

**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY**

In the Matter of: Payson City Wastewater Treatment Facility UPDES Permit No. UT0020427	NOTICE OF VIOLATION AND COMPLIANCE ORDER DOCKET NO. M23-07
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This Notice of Violation and Compliance Order (“NOV/CO”) is issued to Payson City (“Payson”) in its capacity as operator of Payson City Wastewater Treatment Facility, located at 1062 North Main Street, Payson, Utah 84651 (“Facility”), based upon the Facts and Determinations asserted herein. This NOV/CO is issued by the Director of the Utah Division of Water Quality (“Director”) pursuant to the Director’s authority under the Utah Water Quality Act, Utah Code §§ 19-5-101 to 19-5-124 (the “Act”) and the Utah Admin. Code R317-1 *et. seq.* (“Water Quality Rules”). This NOV/CO is also issued in accordance with the administrative procedures of the Utah Department of Environmental Quality, Utah Admin. Code R305-7 *et. seq.*

A. STATUTORY AUTHORITY

1. The State of Utah’s surface water quality programs as adopted in the Utah Water Quality Act by the Utah Legislature operate with federal oversight and under delegation from the Environmental Protection Agency (“EPA”) under the federal Clean Water Act, 33 U.S.C. § 1342.
2. The Director is authorized to issue, continue in effect, renew, revoke, modify, or deny discharge permits and to issue orders under the Act and in accordance with Utah Code § 19-5-106(2)(d) and may enforce rules made by the Board through the issuance of orders.
3. The Utah Division of Water Quality (“Division”) was created to administer the Act under the immediate direction and control of the Director pursuant to Utah Code § 19-1-105.
4. EPA delegated authority to the State of Utah to administer the National Pollutant Discharge Elimination System permit program under the Federal Clean Water Act, known in Utah as the Utah Pollutant Discharge Elimination System (“UPDES”).
5. Pursuant to Utah Code § 19-5-111, whenever the Director determines that there are reasonable grounds to believe that there has been a violation of the Act, the Water Quality Rules, or any order of the Director or the Board, the Director may

issue a notice of violation. In that event, the notice shall require that the matters complained of be corrected.

6. Utah Code § 19-5-115 provides that any person who violates a rule or order made or issued pursuant to the Act, or any rule or order made thereunder, may be subject, in a civil proceeding, to a civil penalty of up to \$10,000 per day of violation.
7. The Director is authorized to specify a schedule of compliance in a permit leading to compliance with the Act pursuant to Utah Admin. Code R317-8-5.2.

B. APPLICABLE STATUTORY AND REGULATORY PROVISIONS

1. Utah Code § 19-5-107(1)(a) and (b) state, “(a) Except as provided in [the Water Quality Act] or rules made under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any waste in a location where there is probable cause to believe it will cause pollution. (b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.”
2. Utah Code § 19-5-102(22) defines “Waste” or “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked, or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.”
3. Utah Code § 19-5-102(23)(a) defines “Waters of the state” as “streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state.”
4. The permittee must comply with all conditions of the UPDES permit. Utah Admin. Code R317-8-4.1(1)(a) states, “Any permit noncompliance is a violation of the Utah Water Quality Act... and is grounds for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.”
5. Utah Admin. Code R317-8-4.1(5) states, “the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit... This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee

only when the operation is necessary to achieve compliance with the conditions of the permit.”

