

JOHN W. HUBER (#7226)
United States Attorney
JARED C. BENNETT (#9097)
Assistant United States Attorney
185 South State Street, Suite 300
Salt Lake City, Utah 84111
Phone: (801) 325-3259
Email: jared.bennett@usdoj.gov

SANDRA K. ALLEN (#5436)
Assistant Attorney General
Utah Office of Attorney General, Environment
195 North 1950 West
P.O. Box 140873
Salt Lake City, UT 84114
Phone: (801) 536-4122
Email: skallen@utah.gov

MARK C. ELMER
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Phone: (303) 844-1352
Email: mark.elmer@usdoj.gov

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
Central Division

UNITED STATES OF AMERICA and
THE STATE OF UTAH,

Plaintiffs,

v.

SALT LAKE COUNTY, UTAH,

Defendant.

Case No. 2:16CV87BCW

COMPLAINT

Honorable Brooke C. Wells

The United States of America, by authority of the Attorney General and acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”),

and the State of Utah, acting at the request and on behalf of the Utah Department of Environmental Quality (“UDEQ”) (collectively “Plaintiffs”), allege:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought against Salt Lake County, Utah (the “County”) pursuant to section 309(b) and (d) of the Clean Water Act (the “Act”), [33 U.S.C. § 1319\(b\)](#) and (d), and [Utah Code Ann. § 19-5-115](#).

2. Plaintiffs allege that the County has violated the Clean Water Act and [Utah Code Ann. §§ 19-5-107](#) and 108 by failing to comply with the terms and conditions of the County’s National Pollutant Discharge Elimination System (“NPDES”) permit issued by the State of Utah under Section 402(b) of the Act, [33 U.S.C. § 1342\(b\)](#), for discharges of storm water from the County’s municipal separate storm sewer system (“MS4”).

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to section 309(b) of the Act, [33 U.S.C. § 1319\(b\)](#), and [28 U.S.C. §§ 1331](#) (Federal Question), 1345 (United States as Plaintiff), and 1355(a) (Fine, Penalty, or Forfeiture).

4. Venue lies in the Central Division of this district pursuant to [33 U.S.C. § 1319\(b\)](#) and [28 U.S.C. §§ 125\(2\)](#), 1391, and 1395 because the County and its MS4 are located in this District, the claims in this lawsuit arose in this District, and the acts for which Plaintiffs seek civil penalties occurred in this District.

5. Notice of the commencement of this action has been provided to the State in accordance with [33 U.S.C. § 1319\(b\)](#).

6. The State has joined this action as a plaintiff, thereby satisfying the requirements of 33 U.S.C. § 1319(e).

DEFENDANT

7. The County is a political subdivision of the State of Utah and a “municipality” as defined in 33 U.S.C. § 1362(4).

8. The County is a “person” within the meaning of 33 U.S.C. § 1362(5).

9. The County owns and operates a municipal separate storm sewer system, commonly known as an MS4.

STATUTORY AND REGULATORY BACKGROUND

NPDES Program

10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters, except those discharges that are in compliance with other specifically-enumerated sections of the Act, including section 402, 33 U.S.C. § 1342.

11. Under Section 402 of the Act, 33 U.S.C. § 1342(a), EPA may issue NPDES permits that authorize discharges of pollutants into waters of the United States, subject to conditions and limitations set forth in such permits.

12. A state may establish its own NPDES program and, after receiving EPA approval, issue NPDES permits. 33 U.S.C. § 1342(b). The State of Utah has been authorized to administer the NPDES program in Utah since July 22, 1987. 52 Fed. Reg. 27,578, 27,579 (July 22, 1987).

Storm Water Discharge Program

13. Section 402(p)(4)(B) of the Act, [33 U.S.C. § 1342\(p\)\(4\)\(B\)](#), establishes a schedule for issuance of NPDES permits for storm water discharges from municipal separate storm sewer systems serving a population of 100,000 or more but less than 250,000.

14. The Act provides that all permits for discharges from municipal storm sewers must 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 EPA or the State determines appropriate for control of such pollutants. [33 U.S.C. § 1342\(p\)\(3\)\(B\)\(iii\)](#).

15. Regulations governing the storm water program are set forth in [40 C.F.R. § 122.26](#).

16. The regulations define “municipal separate storm sewer” as “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) . . . [o]wned or operated by a . . . county . . . [and] [d]esigned or used for collecting or conveying storm water. . . .” [40 C.F.R. § 122.26\(b\)\(8\)](#).

