted to prepare or implement a SWPPP, or to maintain any BMP for any maintenance station, construction site, or post-construction site referenced in paragraph 69(c), below, for UDOT during the duration of the third-party reviews.
- (iv) Within 120 days after the Effective Date, UDOT shall submit to the EPA and UDEQ a written certification that each Reviewer has no conflicts of interest and has expertise in municipal storm water management. The EPA or UDEQ may, within 30 days of receiving this certification, disapprove of the selection of any Reviewer. Within 90 days of being notified of any such disapproval, UDOT shall select a different Reviewer and provide the EPA and UDEQ with a certification that the relevant Reviewer has no conflicts of interest and has expertise in municipal storm water management.

(b) Timing and Frequency of Reviews.

- (i) The first annual review shall cover the year following the Effective Date.
- (ii) Each review thereafter shall cover a twelve-month period, beginning with the first anniversary of the Effective Date.

(c) Third-Party Review Procedures.

- (i) Prior to the start of each annual third-party review, UDOT shall provide each Reviewer with a complete list of active construction sites, a complete inventory of all post-construction BMPs, and a complete list of all maintenance stations. The Reviewer(s) shall then randomly select 25% of all active construction sites greater than or equal to one acre, 10% of all maintenance stations, and 10% of all post-construction sites spread evenly across all four UDOT regions for their review. Each annual review shall include a new selection of facilities different from the previous year's review.
- (ii) For UDOT's Construction Site Storm Water Runoff Program, the Review shall, at a minimum, verify the following in the field:
  - 1. whether UDOT inspectors are using the correct checklist; and
  - 2. whether UDOT inspectors are thoroughly inspecting each construction site and are thoroughly filling out each checklist based on inspecting all areas of the site, including but not limited to observing and identifying all site violations.
- (iii) For UDOT's Post-Construction Storm Water Management Program, each annual review shall, at a minimum, verify the following in the field:
  - 1. for all post-construction BMPs (owned and operated by UDOT as well as privately owned) UDOT has inspected and has identified as needing maintenance, whether UDOT has completed all necessary maintenance; and
  - 2. for post-construction BMPs (owned and operated by UDOT as well as privately owned) UDOT has inspected but not indicated

as needing maintenance, whether UDOT correctly documented no need for maintenance.

(iv) For UDOT's Pollution Prevention and Good Housekeeping program, the Review shall, at a minimum, verify the following in the field:

1. whether UDOT's maintenance station SWPPP maps accurately reflect the current conditions of each site;
2. whether UDOT is implementing pollution prevention and good housekeeping practices at maintenance stations;
3. whether UDOT inspectors are conducting thorough inspections of maintenance stations and properly identifying deficiencies; and
4. whether UDOT is taking appropriate corrective actions in response to any deficiencies identified during inspections.

(d) Third-Party Compliance Review Report. UDOT will ensure that the Reviewers prepare and submit annual written reports ("Compliance Review Report") to the EPA, UDEQ, and UDOT. Each report shall be due no later than three months after the end of the twelve-month period covered by the report. The Compliance Review Report shall include a summary of the Reviewers' activities and detailed documentation of any noncompliance observed in UDOT's implementation of its Construction Site Storm Water Runoff Program, Post-Construction Storm Water Management Program, and Pollution Prevention and Good Housekeeping program. The Compliance Review Report shall include the following, at a minimum: the site involved; a detailed description of the noncompliance; the date(s) the noncompliance occurred; the actual or suspected cause(s); any documentation supporting the finding, such as photos; recommendations to prevent reoccurrence of the noncompliance; and any concerns that the noncompliance may be part of a pattern of related noncompliance indicating a systematic issue.

(e) Implementation of Corrective Actions After Compliance Review Report.

Within 60 days after receipt of each annual Compliance Review Report from the Reviewers, UDOT must correct all noncompliance. Within 90 days after

receipt of each annual Compliance Review Report from the Reviewers, UDOT must provide the EPA and UDEQ the following information in writing regarding each incidence of noncompliance identified by each Reviewer: how the noncompliance was corrected, when it was corrected, the staff position(s) responsible for correcting the noncompliance, and whether broader corrective action was necessary to prevent reoccurrence of the noncompliance.