C. FACTS & DETERMINATIONS

1. Payson City is a municipality located in Utah County, Utah, and is the legal owner and operator of the Facility located at 1062 North Main Street, Payson, Utah 84651 in Utah County.
2. The Director renewed the UPDES Permit No. UT0020427 (“Permit”) to Payson City on August 18, 2021, authorizing discharges from the Facility at the following outfalls: Outfall 001 (to an unnamed irrigation return drainage ditch to Beer Creek, then Benjamin Slough to Utah Lake) and Outfall 001R (to a tank that collects water then sends it to the Payson Power Plant [Nebo Power Station] for use as makeup water in the cooling system). The Permit expires on January 31, 2024.
3. Utah Admin. Code R317-2-13 classifies the location of Beer Creek, within the Utah Lake-Lower Provo River watershed, as a 2B, 3C, 4 water of the State and the unnamed irrigation ditch as a Class 4 water of the State, establishing the following protections:
 - Class 2B – Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with water.
 - Class 3C – Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.
 - Class 4 – Protected for agricultural uses including irrigation of crops and stock watering.
4. Permit Part I.C.2.a. contains self-monitoring requirements (sample frequency and type) for all pollutant parameters associated with the Facility’s effluent discharge, including but not limited to Oil & Grease (whenever a sheen observed) and requires monthly reporting of sampling results on a Discharge Monitoring Report (“DMR”).
5. On June 19, 2019, Payson City submitted a DMR for the May 2019 monthly monitoring period and failed to report discharge monitoring results for Oil & Grease.
6. Permit Part II.H.1. contains self-monitoring requirements (sample frequency and type) for the Facility’s Pretreatment Program, including but not limited to total Cyanide [as CN], and requires quarterly monitoring and reporting sampling results on a DMR.
7. On January 27, 2020, Payson City submitted a DMR for the Quarterly Influent/Effluent DMR for the monitoring period of November 1, 2019, through January 31, 2020 and failed to report monitoring results for total Cyanide [as CN].

8. Permit Part I.C.2.a. contains effluent concentration limitations for pollutant discharges from Outfall 001 at the Facility, including but not limited to Cyanide, Ammonia (as N), Mercury, and Biochemical Oxygen Demand (“BOD”).
9. The certified DMRs submitted by Payson City to the Division indicate the Facility’s discharge from Outfall 001 exceeded the effluent concentration limitations on forty-six (46) occasions during the monitoring periods between February 2019 and July 2023. The pollutant parameters included in these exceedances, as of the issuance date of this NOV/CO, are Cyanide, Ammonia (as N), Mercury, and BOD. Monitoring results for these pollutant parameters, as reported on the certified and submitted DMRs, for the Facility are summarized in the table below with violations identified in ***bold and italics***:

Report Certification Date	Monitoring Period End Date	Pollutant Parameter	Effluent Limitation	Reported Value	% Exceedance
PERMIT ISSUED FEBRUARY 01, 2019 (EXP. JANUARY 02, 2020)					
03/13/2019	02/28/2019	Total Ammonia Daily Max	12.5 mg/L	<i>12.6 mg/L</i>	1%
05/08/2019	04/30/2019	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.008 mg/L</i>	19%
12/18/2019	11/30/2019	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.007 mg/L</i>	4%
PERMIT EFFECTIVE JANUARY 03, 2020 (EXP. JANUARY 31, 2024)					
06/16/2020	05/31/2020	Total Ammonia Daily Max	13.1 mg/L	<i>15.0 mg/L</i>	15%
09/18/2020	08/31/2020	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.009 mg/L</i>	79%
10/13/2020	09/30/2020	Total Mercury Monthly Average	0.000015 mg/L	<i>0.000025 mg/L</i>	67%
11/18/2020	10/31/2020	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.007 mg/L</i>	4%
12/17/2020	11/30/2020	Total Ammonia Daily Max	13.1 mg/L	<i>27.8 mg/L</i>	112%
02/23/2021	01/31/2021	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0135 mg/L</i>	101%
02/23/2021	01/31/2021	Total Mercury Monthly Average	0.000015 mg/L	<i>0.000031 mg/L</i>	106%
03/25/2021	02/28/2021	Total Ammonia Daily Max	12.5 mg/L	<i>13.2 mg/L</i>	6%
04/15/2021	03/31/2021	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.013 mg/L</i>	94%
04/15/2021	3/31/2021	Ammonia Daily Max	12.5 mg/L	<i>16.4 mg/L</i>	6%
05/21/2021	04/30/2021	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0105 mg/L</i>	57%
06/15/2021	05/31/2021	Total Ammonia Daily Max	13.1 mg/L	<i>14.4 mg/L</i>	10%
06/15/2021	05/31/2021	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.012 mg/L</i>	30%
PERMIT EFFECTIVE AUGUST 18, 2021 (EXP. JANUARY 31, 2024)					
11/19/2021	10/31/2021	Total Ammonia Daily Max	13.1 mg/L	<i>15.2 mg/L</i>	16%
12/17/2021	11/30/2021	Total Ammonia Daily Max	13.1 mg/L	<i>20.9 mg/L</i>	60%

