

STATEMENT OF BASIS
STATE OF UTAH
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL

Intention to Deny - Class V Landfill Application

Promontory Point Resources, LLC.
Promontory Point Landfill

Introduction

On October 30, 2020, Promontory Point Resources (“PPR”) submitted a complete permit application to reclassify its Promontory Point Landfill (“PPL facility”) as a Class V commercial nonhazardous solid waste facility. See DSHW-2020-015781 (“2020 Application”). This Statement of Basis provides an overview of the PPL facility, the Director’s decision associated with PPR’s 2020 Application, and supporting rationale for the Director’s decision.

The Director intends to deny the 2020 Application for reclassification on the basis that there is sufficient landfill capacity at existing landfills within PPR’s self-designated watershed to meet the current and future needs of the State of Utah. Therefore, the Director has determined there is not a need for the facility to serve industry within the state. A detailed explanation of this finding is provided below.

Facility Background

The PPL facility is located near the southwestern tip of the Promontory Point Peninsula of the Great Salt Lake within Box Elder County, Utah. The PPL facility was first permitted as a Class I landfill on March 15, 2004. See DSHW-2004-006273. The PPL facility received a permit renewal on September 01, 2011 (DSHW-2011-010996) and two major permit modifications addressing ownership changes and landfill design (March 15, 2017, DSHW-2017-001090), and relocation of groundwater monitoring wells (July 10, 2019, DSHW-2019-007084). Construction of the Class I landfill was completed in December of 2017. See DSHW-2018-003961.

According to Utah Admin. Code R315-301-2(7), a Class I landfill is a non-commercial landfill. A Class V landfill is a commercial facility, which may receive, for profit, nonhazardous solid waste for treatment, storage, or disposal. See Utah Admin. Code R315-301-2(11) and Utah Code § 19-6-102(3). The “for profit” phrase distinguishes the commercial vs. non-commercial status for these two classifications.

On March 17, 2017, PPR submitted an application (“2017 Application”) to reclassify the existing Class I landfill to a Class V commercial facility. See DSHW-2017-002283. The 2017 Application contained a Needs Assessment that provided the information required by the Utah Solid and Hazardous Waste Act, which is discussed further below. See Utah Code § 19-6-108(10). On July 12, 2017, the Division provided an evaluation of the Needs Assessment to PPR, which was conducted by the Division’s contractor, SC&A, Inc. (“SC&A”). See DSHW-2017-005608. On December 22, 2017, PPR submitted a *Needs Assessment Report Addendum* to address items in SC&A’s evaluation. See DSHW-2017-011061. Additionally, PPR began the process of reclassifying its Class I landfill to a Class V landfill by securing legislative approval, as required by Utah Code § 19-6-108(3)(c)(i), during the 2016 General Legislative Session. See H.R.J. Res. 20, 61st Leg., Gen. Sess. (Ut. 2016) (enacted). However, the 2017 Application was later withdrawn by PPR on February 16, 2018. See DSHW-2018-001321.

Evaluation of the Permit Application

Utah's Solid and Hazardous Waste Act and associated rules are modeled from the federal standards set forth by the Resource Conservation and Recovery Act ("RCRA"), and applicable federal rules, specifically the requirements of 40 C.F.R. Chapter I, Subchapter I, Solid Wastes. Utah's laws and rules safeguard and improve Utah's air, land, and water, and protect human health and the environment, while complying with all federal requirements. The laws and rules established by the Utah State Legislature and the Utah Waste Management and Radiation Control Board ensure that applications for solid waste management facilities are reviewed with the overall goal of protecting human health and the environment, and that practices are in line with all relevant associated federal standards.

The Division reviewed the 2020 Application and the Director has determined it satisfies the requirements set forth by Utah Admin. Code R315-302, R315-303, R315-308, and R315-310 ("technical requirements"). Both Class I non-commercial and Class V commercial solid waste management facilities must meet these technical requirements, and both are permitted to receive identical types of waste. When the Division originally permitted the PPL facility as a Class I landfill in 2004, the Division determined at that time that the PPL facility satisfied the technical requirements. Because the technical requirements are identical for Class I and Class V permits, and because the 2020 Application did not make changes to the facility as currently permitted, the Division's prior determination on the 2004 Class I application is applicable here. As such, the Director has determined that the 2020 Application meets the technical requirements. Nonetheless, the Division includes a brief narrative of the technical requirements review below.

Safeguards against Substantial Hazards to Human Health and the Environment

Utah Admin. Code R315-302 provides standards for location, general facility requirements, and general closure and post closure requirements applicable to both Class I and Class V landfills. As an approved Class I landfill, the requirements from this rule were met with application documents approved in the Division's letter dated March 15, 2004 mentioned above, and in the subsequent permit renewal and modification approvals. The July 10, 2019 modification approval also includes approval of as-built construction reports. The Division reviewed the 2020 Application and determined that no technical changes were made, and no additional information became available that would concern the Director regarding the PPL facility's compliance with Utah Admin. Code R315-302.