17. The regulations require operators of regulated MS4s to obtain an NPDES permit authorizing discharges from the MS4. [40 C.F.R. § 122.26\(a\)\(3\)](#).

18. The regulations require that applicants for NPDES permits for storm water discharges from MS4s propose a storm water management program (“SWMP”) designed “to reduce the discharge of pollutants to the maximum extent practicable.” [40 C.F.R. § 122.26\(d\)\(2\)\(iv\)](#).

NPDES / Storm Water Discharge Enforcement

19. EPA may commence a civil action for appropriate relief whenever EPA finds that a person is in violation of a NPDES permit. [33 U.S.C. § 1319\(b\)](#).

20. Any person who violates the Act by, among other things, violating any permit condition or limitation in a NPDES permit is subject to a civil penalty not to exceed \$25,000 per day for each violation. [33 U.S.C. § 1319\(d\)](#). As provided in 40 C.F.R. part 19, the civil penalty amount has been increased to a maximum of \$27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004; \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009. [74 Fed. Reg. 626 \(January 7, 2009\)](#).

GENERAL ALLEGATIONS

The County's UPDES Permit

21. The County has a NPDES Permit (the "County's UPDES Permit"),¹ numbered UTS-000001.

22. The County's UPDES Permit was issued by the Utah Department of Environmental Quality, which has primary responsibility for administering the NPDES program in Utah pursuant to section 402 of the Act. [33 U.S.C. § 1342](#); [52 Fed. Reg. 27,578, 27,579 \(July 22, 1987\)](#).

23. The County's UPDES Permit was modified effective January 27, 2009. Although it was originally due to expire on May 31, 2011, it was administratively extended until a replacement permit was issued effective September 5, 2013. For simplicity's sake, citations to the County's UPDES Permit are to the version in effect from January 27, 2009 through September 4, 2013. While the permit has since been reissued, there were no substantive changes to the provisions of the permit at issue in this case.

¹ The County's NPDES Permit is referred to as an UPDES permit, or Utah Pollutant Discharge Elimination System permit, because it was issued by the Utah Department of Environmental Quality.

24. The County's UPDES Permit allows the County to discharge pollutants from the MS4 to the Jordan River, subject to certain terms and conditions. The Jordan River is a tributary to the Great Salt Lake.

25. The Jordan River and the Great Salt Lake are both "navigable waters" and "waters of the United States" under [33 U.S.C. § 1362\(7\)](#) and [40 C.F.R. § 122.2](#).

Storm Water Management Program (SWMP)

26. The County's UPDES Permit requires it to develop and implement a storm water management program (SWMP).² (County's UPDES Permit, Part II)

27. The SWMP must include controls to reduce the discharge of pollutants from the MS4 to the "maximum extent practicable." (County's UPDES Permit, Part II.A).

28. The SWMP must address six minimum "control measures:" (1) Public Education and Outreach, (2) Public Involvement/Participation, (3) Illicit Discharge Detection and Elimination, (4) Construction Site Storm Water Runoff Control, (5) Post-Construction Storm Water Management, and (6) Pollution Prevention/Good Housekeeping for Municipal Operations. (County's UPDES Permit, Part II.F).

29. The County's UPDES Permit requires it to develop "measurable goals" for each control measure. These measurable goals are used to assess the effectiveness of the SWMP. (County's UPDES Permit, Part II.E).

30. The County must review the SWMP at least annually. (County's UPDES Permit, Part II.H).

² SWMP is an acronym for storm water management program and is typically pronounced "swamp."

31. The County is required to provide adequate finances, staff, equipment, and support capabilities to implement the SWMP. (County's UPDES Permit, Part II.D).

Wet Weather Monitoring

32. The County is required to implement a wet weather monitoring program. (County's UPDES Permit, Part III.B).

33. The objectives of the wet weather monitoring program are to (1) assess storm water impacts to in-stream water quality, hydrology, geomorphology, habitat, and biology; (2) provide data to estimate annual cumulative pollutant loadings from the MS4; (3) estimate event mean concentrations and pollutants in discharges from major outfalls; (4) identify and prioritize portions of the MS4 requiring additional controls; and/or (5) identify water quality improvements or degradation. (County's UPDES Permit, Part III.B.1.a-e).