70. Illicit Discharge Detection and Elimination.

- (a) Within 60 days after the Effective Date, UDOT shall provide the EPA and UDEQ with the following for review and approval:
  - (i) a revised IDDE Plan that includes specific procedures and timeframes for immediate investigation and cleanup of illicit discharges and/or spills; and
  - (ii) a revised enforcement response procedure that includes specific timeframes for escalating enforcement in the event of an illicit discharge or spill.
- (b) UDOT shall ensure the revised IDDE Plan is properly implemented.
  - (i) UDOT shall provide the EPA and UDEQ with a complete written list of all illicit discharges or spills, including the date the spill or discharge began, the location of the spill or discharge, the date UDOT learned of the spill or discharge, the date UDOT initiated an investigation of the spill or discharge, the date UDOT contained the spill or discharge, the date and a description of any enforcement actions taken by UDOT, and the final clean-up date. This information above must be maintained in a database in accordance with Part 4.2.3.10 of the Permit. UDOT must either grant EPA and UDEQ access to the database, or provide a copy in addition to the complete list required in this paragraph.
  - (ii) The first list shall be due no later than 180 days after the Effective Date and shall cover the preceding time period from the Effective Date. Subsequent lists are due annually thereafter.

71. Construction Site Storm Water Runoff Control.

- (a) UDOT shall ensure the owners or operators of all active construction sites disturbing one acre or greater, and sites part of a larger common plan of development that have plans to disturb one acre or greater, obtain coverage under the current UPDES Stormwater General Permit for Construction Activities for the duration of each construction project.
  - (i) UDOT shall submit to the EPA and UDEQ information on all active construction sites both less than one acre and greater than or equal to one acre. This information shall include a detailed spreadsheet containing information on the name of each construction site, its permit number (if applicable), which UDOT region it is in, its location, the disturbance acreage (current and total expected across all phases of construction), and the start date of construction activity. The first list shall be due no later than 180 days after the Effective Date and shall cover the preceding time period from the Effective Date. Subsequent lists are due annually thereafter.
  - (ii) Within 30 days after the Effective Date, UDOT shall submit to the EPA and UDEQ a narrative describing how UDOT will address construction sites less than one acre that have the potential to discharge pollutants.
- (b) UDOT shall provide the EPA and UDEQ with a complete list of construction site violations, including, for each violation, the date of violation, the construction site at which it occurred, the date of the UDOT inspection of the site, the date UDOT initiated enforcement (and, if enforcement has not occurred, why not), how enforcement will be escalated in response to any repeat or ongoing noncompliance, and, if the enforcement action has been resolved, details on how and when this occurred. The first list shall be due no later than 180 days after the Effective Date and shall cover the preceding

time period from the Effective Date. Subsequent lists are due annually thereafter.

72. Long-Term Storm Water Management in New Development and Redevelopment (Post-Construction Storm Water Management)

- (a) UDOT shall maintain a complete inventory of long-term BMPs it owns and operates. Within 45 days after the Effective Date, UDOT shall provide a copy of the current inventory to the EPA and UDEQ. Thereafter, UDOT shall submit an updated inventory annually thereafter to the EPA and UDEQ.
- (b) UDOT shall continue to inspect each long-term BMP it owns and operates at least every other year. UDOT shall utilize a tracking system for these inspections and shall submit to the EPA and UDEQ following each round of inspections detailed information identifying, for each long-term BMP UDOT has inspected, a description of the BMP and location (latitude and longitude), the date UDOT inspected it, and any maintenance issues found during the inspection. Within 30 days after the Effective Date, UDOT shall also provide a written procedure to the EPA and UDEQ for review and approval describing:
  - (i) how inspection findings are communicated to maintenance personnel;
  - (ii) how maintenance work activities are generated and tracked; and
  - (iii) timeframes for completion of maintenance tasks.
- (c) UDOT shall ensure that all long-term BMPs it owns and operates are properly maintained. Within 60 days after the Effective Date, and annually thereafter, UDOT shall submit to the EPA and UDEQ a list of maintenance needs for all long-term BMPs and the projected and actual maintenance completion dates. If maintenance issues are found, they must be completed within the timeframes provided in the written procedures referenced in the above paragraph.
- (d) UDOT shall ensure that all maintenance agreements for long-term BMPs that have been transferred to other owners have been obtained or established. Within 90 days after the Effective Date, UDOT shall provide a copy of the