Utah Admin. Code R315-303 provides standards for performance, design, and maintenance and operation. Class I non-commercial and Class V commercial solid waste management facilities have identical design standards and are permitted to receive identical types of waste, which include:

- (a) municipal solid waste;
- (b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and
- (c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10.

See Utah Admin. Code R315-301-2(11).

PPR submitted the necessary documentation to meet the requirements of Utah Admin. Code R315-303 in its Class I permit application, and approval was granted through the issuance, renewal, and modifications of the Class I permit. The Division reviewed the 2020 Application and determined that no technical changes were made, and no additional information became available that would concern the Director regarding the PPL facility's compliance with Utah Admin. Code R315-303.

Utah Admin. Code R315-308 outlines the Division's groundwater monitoring requirements for applicable facilities. The requirements for groundwater monitoring are standardized for all facilities that require groundwater monitoring, such as Class I and Class V landfills. The Director approved the PPL facility's groundwater monitoring plan in a letter dated July 10, 2019. See DSHW-2019-007084. The Director's approval was administratively challenged. The Administrative Law Judge recommended upholding the Director's approval, which the Executive Director of the Department of Environmental Quality did. The Executive Director's decision was also challenged, and that challenge is pending before the Utah Court of Appeals. The Division reviewed the 2020 Application and determined that no technical changes were made, and no additional information became available that would concern the Director regarding the PPL facility's compliance with Utah Admin. Code R315-308.

Utah Admin. Code R315-309 details the financial assurance obligations that must be established before a facility may accept any waste and throughout the lifespan of a facility. In a letter dated February 15, 2022, the Division requested additional information of PPR, including a request for an updated financial assurance mechanism. See DSHW-2022-000522. PPR submitted its response on March 02, 2022. See DSHW-2022-003954. However, the Director has not given final approval to PPR's financial assurance mechanism.

Utah Admin. Code R315-310 provides requirements for the contents of a permit application for new or expanding landfills. On January 29, 2021, the Division acknowledged receipt of PPR's application. See DSHW-2021-000362. The Division requested additional information in a letter dated February 15, 2022. See DSHW-2022-000522. PPR submitted its response on March 02, 2022. See DSHW-2022-003954. The Division has not identified any additional informational needs at this time.

Special Requirements for a Commercial Solid Waste Disposal Facility

Utah's Solid and Hazardous Waste Act imposes additional requirements for commercial solid waste landfills. See Utah Code §§ 19-6-108(10)-(11). Because the PPL facility is currently permitted as a Class I facility and has met the associated technical requirements, the Division's focus for the 2020 Application was review of the information required by Utah Code §§ 19-6-108(10)-(11).

The requirements of Utah Code § 19-6-108(10) are discussed below. The information provided by the applicant must be adequate for the Director to determine whether the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect and whether there is a need for the facility to serve industry within the state. See Utah Code § 19-6-108(11). This additional information is commonly referred to as a "Needs Assessment."

The 2020 Application addressed the requirements of Utah Code § 19-6-108(10) in Appendix I. Upon receipt of the 2020 Application, Division staff conducted an initial review of the Needs Assessment. The Division sought additional technical assistance from SC&A. SC&A has a history as a contractor with the Division and has produced thorough reports that satisfied the Division in the quality of its work and attention to detail. Along with its work with the Division, SC&A has a history of working with other state governments, various federal agencies, and private organizations throughout the United States on a range of projects. Additionally, SC&A has a resume of work and qualifications to review PPR's Needs Assessment. SC&A's Final Evaluation of Promontory Point Resources, LLC, Class V October 2020 Needs Assessment Report ("2021 SC&A Evaluation") was received on August 10, 2021. See DSHW-2021-011758.

Utah Code § 19-6-108(10) requires:

- (a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste

PPR has provided detailed analysis of the market and utilizes economic expertise to argue that the proposed Class V landfill could be competitive with local and regional landfills. The Division does not have reason to doubt PPR's arguments, though PPR did not provide proposed pricing for disposal services.

- (b) a description of the public benefits of the proposed facility

The primary benefit that PPR described in its application is that it can compete for waste at lower tipping rates (disposal cost per ton) than competing landfills. Additional public benefits were described in varying levels of detail and benefit certainty. For example, one possible future project might be building a solar microgrid onsite, but the Director does not have a basis to require that to be completed after the permit is issued.

Subsection (10)(b)(i) requires a description of public benefits that includes "the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste." The Director does not agree that the PPL facility meets a need in the state for additional capacity, as further discussed below.