34. In connection with the wet weather monitoring program, the County is required to select at least five monitoring locations. (County's UPDES Permit, Part III.B.2.). These locations are supposed to best characterize the objectives of the wet weather monitoring program and be representative of the area covered by the Permit. (County's UPDES Permit, Part III.B.2).

Industrial and High Risk Facilities

35. The County must also meet specific requirements relating to industrial facilities and facilities that are high risks for runoff ("high risk" facilities), including municipal landfills, municipal incinerators, and hazardous waste treatment facilities. (County's UPDES Permit, Part II.G.). Among other things, the County is required to implement a program to monitor pollutants in runoff from industrial and high risk facilities; identify priorities and procedures for inspections; implement an inspection schedule where all industrial and high risk facilities are inspected at least

once during the life of the UPDES permit; and establish and require implementation of Best Management Practice (“BMP”) standards and control measures for storm water discharges from industrial and high risk facilities. (County’s UPDES Permit, Part II.G).

36. The County’s UPDES Permit requires the County to retain records relating to the implementation of the permit for at least three years. (County’s UPDES Permit, Part III.G).

The County’s Municipal Separate Storm Sewer System (MS4)

37. The County owns and operates a municipal separate storm sewer system (“MS4”) within the meaning of Section 402(p)(2) of the Act, [33 U.S.C. § 1342\(p\)\(2\)](#), and [40 C.F.R. § 122.26\(b\)\(18\)](#).

38. The County’s MS4 is a “medium” municipal separate storm sewer system within the meaning of [40 C.F.R. § 122.26\(b\)\(7\)](#).

39. The County’s MS4 serves a population of more than 100,000.

40. Discharges from the County’s MS4 constitute the “discharge” of “pollutants” from “point sources” to “navigable waters” within the meaning of Sections 502(12), (6), (14), and (7) of the Act, [33 U.S.C. § 1362\(12\)](#), (6), (14), and (7).

FIRST CLAIM FOR RELIEF
(Violations of UPDES Permit Relating to Storm Water Management Program)

41. The allegations of the foregoing paragraphs are incorporated herein by reference.

42. The County is required to develop and implement a storm water management program (SWMP).

43. Since January 2009, the County has failed to develop and implement a SWMP meeting the requirements of Part II.A-H of the UPDES Permit, in violation of Part II of the County’s UPDES Permit.

44. The County is required to provide adequate resources to implement its SWMP.

45. From approximately January 27, 2009 through September 10, 2012, the County failed to provide adequate resources to implement its SWMP, in violation of Part II.D of the County's UPDES Permit.

46. The County is required to review its SWMP on an annual basis.

47. The County failed to review its SWMP from at least January 27, 2010 until September 10, 2012, in violation of Part II.H.1 of the County's UPDES Permit.

48. The County is required to develop and implement measurable goals for each control measure in the SWMP.

49. From approximately January 27, 2009 through September 10, 2012, the County failed to provide measurable goals for each control in the SWMP, in violation of Part II.E of the County's UPDES Permit.

50. Unless enjoined, the County's violations will continue.

51. Pursuant to [33 U.S.C. § 1319\(d\)](#), 40 C.F.R. part 19, and [Utah Code Ann. §§ 19-5-107, 108 and 115](#), the County is liable for civil penalties not to exceed the statutory maximum for each violation.

SECOND CLAIM FOR RELIEF
(Violations of UPDES Permit Relating to Wet Weather Monitoring)

52. The allegations of the foregoing paragraphs are incorporated herein by reference.

53. The County is required to implement a wet weather monitoring program.

54. The County's wet weather monitoring program includes a Sampling Plan for Representative Storm Monitoring. This Sampling Plan requires that representative storm monitoring events be separated by at least 30 days and at least 72 hours from the last measurable storm event

(i.e. 0.1” or more of rainfall). The Sampling Plan also requires sampling for various, specific analytes.

55. On numerous occasions beginning in 2008, the County failed to follow the requirements of the Sampling Plan for Representative Storm Monitoring, in violation of Part III.B of the County’s UPDES Permit.

56. The County is required to operate and maintain at least five wet weather monitoring stations, which are located in places that are representative of the area covered by the UPDES Permit. (County’s UPDES Permit, Part III.B.2).