- current inventory of maintenance agreements, along with a description of any new maintenance agreements added to the inventory, to the EPA and UDEQ.
- (e) UDOT shall ensure that inspections of long-term BMPs that have been transferred to other owners are conducted at least once every five years to verify that adequate maintenance is being performed. UDOT shall continue to inspect all long-term BMPs that have been transferred to other owners. UDOT shall utilize a tracking system for these inspections and shall submit to the EPA and UDEQ following each round of inspections detailed information identifying each long-term BMP and its location and owner, the date the long-term BMP was inspected by UDOT, and any findings pertaining to inadequate maintenance of the long-term BMP and results of those findings (violations, enforcement, reinspection, etc.). Within 30 days after the Effective Date, UDOT shall also provide a written procedure to the EPA and UDEQ describing:
- (i) how UDOT will transmit the information from routine inspections to the owners; and
  - (ii) how UDOT will verify the maintenance needs transmitted to the owners are accomplished.

73. Pollution Prevention and Good Housekeeping for UDOT Facilities and Operations.

- (a) UDOT shall implement pollution prevention and good housekeeping measures at all of its maintenance stations. UDOT must correct each deficiency or provide the EPA and UDEQ a detailed schedule for correction of each deficiency found during maintenance station inspections within 30 days after the date the deficiency was first observed, but in any event UDOT must correct each deficiency no later than its deadline for correcting any noncompliance under paragraph 69, above. By April 1<sup>st</sup> of each year, UDOT shall submit to the EPA and UDEQ a tracking spreadsheet of issues found during maintenance station inspections and the dates they were found, a description of corrective actions taken to address the issues, and the dates of

the corrective actions. This spreadsheet shall cover the preceding twelve-month period from March 1<sup>st</sup> through February 28<sup>th</sup>.

- (b) UDOT shall continue to develop and update maintenance station SWPPP site maps to include correct and site-specific information. Within 30 days after the Effective Date, UDOT shall submit to the EPA and UDEQ all revised maintenance station SWPPP site maps.
- (c) UDOT shall ensure all required monthly, semi-annual, and annual inspections of maintenance stations are completed. UDOT shall submit to the EPA and UDEQ all maintenance station inspection completion records by April 1<sup>st</sup> of each year.
- (d) UDOT shall implement a regular schedule for road and parking lot sweeping. UDOT shall revise the sweeping schedules to include specified periods for regular sweeping in addition to an “as-needed” basis as described in the current procedures. Within 60 days after the Effective Date, UDOT shall submit to the EPA and UDEQ a revised road and parking lot sweeping schedule for review and approval. The sweeping schedule shall be fully implemented within 60 days after approval by EPA or UDEQ.
- (e) UDOT shall develop spill prevention plans in coordination with local fire departments. Within 90 days after the Effective Date, UDOT shall submit to the EPA and UDEQ a tracking spreadsheet including information on which fire departments have been contacted, the date UDOT contacted each fire department, and the date each spill prevention plan was finalized with which department. UDOT shall also include the spill prevention plans in addition to the tracking spreadsheet.

74. Effective Date. This Consent Order shall be effective on the date it is filed with the Office of the Regional Hearing Clerk for EPA Region 8 (see Certificate of Service, below).

75. Termination. This Consent Order shall remain open for a minimum of three years from the Effective Date. UDOT may then request to terminate this Consent Order, and the EPA and UDEQ will make the final determination for termination of this

Consent Order. If the Consent Order is not terminated after three years, the third-party reviews shall continue as well as annual submittals as required by paragraphs 67-73, above.