- (c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility

Compliance history for PPR does not exist at locations other than the PPL facility. However, PPR has been responsive to requests from the Division to conduct preventive maintenance in advance of receiving waste at the landfill. Construction of the Class I landfill was completed in December of 2017, but the landfill has remained non-operational. Compliance evaluation inspections were conducted in April and August 2020, and a site visit was conducted by Division staff in September 2021. The April and August 2020 inspections identified erosion affecting the thickness of the initial soil cover over the disposal cell's synthetic liner. Sediment had also built up near the leachate collection sump, and vegetation was growing in the landfill cell, having some potential to affect the integrity of the cell liner. Because waste has not been received in the landfill cell, these matters did not threaten the environment, but PPR was asked to take corrective measures at the landfill to properly maintain the cell floor, address vegetation roots and sediment build-up, and repair channel and surficial erosion. See DSHW-2020-006442 and DSHW-2020-012242. PPR was responsive to both of the requests, repairing the effects of erosion and evaluating the root depth of vegetation growing in the cell floor. See DSHW-2020-007988 and DSHW-2020-016922.

Justification for Denying the Permit Application

The Division reviewed both the 2020 Application and the final evaluation of the Needs Assessment completed by SC&A. After review and consideration, the Director has determined that the application cannot be approved because the 2020 Application has not demonstrated "the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste" as required by Utah Code § 19-6-108(10)(b)(i). Specifically, the Director has determined there is sufficient landfill capacity at existing landfills within PPR's self-designated watershed to meet the current and future needs of the State of Utah.

In its 2020 Application, PPR identified a watershed using economic factors for analysis. PPR's approach to identifying its economic watershed was to show that, apart from physical capacity, "need" could also be interpreted as a need for a better located facility to provide an economic benefit through lower transportation costs. PPR argues that if the PPL facility is reclassified as a commercial Class V facility, it can receive

commercial and out of state waste. By receiving out of state waste, the PPL facility can achieve the scale needed to offer lower prices to competitively serve the Utah market. PPR proposes that its attainable waste market has a range of up to 2.5 hours travel time, one way, to transfer stations and to available waste within its economic watershed. PPR considers Box Elder County, Weber County, and Cache County as its potential in-state market.

The PPL facility is located within Box Elder County, whose populated areas are serviced by the non-commercial Little Mountain Landfill, which has approximately 34 years of capacity. The nearest transfer station to PPL is the Weber County Transfer Station, which is a 1.5 hour drive. The populated areas of Box Elder County are primarily served by compactor trucks, having differing travel times depending on the starting point from within the county. However, the Little Mountain Landfill is located along UT-83, which is the same route waste haulers will take to the PPL facility. The Little Mountain Landfill is one hour closer to most of the populated areas of Box Elder County than the PPL facility, making the Little Mountain Landfill the closer option.

Weber County is currently contracted to send residential municipal solid waste (“MSW”) to a commercial landfill that PPR implies is Wasatch Regional Landfill, which has approximately 346 years of capacity. The travel time from the Weber County Transfer Station, which is the northernmost transfer station in Weber County to Wasatch Regional Landfill, is a 1.5-hour drive. The travel time from the Weber County Transfer Station to the PPL facility is also approximately a 1.5-hour drive.

Wasatch Integrated Waste Management District, which operates the Layton Transfer Station, currently sends about 120,000 tons per year to the Tekoi Landfill, according to the PPR Needs Assessment. *See* 2020 Application, Appendix I, p. 18. Tekoi has approximately 263 years of capacity. The travel time between the Layton Transfer Station and Tekoi is roughly a 1.5-hour drive. The travel time between the Layton Transfer Station and the PPL facility is a 1.75-hour drive.

PPR considers Cache County to be among the last of the residential MSW markets to eventually shift to PPL, since it opened the new Logan City North Valley Landfill in 2017, which is estimated to have 77 years of capacity. The travel time from the Logan City Transfer Station, the northernmost transfer station in Cache County to the PPL facility, is a 1.75-hour drive.

The Director accepts that Box Elder, Weber and Cache counties are within PPR’s watershed. Because the Layton and Logan City transfer stations are located furthest from the PPL facility at 1.75 hours away, the Director determined it is reasonable to evaluate PPR’s watershed on a 1.75-hour travel time.

The Needs Assessment reviewed all commercial landfills in Utah within the PPR watershed, comparing travel times for facilities that the PPL facility would compete with to receive waste. PPR’s figures can be viewed in Table A-10 below. *See also* 2020 Application, Appendix I, Volume II, Appendix A, p. 17. The Logan City Transfer Station is highlighted to show that it is the only transfer station having a shorter travel time to the PPL facility than other commercial competitors. Although it is not a commercial landfill, the Logan City North Valley Landfill is located 34 minutes north-west of the Logan City Transfer Station, a shorter travel time than 1.75 hours.

