

May 22, 2017

Alan Matheson
Executive Director
Utah Department of Environmental Quality
195 North 1950 West, 4th Floor
P.O. Box 144810
Salt Lake City, UT 84114-4810

Dear Director Matheson,

On behalf of our coalition—the Intermountain Power Project, PacifiCorp, Salt Lake County Department of Public Works and Municipal Services, Trans-Jordan Landfill, Utah Association of Counties, Utah League of Cities and Towns, Wasatch Integrated Waste, and Waste Management—we appreciate the stakeholder outreach that the Division of Waste Management and Radiation Control has conducted about HB 115. This letter outlines the statutory parameters for the Division’s outreach and our coalition’s concerns about the process to date.

I) Statutory parameters

Per HB 115 and Utah Code Ann. 19-6-119(6), the Division is responsible to propose a fee schedule that:

*(i) creates an **equitable and fair fee** to be paid by all persons whose treatment, transfer, or disposal of nonhazardous solid waste creates a regulatory burden to the department,*

*(ii) covers the **fully burdened costs** of the program and provide for reasonable and timely oversight by the department,*

*(iii) **adequately meets the needs** of industry, local government, and the department to employ qualified personnel to appropriately oversee industry and local government regulation,*

*(iv) provides **stable funding** for the Environmental Quality Restricted Account (EQRA), and*

*(v) gives **consideration to a fee differential** regarding solid waste managed at a transfer facility, no greater than 50% of the fee set for the treatment or disposal of the same solid waste.*

Our group of identified stakeholders has attended stakeholder meetings in Brigham City, Cedar City, Richfield, and Salt Lake City in recent weeks. We have appreciated the feedback from Division staff, led by Director Scott Anderson, both during the 2017 legislative session and the stakeholder meetings.

We have several unanswered questions about the implementation of HB 115. We have outlined our concerns to match the five statutory expectations listed above in HB 115.

(i) What is an equitable and fair fee?

Our coalition agrees that all persons that create a regulatory burden to the department must pay “an equitable and fair fee.” However, finding consensus on “equitable and fair” requires additional data so that all of the stakeholders better understand the purpose of the fee and cost accounting of the regulations (see (ii) below).

Under current law, the Division distinguishes between landfills and waste facilities that are owned by political subdivisions and those that are commercial facilities. Likewise, state law provides for a lower fee for municipal waste and a higher fee for industrial waste.

Under current law, the Division regulates 168 facilities but only 41 facilities pay a regulatory fee. One reason for that discrepancy is that landfills owned by political subdivisions that receive less than 5,000 tons of waste do not pay a fee. Longstanding state policy has recognized the potential burden of a fee on small, rural landfills and has thus exempted them from the fee. The current fee schedule proposals would result in a policy shift by mandating a fee on those facilities.

Meanwhile, one facility of the 41 facilities that pays the fee—ECDC which Republic operates in East Carbon—pays about 40% of the overall fee revenue because of their reliance on collecting industrial waste. As such, it is understandable why ECDC would seek a modification to the current fee schedule.

“Equitable and fair” could include a tiered system based on facility classification, a flat fee on all facilities, a fee based on different types of waste, and any other number of potential options. The Division has publicly proposed four fee schedules, but must explore all potential options (see (II) below).

(ii) Fully burdened costs ... reasonable and timely oversight

Our coalition has consistently asked the Division to provide us with accounting data for the actual cost of regulation. Solid waste is regulated by the Division of Waste Management and Radiation Control that also oversees the regulation of radioactive waste and hazardous waste in addition to other programs such as used oil and tire recycling. While we understand the need to fund the “entire program” that allows that state to have the delegated federal authority from the Environmental Protection Agency (EPA), fair and equitable fees can’t be established without first understanding the cost specific to the regulation of solid waste, and also for each facility or facility type.

According to statute, the term “fees” means revenue collected by an agency for performing a service or providing a function. UCA §63J-2-102(3). What is the actual cost of regulation for the Division to perform an inspection or issue a permit? For example, how much does it cost the Division to regulate the Iron County landfill? Last year, Iron County paid a fee to the Division of \$3,850. However, the initial version of HB 115 would have resulted in a new fee of \$15,602. Did the regulatory cost quadruple? When cities or counties levy a fee on residents, they must account for the justification of the fee and cannot use it as a “tax.” We do not oppose paying the cost of regulation, but we are concerned that this decision regarding the equity of fees is being made while lacking data about the actual cost of regulation.

Additionally, we have requested that the Division articulate the extent of their oversight of facilities. How often do inspections occur? How often are permits issued? What other services or functions are provided? Our coalition requests that information so that the data can inform what the “fully burdened costs” are and guide the conversation in (i) about a “fair and equitable” fee.

(iii) Adequately meet the needs of ...

As referenced in (i) and (ii) above, our coalition wants to better understand how often the Division is inspecting waste facilities, processing permits, and meeting the needs of all of the stakeholders. The Division has indicated that such data is difficult to determine. Nevertheless, our Coalition requests that the Division produce such data to inform the dialogue.

(iv) *Stable funding for EQRA*

As referenced in (i), only 41 facilities—out of 168 regulated facilities—pays regulatory fees. Additionally, one facility (ECDC) provides approximately 40% of the overall fee revenue. As such, it is understandable why ECDC would seek a modification to the current fee schedule.