57. The County has failed to operate and maintain at least five wet weather monitoring locations, in violation of Parts III.B.2 and IV.R of the County’s UPDES Permit.

58. Starting in January 2009 and continuing through at least September 10, 2012, one of the required five monitoring stations was located outside the County and therefore was not representative of the area covered by the UPDES Permit, in violation of Part III.B.2 of the County’s UPDES Permit.

59. Another of the five required monitoring stations was not used for several years due to high sediment build up; a third station was not monitored in 2009 due to culvert construction, in violation of Part III.B.2 of the County’s UPDES Permit.

60. From approximately 2008 through 2011, the County failed to accurately report wet weather data in its annual reports, in violation of Part II.I.3 of the County’s UPDES Permit.

61. Unless enjoined, the County’s violations will continue.

62. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. part 19, and Utah Code Ann. §§ 19-5-107, 108 and 115, the County is liable for civil penalties not to exceed the statutory maximum for each violation.

THIRD CLAIM FOR RELIEF
(Violations of UPDES Permit Relating to Industrial and High Risk Facilities)

63. The allegations of the foregoing paragraphs are incorporated herein by reference.

64. The County is required to implement a program to monitor pollutants in the runoff from certain “industrial” and “high risk” facilities. Part II.G of the County’s UPDES Permit.

65. From approximately January 27, 2009 through December 31, 2013, the County failed to implement a program to monitor pollutants in the runoff from industrial and high risk facilities, in violation of Part II.G of the County’s UPDES Permit.

66. The County is required to establish and require implementation of Best Management Practice (“BMP”) standards and control measures for storm water discharges from industrial and high risk facilities. (Part II.G of the County’s UPDES Permit).

67. From approximately January 27, 2009 through December 31, 2013, the County failed to require BMP standards and control measures for storm water discharges from industrial and high risk facilities, in violation of Part II.G of the County’s UPDES Permit.

68. The County is also required to create a list of industrial and high risk facilities. In 2008, the County’s list of industrial and high risk facilities was incomplete, in violation of Part II.G of the County’s UPDES Permit.

69. The County is required to determine the UPDES industrial storm water permitting obligations for industrial and high risk facilities.

70. From approximately March 6, 2012 through May 2, 2013, the County failed to determine the UPDES industrial storm water permitting obligations for a number of industrial and/or high risk facilities, including Condis Foods, Deseret Pasta Plant, and Ready Made Builders Supply/Ready Made Truss, in violation of Part II.G of the County's UPDES Permit.

71. The County is required to identify priorities and procedures for inspections of industrial and high risk facilities. (County's UPDES Permit, Part II.G).

72. While the Health Department has inspection priorities and procedures and may have inspected some of the industrial and high risk facilities in the County, from approximately January 27, 2009 through May 1, 2013 the County did not have inspection priorities or procedures to inspect industrial and high risk facilities not inspected by the Health Department, in violation of Part II.G of the County's UPDES Permit.

73. The County is required to develop and implement an inspection schedule to inspect all industrial and high risk facilities at least once during the life of the UPDES Permit. (County's UPDES Permit, Part II.G).

74. From approximately January 27, 2009 through December 31, 2013, the County failed to implement an inspection schedule where all industrial and high risk facilities were inspected at least once during the life of the UPDES Permit, in violation of Part II.G of the County's UPDES Permit.

75. Unless enjoined, the County's violations will continue.

76. Pursuant to [33 U.S.C. § 1319\(d\)](#), 40 C.F.R. part 19, and [Utah Code Ann. §§ 19-5-107, 108 and 115](#), the County is liable for civil penalties not to exceed the statutory maximum for each violation.

FOURTH CLAIM FOR RELIEF
(Violations of UPDES Permit Relating to Pollution Prevention)

77. The allegations of the foregoing paragraphs are incorporated herein by reference.

78. The County is required to develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing polluted runoff from municipal operations. (County's UPDES Permit, Part II.F.6).

79. From approximately 2010 through 2011, the County failed to conduct any training on storm water BMPs and preventing and reducing polluted runoff from municipal operations, in violation of Part II.F.6 of the County's UPDES Permit.

80. The County is required to operate and maintain municipal operations to reduce, to the maximum extent practicable, the discharge of pollutants. (County's UPDES Permit, Part II.F.6.b).