Report Certification Date	Monitoring Period End Date	Pollutant Parameter	Effluent Limitation	Reported Value	% Exceedance
12/17/2021	11/30/2021	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0078 mg/L</i>	16%
01/19/2022	12/31/2021	Total Ammonia Daily Max	13.1 mg/L	<i>18.3 mg/L</i>	40%
01/19/2022	12/31/2021	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.011 mg/L</i>	64%
02/18/2022	01/31/2022	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.007 mg/L</i>	4%
02/18/2022	01/31/2022	Total Ammonia Daily Max	12.5 mg/L	<i>19.7 mg/L</i>	58%
02/18/2022	01/31/2022	Total Mercury Monthly Average	0.000015 mg/L	<i>0.000031 mg/L</i>	106%
04/22/2022	03/31/2022	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.011 mg/L</i>	64%
05/24/2022	04/30/2022	Total Ammonia Daily Max	13.1 mg/L	<i>32.7 mg/L</i>	150%
05/24/2022	04/30/2022	BOD, 5-Day 20 Degrees Max 7 Day Average	35.0 mg/L	<i>43.0 mg/L</i>	23%
06/17/2022	05/31/2022	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.012 mg/L</i>	79%
06/17/2022	05/31/2022	Total Ammonia Daily Max	13.1 mg/L	<i>17.2 mg/L</i>	80%
07/22/2022	06/30/2022	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.007 mg/L</i>	9%
08/23/2022	07/31/2022	Total Ammonia Daily Max	14.1 mg/L	<i>20.9 mg/L</i>	48%
08/23/2022	07/31/2022	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0133 mg/L</i>	99%
09/14/2022	08/31/2022	Total Ammonia Daily Max	14.1 mg/L	<i>20.0 mg/L</i>	42%
09/14/2022	08/31/2022	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0096 mg/L</i>	43%
11/23/2022	10/31/2022	Total Ammonia Daily Max	13.1 mg/L	<i>16.1 mg/L</i>	23%
11/23/2022	10/31/2022	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0071 mg/L</i>	6%
12/21/2022	11/30/2022	Total Ammonia Daily Max	13.1 mg/L	<i>24.1 mg/L</i>	84%
12/21/2022	11/30/2022	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0078 mg/L</i>	16%
01/20/2023	12/31/2022	Total Ammonia Daily Max	13.1 mg/L	<i>23.7 mg/L</i>	81%
02/24/2023	01/31/2023	Total Ammonia Daily Max	12.5 mg/L	<i>18.9 mg/L</i>	66%
02/24/2023	01/31/2023	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0092 mg/L</i>	37%
02/24/2023	01/31/2023	Total Mercury Monthly Average	0.000015 mg/L	<i>0.000031 mg/L</i>	106%
03/21/2023	02/28/2023	Total Ammonia Daily Max	12.5 mg/L	<i>17.5 mg/L</i>	40%
03/21/2023	02/28/2023	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0084 mg/L</i>	25%
04/21/2023	03/31/2023	Total Ammonia Daily Max	12.5 mg/L	<i>16.1 mg/L</i>	29%
06/16/2023	05/31/2023	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0079 mg/L</i>	29%

Report Certification Date	Monitoring Period End Date	Pollutant Parameter	Effluent Limitation	Reported Value	% Exceedance
08/18/2023	07/31/2023	Cyanide Monthly Max Average	0.0067 mg/L	<i>0.0075 mg/L</i>	12%