76. Annual Submissions. Whenever this Consent Order requires UDOT to make any submission within a specified number of days after the Effective Date and “annually thereafter,” the first subsequent annual submission is due no later than one year following the initial due date and shall cover the twelve-month period ending on the last day of the most recent month ending at least 10 days prior to the one-year anniversary date. For example, if the Effective Date is August 15, 2024, and a submission is due within 60 days after the Effective Date, (a) the initial submission is due by October 14, 2024, and (b) the first subsequent annual submission is due by October 14, 2025, and covers the twelve-month period from October 1, 2024 through September 30, 2025.
77. Time Periods. The time periods in this Consent Order are calendar days unless otherwise specified. If any due date specified in this Consent Order falls on a weekend or federal holiday, the relevant deadline shall be the first business day following that date.
78. Notices to the EPA. All notices, reports, and submittals required by this Consent Order to be given to the EPA shall be sent via email to the following recipients. If email is not a feasible manner of providing any notification, UDOT shall contact either or both of the following individuals by telephone to make alternative arrangements. All notices, reports, and submittals by the Consent Order shall include the following certification statement, signed and dated by either a principal executive officer or duly authorized representative of UDOT: I hereby 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 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 or imprisonment for knowing violations.

Stephanie Meyers  
[meyers.stephanie@epa.gov](mailto:meyers.stephanie@epa.gov)  
(303) 312-6938

Brit Rustad  
[rustad.brit@epa.gov](mailto:rustad.brit@epa.gov)  
(303) 312-6885

79. Notices to UDEQ. All notices and reports required by this Consent Order to be given to UDEQ shall be sent via email to the following recipients. If email is not a feasible manner of providing any notification, UDOT shall contact either or both of the following individuals by telephone to make alternative arrangements.

Jeanne Riley  
[jriley@utah.gov](mailto:jriley@utah.gov)  
(801) 536-4369

Kelsee York  
[kcyork@utah.gov](mailto:kcyork@utah.gov)  
(385) 260-2760

80. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject UDOT to penalties as provided under Section 309 of the Act, 33 U.S.C. § 1319.
81. Not a Permit. This Consent Order is not a permit and does not constitute a waiver or modification of the terms and conditions of any permit.
82. Other Enforcement. This Consent Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$66,712 (as adjusted for inflation by 40 C.F.R. part 19) per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.
83. Access and Compliance Monitoring. This Consent Order shall in no way limit or otherwise affect EPA's or UDEQ's authority, or the authority of any other governmental agency, to conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

- 84. Other Laws. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve UDOT of its obligation to comply with any applicable federal, state, or local law or regulation.
- 85. Consent to Issuance. In signing this Consent Order, UDOT neither admits nor denies the Findings in paragraphs 24 through 65, above. Without any admission of liability, UDOT consents to the issuance of this Consent Order and agrees to abide by all of its conditions. UDOT waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that UDOT may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. UDOT further agrees not to challenge the jurisdiction of the EPA or the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.
- 86. Authority to Bind UDOT. The undersigned representative of UDOT certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind UDOT to the terms and conditions of this Consent Order.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**

Date: 10/08/2024

By: \_\_\_\_\_

Colleen Rathbone, Manager  
Water Enforcement Branch  
Enforcement and Compliance Assurance Division  
Region 8, U.S. EPA  
1595 Wynkoop Street  
Denver, Colorado 80202  
(303) 312-6521

**UTAH DEPARTMENT OF TRANSPORTATION  
Respondent**

Date: 10/07/2024

By:  \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I certify that the foregoing Administrative Order for Compliance on Consent was transmitted by email to [R8\\_Hearing\\_Clerk@epa.gov](mailto:R8_Hearing_Clerk@epa.gov) and as indicated below to the following: rhondathiele@utah.gov, djosie@utah.gov

Date: \_\_\_\_\_ By: \_\_\_\_\_