81. From approximately March 6, 2012 through December 31, 2012, the storm water structural controls at the Parks and Recreation Equipment Maintenance Facility and the Millcreek Municipal Storage Area were not adequately maintained to address the discharge of pollutants, in violation of Part II.F.6.b of the County's UPDES Permit.

82. In particular, at the Parks and Recreation Equipment Maintenance Facility, one storm water inlet contained trash debris; another was half-full with sediment; and a third was blocked with sediment and had grass growing out of it. The oil-water separator had oil build-up in the main chamber and a sheen discharging from the second chamber into the drain.

83. At the Millcreek Municipal Storage Area, the storm drain inlet was almost completely buried by sediment, branches, logs, and dead foliage.

84. As described in Paragraphs 85-88 below, the County has not maintained its facilities to reduce the discharge of pollutants to the maximum extent practicable, in violation of Part II.F.6.b of the County's UPDES Permit.

85. During the EPA inspection in March 2012, the County was storing outdoors at the Millcreek Municipal Storage Area soils, solid waste, and containerized chips. There was oil staining the ground, and 55-gallon drums stained with and containing oil had only recently been moved inside a shed.

86. At the time of EPA's March 2012 inspection, fuel, oil, anti-freeze, used oil, and solid waste were stored outdoors at the County's Parks and Recreation Equipment Maintenance Facility. There was oil staining on the soil, concrete and a fence.

87. During the EPA inspection in March 2012, the County was storing outdoors at the Parks and Recreation Old Mill Golf Course Maintenance Facility, fuel, fertilizer, batteries, peroxide, used oil, sand, and solid waste. There was oil staining on the pavement.

88. The County stores salt for road de-icing at the Millcreek Municipal Storage Area and the Parks and Recreation Equipment Maintenance Facility. At the Millcreek facility, storm water runoff from an adjacent road flows directly to the salt storage area. At the Parks and Recreation Equipment Maintenance Facility, there were no storm water controls for the salt storage pile.

89. Unless enjoined, the County's violations will continue.

90. Pursuant to [33 U.S.C. § 1319\(d\)](#), 40 C.F.R. part 19, and [Utah Code Ann. §§ 19-5-107, 108 and 115](#), the County is liable for civil penalties not to exceed the statutory maximum for each violation.

FIFTH CLAIM FOR RELIEF
(Violations of UPDES Permit Relating to Illicit Discharges)

91. The allegations of the foregoing paragraphs are incorporated herein by reference.

92. The County is required to implement a program to detect and eliminate illicit discharges to the MS4. (County's UPDES Permit, Part II.F.3).

93. From approximately 2009 through September 10, 2012, the County did not have a specific plan to detect and address non-storm water discharges to the MS4, in violation of Part II.F.3.c of the County's UPDES Permit.

94. On or about March 6, 2012, at the County's Parks and Recreation Equipment Maintenance facility, the County discharged kerosene used to clean a gasoline can, along with water used to wash County-owned vehicles, to the MS4, in violation of Part II.F.3 of the County's UPDES Permit.

95. On approximately 13 occasions during the period January 2009 through October 2012, the County failed to take timely and appropriate enforcement procedures or actions against entities responsible for illicit discharges to the MS4, in violation of Part II.F.3.b of the County's UPDES Permit.

96. From approximately November 2, 2010 through December 31, 2013, County Ordinance 17.22.130 included "[a]ny other uncontaminated water source" as an allowable non-storm water discharge.

97. "Any other uncontaminated water source" is not an allowable non-storm water discharge under the County's UPDES Permit. (County's UPDES Permit, Part II.F.3.d).

98. The County's inclusion of "[a]ny other uncontaminated water source" as an allowable non-storm water discharge in County Ordinance 17.22.130 violates Part II.F.3.b of the County's UPDES Permit.

99. The County is required to effectively prohibit, through ordinance or other regulatory mechanism, non-storm water discharges to the MS4. (County's UPDES Permit, Part II.F.3.b). County Ordinance 17.22.160 requires notification of spills by the responsible party.

100. Through at least May 31, 2013, the County had no records to demonstrate that County Ordinance 17.22.160 had been enforced, in violation of Part II.F.3.b of the County's UPDES Permit.

101. Unless enjoined, the County's violations will continue.

102. Pursuant to [33 U.S.C. § 1319\(d\)](#), 40 C.F.R. part 19, and [Utah Code Ann. §§ 19-5-107, 108 and 115](#), the County is liable for civil penalties not to exceed the statutory maximum for each violation.