10. Permit Part I.C.4. requires Whole Effluent Testing (“WET testing”) for chronic toxicity. On a quarterly basis, Payson City is required to conduct chronic static renewal toxicity tests on a grab or composite sample of the final effluent at Outfall 001 and report the results along with the DMR that is submitted for the end of the required reporting period.
11. Permit Part I.D.1. requires Payson City to report monitoring results for the Facility’s pollutant discharges on a DMR to the Division “no later than the 28th day of the month.” As of January 1, 2017, monitoring results must be submitted using NetDMR unless the permittee has successfully petitioned for an exception; to the Division’s knowledge, Payson City has not petitioned for an exception.
12. Payson City failed to submit the Facility’s DMR for Outfall 001 (Quarterly WET Testing) for the monitoring period of April 1, 2023, through June 30, 2023, to the Division by the Permit deadline. The DMR was submitted on August 9, 2023, twelve (12) days after the required due date.
13. Permit Part I.C.4.b. requires “Whole Effluent Toxicity (WET) tests to be conducted in general accordance with the procedures set out in the latest revision of Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Fourth Edition, October 2002, EPA-821-R-02-013 as per 40 C.F.R. § 136.3(a) TABLE IA-LIST OF APPROVED BIOLOGICAL METHODS”.
14. On September 1, 2022, the Division completed a compliance evaluation inspection of the Facility. The inspection report was issued to Payson City on September 29, 2022 and identified that wastewater samples for the Facility’s WET testing sampling procedures did not meet the temperature requirements of permit condition I.C.4.b.

D. VIOLATIONS

Based on the foregoing Payson City has violated the following:

1. UPDES Permit No. UT0020427 condition I.C.2.a. Effluent Limitation for Cyanide.
2. UPDES Permit No. UT0020427 condition I.C.2.a. Effluent Limitation for Ammonia (as N).
3. UPDES Permit No. UT0020427 condition I.C.2.a. Effluent Limitation for Mercury.
4. UPDES Permit No. UT0020427 condition I.C.2.a. Effluent Limitation for BOD.

5. UPDES Permit No. UT0020427 condition I.D.1. for failure to report monthly sampling results for Oil & Grease
6. UPDES Permit No. UT0020427 condition I.D.1 for failure to report quarterly sampling results for Cyanide.
7. UPDES Permit No. UT0020427 condition I.D.1. for failure to report DMRs by the required Permit deadlines.
8. UPDES Permit No. UT0020427 condition I.C.4.b. for failure to follow approved WET testing sampling procedures.

E. ORDER

Based on the foregoing Facts and Determinations and Violations, and pursuant to Utah Code §§ 19-5-107 and 19-5-111, Payson City is hereby **ORDERED** to:

1. As of the date of issuance of this NOV/CO, if not already initiated, initiate all action required to come into compliance with all applicable provisions of the Utah Water Quality Act in Utah Code Title 19, Chapter 5 and the Water Quality rules in Utah Admin. Code, R317.
2. Cease and desist all un-permitted actions and/or discharges which violate Utah water quality standards.
3. Submit a report containing the information below. The report must be submitted to the Director within thirty (30) days of the date of issuance of this NOV/CO and must provide the information listed below:
 - i. An evaluation of what caused the cited violations. This information should include the facts of the specific violations outlined in the Facts and Determinations, as well as any other information regarding the violations that occurred that may be important in resolving the violations listed in Section D of this NOV/CO.
 - ii. Describe, in detail, the actions taken and/or planned to be implemented (including dates) to attain and continue to be in full compliance with this NOV/CO and the Permit.
 - iii. Describe, in detail, any environmental mitigation and restoration plans for the area affected by the discharge and the expected timetables related to these plans.

F. NOTICE

This NOV/CO is effective upon issuance (date signed) and shall become final unless it is administratively contested. This NOV/CO may be contested by filing and serving a

written Request for Agency Action as provided by Utah Admin. Code R305-7-303 and R305-7-104(5). Even if this NOV/CO is contested, it remains effective unless a stay is issued or the NOV/CO is rescinded, vacated, or otherwise terminated.

Failure to contest this NOV/CO within thirty (30) days, as specified by Utah Admin. Code R305-7-303(8), constitutes a waiver of any right to contest the NOV/CO or to seek judicial review.

All reports required under this NOV/CO must be accompanied by the following certification, which is to be signed in accordance with Utah Admin. Code R317-8-3.4(4):

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

Utah Code § 19-5-115 provides that violation of the Act, or any permit, rule, or order adopted under the Act, may be subject to a civil penalty not to exceed \$10,000 per day of violation. Failure to comply with this NOV/CO may result in additional civil penalties or criminal sanctions under Utah Code § 19-5-115.

Issued this 1st day of November 2023.

A handwritten signature in cursive script that reads "John K. Mackey". The signature is written in dark ink and is positioned above a horizontal line.

John K. Mackey, P.E.
Director, Division of Water Quality