



# PROVO MUNICIPAL COUNCIL

## Legislative Breakfast

### City Discussion Items

- Funding for wastewater treatment facilities
  - \$120 million needed → still funding gap if city doesn't phase project
  - State Water Quality Board providing \$75.8M loan with \$2M forgiveness and 0.5% interest
  - Another possibility: State bridge loan where DWQ borrows \$ from another state funding source to allow additional funding for project (possibly DNR), may require legislative action
  
- MS4 Standards changes and reporting requirements
  - Provo has concerns regarding DEQs standard for new development and redevelopment to retain 90<sup>th</sup> percentile storm through low impact development
    - More restrictive than necessary, cumbersome paperwork, not enough flexibility
    - Increased maintenance requirements imposes financial burden
  - Want specific revisions to the MS4 permit
  
- Governor's budget items
  - **\$50 million to improve water infrastructure**, including **\$20 million** to enhance municipal and industrial water efficiency → unmetered water, can state provide more \$ for wastewater issues?
  - **\$17 million** for affordable housing → housing advocates ask for \$20 million
  - **\$30 million** for open space and significant community parks → \$25 million in matching grant funds for regionally significant community parks tied to efficient land use, connection with transit oriented development, and housing affordability goals. → Regional Sports Park?

Provo wants to be able to access these programs
  
- Opportunities to expand airport terminal in Provo
  - Jet Blue founder David Neeleman starting Moxy airline servicing cities like Provo
  - Work with GOED etc. to get this service into Provo
  - To add flights we need to expand the terminal
  
- Utah County election issues and funding
  - City leaders met with Amanda Powers re: election issues
  - County recorder and other counties need financial help updating election equipment
  - Automatic voter registration eases same day registration



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Provo City has significant concerns regarding DEQ's standard for new development and redevelopment to retain the 90<sup>th</sup> percentile storm through Low Impact Development (LID), as contained in the Modified General Permit from Small MS4s-UTR090000. The voicing of our concerns should not be construed to imply Provo City is against water quality standards, nor do we deny LID is a worthwhile option to address water quality needs. Our concerns are specific to the way the permit is currently written, in that it is more restrictive than necessary without adequate justification, will result in an overly cumbersome amount of paperwork, and does not provide Cities enough flexibility to implement alternative measures that provide water quality benefits without significantly increases their maintenance burden.

First, our understanding is that the retention requirement was implemented due to a critical finding in EPA's April 2014 Audit of Utah's UPDES Program. The example wording for a numeric standard that the EPA provided in the comment was "all new development must be designed to retain, detain, or infiltrate the prescribed storm event, such as a 85<sup>th</sup>, 90<sup>th</sup>, or 95<sup>th</sup> percentile storm event".

The MS4 permit requires retaining the 90<sup>th</sup> percentile storm, but the EPA was willing to accept the 85<sup>th</sup> percentile storm. Per precipitation from the BYU rain gage, the 90<sup>th</sup> percentile storm represents a  $\pm 20\%$  increase over the 85<sup>th</sup> percentile storm, meaning retention facilities will be  $\pm 20\%$  larger. It does not appear there was any specific reason the larger 90<sup>th</sup> percentile storm was chosen over the 85<sup>th</sup>.

In addition, the example wording the EPA gave included detention as an option. The MS4 permit does not allow for detention as a viable option. Again, there seems to be a lack of sufficient data or studies for removing options the EPA had put on the table.

Second, the wording of the permit allows an alternative approach only if retention through LID is shown to be infeasible on a case by case basis. As written, this appears to mean justification on a project by project basis. In verbal conversations with Provo City staff, DEQ staff has indicated MS4s such as Provo City may include exceptions or alternative approaches for particular areas of the City (such as high groundwater areas, well protection zones, etc.) in their City code or drainage manual. But the indication is also that written documentation regarding the retention requirement, how it was followed, and justification for alternative approaches should also be kept with each individual project. Documentation for any particular project may be subject to review during a DWQ audit. Note that the MS4 also requires a written Storm Water Management Plan, Erosion Control and Water Quality Manual, Illicit Discharge Detection and Elimination Manual, specific code language, written fliers/pamphlets for public education on multiple potential water quality concerns, retention of Storm Water Pollution Prevention Plans (SWPPPs) for construction projects within the City, documentation of personnel training, documentation of construction inspections, documentation of outfall inspections, documentation of municipal facility inspections, several water quality Standard Operation Procedures for normal municipal operations, mapping of the City's

storm drain system, etc. In short, the MS4 permit already requires an extreme amount of documentation and paperwork. Requiring additional documentation for every project in the City seems excessive.

