

BEFORE THE
UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

In the Matter of: Weber County C & D Class IVb Landfill Solid Waste Permit #0901	Order
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On October 19, 2009, the Executive Secretary of the Utah Solid and Hazardous Waste Control Board (“Executive Secretary”) granted Weber County as owner and Moulding & Sons Landfill, LLC (“Moulding”) as operator a noncommercial, nonhazardous, solid waste permit to construct and operate the Weber County construction and demolition debris (“C&D”) class IVb landfill. On November 8, 2009, Counterpoint Construction Company (“Counterpoint”) filed a *Request for Intervention, Request for Agency Action, and Request for Stay of the Order of the Executive Secretary* to challenge the permit. Counterpoint was granted standing to intervene in this proceeding and was admitted as a party.

The Executive Director of the Department of Environmental Quality appointed Connie S. Nakahara to act as an administrative law judge for the Solid and Hazardous Waste Control Board to conduct an adjudicative proceeding in accordance with Utah Code Ann. § 19-1-301, and to submit to the Board a proposed dispositive action, including any necessary findings of fact, conclusions of law and a recommended order. Respondents Moulding and the Executive Secretary moved separately for summary judgment. Weber County joined Moulding’s motion for summary judgment. Counterpoint also moved for summary judgment. On April 6, 2011, the Administrative Law Judge submitted to the Board a *Memorandum and Recommended Order*.

On Thursday, May 12, 2011, at a regularly scheduled meeting, the Board considered the *Memorandum and Recommended Order*. Mr. Raymond Wixom represented the Executive Secretary. Mr. Dave Wilson represented Weber County. Mr. Michael S. Malmborg represented Moulding. Mr. Brice N. Penrod and Ms. Joan Penrod represented Counterpoint. Ms. Sandra K. Allen acted as Counsel for the Board. Board members present were Mr. Kevin Murray, Mr. Scott Bruce, Mr. Michael Brehm, Mr. Carlton Christensen, Dr. R. Ryan Dupont, Mr. Gary Mossor, Mr. John Newman, and Mr. Dennis Riding. Board member Mr. Kory Coleman was initially present but recused himself shortly after oral arguments began.

The Board first considered whether Counterpoint's challenge to the noncommercial Weber County landfill permit was mooted by the approval of the legislature and governor of a commercial permit for the Weber County Landfill. Mr. Wixom represented the parties' agreement that the challenge was not mooted. Mr. Wixom explained that the matter was not mooted because the commercial permit was also being challenged and if the challenge was successful, the parties would have to renew this proceeding or Weber County and Moulding would have to re-apply for a noncommercial permit. The Board proceeded to hear the matter.

At the beginning of his oral argument, Mr. Wixom noted a minor clarification and a minor exception to the *Memorandum and Recommended Order*. Mr. Wixom's clarification was to the citation in footnote 7, page 3 in Background, Section IV, of the *Memorandum and Recommended Order*. Mr. Wixom stated that the citation should be to Utah Admin. Code R315-12-5.3(a)(1), not to Utah Admin. Code R317-9-4(1). Mr.

Wixom stated that this clarification had no bearing on the Board's decision. The Board accepted Mr. Wixom's clarification.

Mr. Wixom's exception was to the statement in Analysis, Section VI, Paragraph 3.c.iii. of the *Memorandum and Recommended Order* that: "The Permit Condition Limiting the Landfill's Receipt of Waste Generated Outside the Boundaries of Weber County Fails to Satisfy the Statutory Requirement." Mr. Wixom explained that the language in condition I.E of the permit restates the language of the statute and effectively states a truism. Mr. Wixom elaborated that the language was added to the permit in response to concerns raised by Counterpoint during the permitting process. Mr. Wixom observed that the Weber County landfill has to comply with the requirements of Utah Code Ann. § 19-6-102(3)(b)(iii) whether those requirements are restated in the permit or not. Mr. Wixom noted that the Administrative Law Judge's recommended order provided that the Board direct the Executive Secretary to restate the permit condition in language that more closely tracks the language of the statute. Mr. Wixom represented that the Executive Secretary agreed that the Administrative Law Judge's proposed language would make the permit clearer and would more completely embody the language of the statute, but did not think that the change was legally necessary. Mr. Wixom represented that the Executive Secretary did not object to the recommended order. The Board accepted Mr. Wixom's exception.

After review of the *Memorandum and Recommended Order* and accompanying record, and after hearing oral arguments from all of the parties, and after questioning the parties, the Board, excluding Mr. Coleman who had previously recused himself, unanimously found that the Executive Secretary properly granted Weber County as

owner and Moulding as operator a noncommercial, nonhazardous, solid waste permit to construct and operate the Weber County C&D Class IVb landfill. The Board approved and adopted the Findings of Fact and Conclusions of Law in the *Memorandum and Recommended Order* except for subparagraph B.3 of the Conclusions of Law on page 30. The Board directed that subparagraph B.3 of the Conclusions of Law on page 30 be changed to:

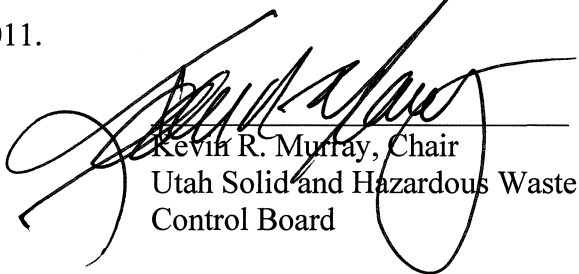
Pursuant to section 19-6-102(3)(b)(iii), a commercial nonhazardous solid waste treatment or disposal facility does not include a facility that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government. Part VI.A.

ORDER

The Executive Secretary's decision to grant Weber County as owner and Moulding as operator a noncommercial, nonhazardous, solid waste permit to construct and operate the Weber County C&D class IVb landfill is upheld. The Administrative Law Judge's Findings of Fact and Conclusions of Law and Recommended Order in the *Memorandum and Recommended Order* are hereby accepted, approved and adopted by the Board except that subparagraph B.3 of the Conclusions of Law on page 30 of the *Memorandum and Recommended Order* is changed to:

Pursuant to section 19-6-102(3)(b)(iii), a commercial nonhazardous solid waste treatment or disposal facility does not include a facility that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government. Part VI.A.

Dated this 20 day of June, 2011.


Kevin R. Murray, Chair
Utah Solid and Hazardous Waste
Control Board

Notice of Right to Apply for Reconsideration

Within 20 days after the date this order is signed by the Utah Solid and Hazardous Waste Control Board, any party shall have the right to apply for reconsideration with the Board pursuant to Utah Code Ann. § 63G-4-302. The request for reconsideration should state the specific grounds upon which relief is requested and should be submitted in writing to the Board whose mailing address is P.O. Box 144880 Salt Lake City, UT 84114-4880 and whose street address is 195 North 1950 West, Salt Lake City, Utah. A copy of the request must be mailed to each party by the person making the request. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this order.

Notice of Right to Petition for Judicial Review

Judicial review of this final order may be sought in the Utah Court of Appeals under Utah Code Ann. § 63G-4-403 and the Utah Rules of Appellate Procedure by filing a proper petition within thirty days after the date of this order.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2011, I caused a copy of the foregoing order to be mailed by electronic mail and by United States mail, postage prepaid, to the following unless otherwise indicated:

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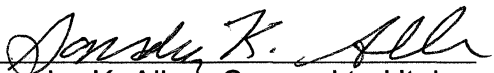
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