Meanwhile, the Utah State Legislature currently mandates that approximately 11% of the Division's fee revenue--\$192,200 out of \$1,700,000—be transferred to the state general fund as “free revenue” or to the Hazardous Substances Mitigation Fund. Instead, we argue that the Utah State Legislature should not transfer fee revenue as “free revenue” and should instead allow the Division to stabilize the EQRA.

(v) *Gives consideration to a fee differential*

This point encourages the Division to consider a fee differential regarding solid waste at a transfer facility. In doing so, one could argue that (v) encourages the Division to focus the fee on the type of waste so as to not doubly charge the same waste. However, is the cost to the Division the regulation of the waste itself—and thus a rationale to avoid a double charge—or is the cost to the Division the regulation of the classification of the facility? As referenced above, our coalition needs to better understand the regulatory cost in order to determine this potential fee differential. Additionally, this question gives rise to another policy determination – Should waste only be charged the fee once, or should it be charged at every facility in which the waste is handled, and thus regulated. The crux of this discussion centers of “double taxation” vs. “fee based on regulatory burden.”

II) The coalition recommends the following research and approach by the Division:

- 1) Calculate the cost accounting for regulating different classifications of waste facilities, both commercially owned and political subdivision owned
- 2) Calculate the cost accounting for different types of site visits (regular inspections, permitting for new construction, etc.)
 - The cost accounting data should consider travel costs separately so as not to penalize waste facilities for their location in the state
 - It should also include which facilities pay a permit review fee in addition to disposal fees
- 3) Calculate the cost accounting for regulating different types of waste (municipal, industrial)
 - Without this cost accounting data, then a new fee schedule could reduce the fee on industrial waste from \$2.50 to a fraction of that cost without an understanding of the state's regulatory burden for industrial waste (as well as the policy reasons below)
- 4) Consider a transition from a fee to a tax for certain types of waste (revenue neutral)
- 5) Consider Coal Combustion Residuals as a separate category of waste and treat it as such for purposes of evaluation for the fee schedule
- 6) Consider a graduated fee schedule, similar to the current fee schedule for political subdivision owned waste facilities, that would charge a base rate based on size
- 7) Consider a graduated fee schedule based on the type of waste
- 8) Consider a hybrid fee schedule, which could have a base fee for all facilities with an escalating fee based on a tonnage range, regulatory requirements, or other factors referenced above

(III) The coalition has the following concerns which are beyond the Division's HB 115 authority

- 1) The Division has repeatedly stated that they are proposing a fee schedule to ensure that their budget remains at \$1.7 million. However, the Utah State Legislature statutorily transfers \$196,200 of the \$1.7 million budget to the state general fund or to the Hazardous Substances Mitigation Fund. Why is the Legislature thus mandating that fees that local government pays for state regulation are transferred to subsidize other state programs without a public process, notice, or transparency?
 - a. The legislature enacted HB 164 in 2017 to require an open, noticed, and transparent process whenever a city transfers money beyond administrative costs from an enterprise fund to another fund. However, the state makes two transfers from the Division to other programs without similar transparency. Why?
- 2) The Utah State Legislature also authorizes the Division to collect revenue above and beyond their regulatory burden and deposit those excess fees into a reserve account. For example, the Division indicated that they collected \$1.9 million in fiscal year 2017 but only budgeted \$1.7 million. The Division then stored \$200,000 in their reserve account. While the coalition does not oppose the concept of a reserve account, we are frustrated that the state is charging excessive fees on our waste facilities in order to maintain a reserve account.
 - a. Local governments are prohibited from charging certain fees beyond cost recovery. Nevertheless, state law authorizes the Division to charge more than cost recovery to build a reserve. Local governments would certainly support similar fee flexibility.
- 3) Finally, the historic public policy in Utah is that industrial waste is charged a higher rate than municipal waste. Since much industrial waste collected and disposed of in Utah originates from other states, the industrial waste fee is a disincentive to collect and dispose of out-of-state industrial waste. Additionally, all states define waste differently. What Utah classifies as "industrial" may be "hazardous" in Oregon. As such, we are concerned that the combination of removing the out-of-state industrial waste surcharge and the discrepancy in definitions could incentivize other states to ship hazardous waste to Utah for disposal.

During the May 8 stakeholder meeting, Division Director Scott Anderson said "that for purposes of this discussion, out-of-state waste is a good thing because it broadens the base." While we are cognizant of the commerce clause of the constitution, we are concerned that local taxpayers will pay more for state regulation of municipal landfills—which rarely accept industrial or out-of-state waste—while out-of-state interests will pay less for state regulation to ship industrial or even hazardous waste to commercial landfills in Utah.

Thank you for your consideration. You can contact Intermountain Power Project's Amanda Smith at asmith@hollandhart.com or Kate Bradshaw at kabradshaw@hollandhart.com, ULCT's Cameron Diehl at cdiehl@ulct.org, or UAC's Lincoln Shurtz at lincoln@uacnet.org.

Sincerely,

Intermountain Power Project

Salt Lake County Department of Public Works and Municipal Services

Utah League of Cities and Towns (ULCT)

Wasatch Integrated Waste

PacifiCorp

Trans-Jordan Landfill

Utah Association of Counties (UAC)

Waste Management