Finally, a major concern for Provo City is a significant increase in maintenance requirements. Requiring onsite retention for every project over 1 acre, as the permit language requires now, will result in at least one new facility per project. Requiring that projects look first at using LID, as the permit language does now, will likely result in multiple new facilities per project. Many residential projects in Provo are not large enough to have an HOA, meaning the maintenance burden will fall to the City. Even for projects where the maintenance will be the responsibility of private property owners or HOAs, the City will be required to verify maintenance is taking place, document it, and take action if maintenance is not occurring.

It is Provo City's view that the water quality standard in the MS4 permit be revised to address the concerns mentioned above. Provo City understands that the State is accountable to the EPA for MS4 permitting. But we also believe the State should not have implement state-wide standards that are more restrictive than the EPA is requiring. We have included suggested revisions to Sections 4.2.5.3.2 and 4.2.5.3.4 of the MS4 permit, which we believe will meet EPA's requirements while allowing for more flexibility to address water quality in the best manor suitable to individual Cities' circumstances and existing operating procedures.

#### SECTION 4.2.5.3.2

For new development or redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, the program shall include a process to evaluate and encourage a Low Impact Development (LID) approach which promotes the implementation of BMPs that infiltrate, evapotranspire or harvest and use storm water from the site to protect water quality. ~~By March 1, 2019, the program shall include a process which requires the evaluation of an LID approach for new development or redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale.~~ Structural controls may include green infrastructure practices such as rainwater harvesting, rain gardens, permeable pavement, and vegetated swales. If an LID approach cannot be utilized, the Permittee must document an explanation of the reasons preventing this approach and the rationale for the chosen alternative controls. The Permittee may choose to include documentation in their respective design guidance for known locations or instances where alternative controls are to be used, or documentation may be required on a case by case basis for each project.

Since 2010, rainwater harvesting is legal in the State of Utah. Depending on the volume of rainwater collected and stored for beneficial use, the Permittee must meet the requirements of the Utah Division of Water Rights to harvest rainwater found on their website:  
<http://waterrights.utah.gov/forms/rainwater.asp>

#### SECTION 4.2.5.3.4

Each Permittee shall develop and define specific hydrologic method or methods for calculating runoff volumes and flow rates to ensure consistent sizing of structural BMPs in their jurisdiction and to facilitate plan review. ~~By March-September 1, 2019, new development or redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale must manage rainfall on-site, and prevent the off-site discharge of the precipitation from all rainfall events less than or equal to the 90th percentile rainfall event be designed and maintained to retain, detain, or infiltrate the 85<sup>th</sup> percentile storm event. This objective must be accomplished by the use of practices that are designed, constructed, and maintained to infiltrate, evapotranspire and/or harvest and reuse rainwater.~~ The 90<sup>th</sup> 85<sup>th</sup> percentile rainfall event is the event whose precipitation total is greater than or equal to 90-85 percent of all storm events over a given period of record. If meeting this retention standard is technically infeasible, a rationale shall be provided on a case-by-case basis for the use of alternative design criteria. Each Permittee may specify in their respective design guidance known locations or instances where alternative design criteria or special considerations are warranted (e.g. high water tables, slide areas, well protection zones, regional water quality facilities). In this instance, the guidelines shall include documentation as to why retention, detention, or infiltration of the 85<sup>th</sup> percentile storm event is not technically feasible in the specified locations or instances, and how the alternative methods or special considerations provide similar water quality benefits to the maximum extent technically feasible. Alternatively, the Permittee may require that alternative designs be evaluated on a case by case basis. In this instance, each project must document and quantify that infiltration, evapotranspiration and rainwater harvesting retention, detention, and infiltration of the 85<sup>th</sup> percentile storm event have been used to the maximum extent technically feasible, and that full employment of these control are infeasible due to site constraints, and

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that alternative methods having similar water quality benefits have been used to the maximum extent technically feasible.