Table A-10: Travel Times (Minutes) From Transfer Stations to Landfills – Departure Time (8 AM)

	Transfer Station	Difference in Minutes (PPL vs. Next Best Competitor)	Landfills in UT					
			1	2	3	4	5	
			Promontory Point Landfill	Wasatch Regional Class V Landfill	Intermountain Regional Landfill	ECDC Environmental Landfill	Tekoi Commercial Landfill	
UT	1	Ace Intermountain Recycling Center	82	139	57	63	143	73
	2	Allied Salt Lake Transfer Station	82	144	62	66	150	78
	3	DCD-Heber Transfer Station	83	185	105	102	153	122
	4	DCD-Orem Transfer Station	136	180	98	44	110	115
	5	Layton Transfer Station	35	118	83	87	171	100
	6	Logan City Transfer Station	(24)	110	134	136	221	150
	7	North Pointe Solid Waste District-Lindon	135	179	98	44	117	115
	8	Salt Lake Valley SWMF-Transfer Station	92	146	54	67	150	70
	9	South Utah Valley Solid Waste District	135	189	108	54	99	125
	10	Tooele County Transfer Station	123	168	54	45	175	58
	11	Waste Management-Salt Lake MSW	109	159	72	50	143	88
	12	Weber County-Transfer Station	13	106	93	97	181	110

PPR’s comparison of travel times to competing commercial landfills within its wasteshed aids to answer Utah Code § 19-6-108(10)(a)(iii), which requires “a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste.” However, the evaluation of the need in the state for additional capacity cannot not be limited to commercial facilities. See Utah Code § 19-6-108(10)(b)(i). PPR’s wasteshed also contains non-commercial landfills that provide additional capacity and shorter travel times not fully considered in PPR’s submission. Nonetheless, the evaluation of the existing commercial capacity and travel times to these landfills is sufficient to demonstrate that a need for additional capacity is not supported.

PPR suggests that the language in Utah Code § 19-6-108(10)(b)(i) referring to “need in the state for the additional capacity” refers to economics rather than physical space within landfills. PPR posits that evaluating the economic efficiency with which the available capacity is distributed within a proposed region is more important than the available physical airspace. The Director disagrees. The Director interprets the “need in the state for the additional capacity” to refer to the need in the state for physical airspace that is proximate to the locations of waste generation within a given wasteshed. With only the exception of the Logan City Transfer Station, PPL is in no better location than the existing options shown above in PPR’s own comparison of travel times, which does not include even closer travel times to the additional non-commercial landfills in the wasteshed. See 2020 Application, Appendix I, Volume II, Appendix A, p. 17, Table A-10. The travel time from the locations of MSW accumulation to existing permitted landfills is shorter than it is to the PPL facility. The Director views travel time from the source of waste collection to the PPL facility to be greater than or comparable to currently available options for disposal.

Disregarding PPR’s claim, the Division must focus on the literal interpretation of Utah Code § 19-6-108(10)(b)(i) regarding capacity as physical airspace. The available airspace within PPR’s market is as much as 346 years, and includes multiple facilities within comparable travel times, as indicated above in PPR’s Table A-10, and on the map below from the 2021 SC&A Evaluation.

Public Participation

On February 23, 2023, the Director initiated a 45-day period to provide the public an opportunity to submit comments on the Director's intent to deny the 2020 Application to reclassify the PPL facility as a Class V commercial landfill on the basis that there is sufficient landfill capacity at existing landfills within PPR's watershed to meet the current and future needs of the State of Utah. As discussed above, the technical requirements related to safeguarding against substantial hazards to human health and the environment are identical for Class I and Class V facilities, and were demonstrated for the previously approved PPL Class I facility.

A public hearing is scheduled for Monday, March 27, 2023, for the purposes of taking oral comments from members of the public. Additional details on the public hearing are found in the public notice.

A public notice of the comment period was published in the Deseret News, the Salt Lake Tribune, the Box Elder News Journal, and the Ogden Standard Examiner. The notice was also made available on the Division's web page at:

<https://deq.utah.gov/public-notices-archive/waste-management-radiation-control-public-notices>

Written comments will be accepted according to the instructions provided in the public notice published in the newspapers and on the web page listed above. At the conclusion of the public comment period and public hearing, the Director will give due consideration to each comment.

All documents referenced in the narrative above may be reviewed online by searching for the document number in the "Search Phrase" box on the following web page: <http://eqedocs.deq.utah.gov/>
To open documents from the web page, pop-ups must be allowed by your internet browser. If further information or assistance in obtaining a copy of documents is required, contact the Division at (801) 536-0200.