SIXTH CLAIM FOR RELIEF
(Violations of UPDES Permit Relating to Storm Water Runoff from Construction Sites)

103. The allegations of the foregoing paragraphs are incorporated herein by reference.

104. The County is required to develop, implement, and enforce a program to control storm water runoff from construction sites. (Part II.F.4 of the County's UPDES Permit). This program must include, among other things, procedures for site plan review to minimize water quality impacts. (County's UPDES Permit, Part II.F.4.c).

105. The authority to implement a construction site storm water runoff control program is found in Title 17.22.

106. The responsibility for implementing most of the construction site storm water runoff control program is vested in the County's Planning and Development Services Division.

107. The Planning and Development Services Division does not have authority to implement Title 17.22 (that authority is given instead to the County Engineer).

108. Accordingly, the County has failed to ensure that legal authority exists to control discharges to the MS4 from construction site runoff, in violation of Part II.J of the County's UPDES Permit.

109. From at least January 27, 2009 through December 31, 2013, the County did not have any written procedures or plan for reviewing construction site plans, responding to violations, conducting inspections, or enforcing control measures, in violation of Part II.F.4 of the County's UPDES Permit.

110. The County's construction site storm water runoff control program must include a requirement that all local building permit applicants that operate small and large construction sites obtain UPDES storm water permit coverage before local permit approval and issuance. (County's UPDES Permit, Part II.F.4.g).

111. From approximately March 9, 2012 through September 10, 2012, the County failed to ensure that at least two large construction sites – the Arcadia and Reliance Homes sites – had obtained UPDES storm water permit coverage before local permit approval and issuance, in violation of Part II.F.4.g of the County's UPDES Permit.

112. The County's construction site storm water runoff control program must include inspection of construction sites and enforcement of control measures. (County's UPDES Permit, Part II.F.4.e).

113. From approximately March 9, 2012 through September 10, 2012, the County failed to enforce control measures at the Millcreek Community Center. Based on an EPA visit to the

Millcreek Community Center, there was a significant amount of sediment in storm drain inlets in the parking lot and inlet protection was poorly maintained. In addition, there were no controls along Evergreen Road. Nor were there any controls at a temporary entrance (constructed when the concrete for the parking lot was poured) west of the parking lot. This constitutes a violation of Part II.F.4.e of the County's UPDES Permit.

114. The County's construction site storm water runoff control program must include penalties severe enough to deter non-compliance with requirements to use erosion and sediment controls and BMPs to reduce pollutants discharged to the MS4 during soil disturbances and excavation activities. (County's UPDES Permit, Part II.F.4).

115. From approximately January 27, 2009 through April 31, 2013, contractors who failed to correct a deficiency with erosion and sediment controls and BMPs after receiving a citation could be fined a maximum of \$100. This is an insufficient amount to deter non-compliance and thus a violation of Part II.F.4 of the County's UPDES Permit.

116. The County's construction site storm water runoff control program must include procedures for receipt and consideration of information submitted by the public. (County's UPDES Permit, Part II.F.4.d).

117. From approximately January 27, 2009 through December 31, 2012, the County did not have a documented procedure for consideration of information submitted by the public regarding the construction site storm water runoff control program, in violation of Part II.F.4.d of the County's UPDES Permit.

118. Unless enjoined, the County's violations will continue.

119. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. part 19, and Utah Code Ann. §§ 19-5-107, 108 and 115, the County is liable for civil penalties not to exceed the statutory maximum for each violation.

SEVENTH CLAIM FOR RELIEF
(Violations of UPDES Permit Relating to Post-Construction Storm Water Management)

120. The allegations of the foregoing paragraphs are incorporated herein by reference.

121. To minimize water quality impacts, the County is required to develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that discharge to the MS4. (County's UPDES Permit, Part II.F.5).

122. From approximately January 27, 2009 through December 1, 2014, the County failed to develop, implement, and enforce a program to address storm water runoff from new developments and redevelopments, in violation of Part II.F.5 of the County's UPDES Permit.

123. The program for storm water runoff from new development and redevelopment must include requirements to consider water quality impacts in a comprehensive land use master planning process. (County's UPDES Permit, Part II.F.5.c). The program must also require the use of a comprehensive master planning process in "developing, implementing, and enforcing [Best Management Practices] to reduce, to the [maximum extent practicable], the discharge of pollutants from areas of municipal new development and significant redevelopment after construction is completed." (County's UPDES Permit, Part II.F.5.d).

124. From at least January 27, 2009 through September 1, 2013, the County violated Part II.F.5.c of the UPDES Permit by failing to develop a land use master plan that included all of the required items.

125. From at least January 27, 2009 through September 1, 2013, the County violated Part II.F.5.d of the UPDES Permit by failing to use a comprehensive master planning process that addressed all of the required items.

126. Beginning no later than March 6, 2012, the County has failed to ensure that the post-construction controls at the RC Automotive facility would prevent and minimize water quality impacts, in violation of Part II.F.5 of the County's UPDES Permit.

127. The County is required to ensure the continued maintenance, post-construction, of storm water system components of new developments and redevelopments. Part II.F.5.e of the County's UPDES Permit.

128. Beginning no later than March 9, 2012, the County has failed to develop and implement a plan for ensuring, post-construction, the continued maintenance of storm water system controls at new developments and redevelopments, including the I-9 and Oaker Shadows detention basins, in violation of Part II.F.5.e of the County's UPDES Permit.

129. Unless enjoined, the County's violations will continue

130. Pursuant to [33 U.S.C. § 1319\(d\)](#), 40 C.F.R. part 19, and [Utah Code Ann. §§ 19-5-107, 108 and 115](#), the County is liable for civil penalties not to exceed the statutory maximum for each violation.

EIGHTH CLAIM FOR RELIEF
(County's Failure to Follow Analytical Procedures)

131. The allegations of the foregoing paragraphs are incorporated herein by reference.

132. From approximately January 27, 2009 until September 10, 2012, the County violated the requirements of 40 C.F.R. part 136 and the UPDES permit:

- a. by failing to use glass containers to sample oil and grease; and

b. failing to sterilize bottles used to collect E. Coli samples.

133. Unless enjoined, the County's violations will continue.

134. Pursuant to [33 U.S.C. § 1319\(d\)](#), 40 C.F.R. part 19, and [Utah Code Ann. §§ 19-5-107](#), 108 and 115, the County is liable for civil penalties not to exceed the statutory maximum for each violation.

NINTH CLAIM FOR RELIEF
(Other Violations of the County's UPDES Permit)

135. The allegations of the foregoing paragraphs are incorporated herein by reference.

136. The County has failed to include the initials or names of individuals who perform sampling analysis, as required by Part IV.S.3.b of the County's UPDES permit.

137. The County has failed to retain monitoring data for three years, as required by Part IV.S.2 of the County's UPDES permit.

138. Unless enjoined, the County's violations will continue.

139. Pursuant to [33 U.S.C. § 1319\(d\)](#), 40 C.F.R. part 19, and [Utah Code Ann. §§ 19-5-107](#), 108 and 115, the County is liable for civil penalties not to exceed the statutory maximum for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendant as follows:

1. Pursuant to [33 U.S.C. § 1319\(b\)](#), enjoin the County from any and all ongoing or future violations of the Clean Water Act by ordering compliance with the Act, the storm water regulations ([40 C.F.R. §122.26](#)), and the County's UPDES Permit;

2. Pursuant to 33 U.S.C. § 1319(d), 40 C.F.R. part 19, and Utah Code Ann. § 19-5-115, assess civil penalties against the County, as permitted by law;
3. Order the County to take all steps necessary to redress or mitigate the impact of its violations;
4. Award Plaintiffs their costs and disbursements in this action; and
5. Grant Plaintiffs such other and further relief as the Court deems just and proper.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

JOHN W. HUBER
United States Attorney

/s/ Jared C. Bennett
JARED C. BENNETT
Assistant United States Attorney

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

/s/ Mark C. Elmer
MARK C. ELMER
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

OF COUNSEL:

WENDY SILVER

Enforcement Attorney

U.S. Environmental Protection Agency, Region 8

1595 Wynkoop Street

Denver, Colorado 80202

FOR PLAINTIFF THE STATE OF UTAH:

/s/ Sandra K. Allen
SANDRA K. ALLEN
Assistant Attorney General
Utah Office of Attorney General
Environment and Health Division

FOR PLAINTIFF THE STATE OF UTAH:



SANDRA K. ALLEN

Assistant Attorney General

Utah Office of Attorney General

Environment and Health Division

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.