

Solid Waste Fee Updates

During the 2017 General Session, the state legislature tasked the Department of Environmental Quality (DEQ) with updating their fee schedule via HB 115. Instead of encoding new fee rates in statute, HB 115 delegated that responsibility to the DEQ. HB 115 included some guidance, specifically five provisions. They said the DEQ must:

- (i) create an equitable and fair fee to be paid by all persons whose treatment, transfer, or disposal of nonhazardous solid waste creates a regulatory burden on the department...;*
- (ii) cover the fully burdened costs of the program and provide for reasonable and timely oversight by the department;*
- (iii) adequately meet the needs of industry, local government, and the department, including enabling the department to employ qualified personnel to appropriately oversee industry and local government regulation;*
- (iv) provide stable funding for the Environmental Quality Restricted Account...; and*
- (v) give consideration to a fee differential regarding solid waste managed at a transfer facility, no greater than 50 percent of the fee set for the treatment or disposal of the same solid waste.*

In response to these proposed changes, the league partnered with several other stakeholders (representing both the public and private sectors) to form a coalition. The aim of the coalition was to assist the DEQ by providing a recommendation for a fee structure that would satisfy the conditions imposed by HB 115 and would favor the interests of all stakeholders. The coalition examined dozens of different fee models over the course of the summer and eventually arrived at an agreement. The coalition's proposal was a hybrid approach, with a minimum "floor" amount and a varying rate for different classifications of landfills. The coalition felt strongly that non-commercial entities (as defined in statute) should have a lower rate than commercial landfills. It is worth noting that the statutory distinction between commercial and non-commercial landfills is not whether they're "for-profit" entities or not, but whether they serve a local government. That is to say that a "for-profit" landfill may be designated non-commercial as long as they contract exclusively with a political subdivision. Hence, class I, II, III, and IV landfills are considered noncommercial while Class V and VI are commercial.

One of the most important distinguishing factors between commercial and non-commercial landfills is their ability to dispose of out-of-state waste. Non-commercial landfills are limited in waste disposal by the local government's population and other regulations. Commercial landfills may import for disposal: municipal, construction, and industrial waste from other states, where it may be designated as "hazardous" (so long as it's not considered hazardous in Utah). Essentially, commercial landfills have access to broader, larger markets and more deference in the types of waste they dispose of. This gives commercial landfills the financial incentive to dispose of a larger quantity of industrial waste in order to be more profitable. The coalition feels that this categorically distinguishes commercial landfills from non-commercial landfills and warrants a higher fee, since the regulatory standards should be higher.

Unfortunately, the DEQ rejected the coalition's proposal in lieu of an identical rate for all landfills. They proposed that all landfills in Utah, regardless of size, classification, or type of waste, should pay the same tonnage rate: \$125 or \$0.22 per ton, quarterly (whichever is greater). The DEQ argued that this is the only possible interpretation of the first condition, which mandates equitability and fairness. The coalition maintains that fees exist to cover the cost of a service. In this instance, that service is

regulation. The DEQ, Utah Administrative Code, and Utah Code all distinguish different types of landfills (municipal solid waste, construction waste, industrial waste, etc.) and attach varying degrees of oversight to them. This, in addition to the precedent that state leaders and regulators have set by not mandating fees for small municipal and county landfills, indicates that there is a fundamental regulatory difference between the two. Ignoring the additional regulatory burden to meet an arbitrary standard of equitability is unfair. Small municipal landfills should not have to pay undue fees to cover the costs of large landfills. Instead, the coalition's proposal of a minimum fee provides equitability while the proposal's varying rates (\$0.50 for commercial and significantly less for non-commercial landfills) provide fairness.

The other lingering issue with the DEQ's proposal is that any municipality or county that uses a transfer station will effectively pay a higher rate. For example, if a city uses a transfer station they not only pay the quarterly \$125 or \$0.22 per ton (again, whichever is greater), they must also pay a \$0.11 per-ton fee on the waste for the transfer station. If this is a large or medium-sized government, they will ultimately be paying \$0.33 per ton on their waste. Out-of-state waste typically does not pass through a transfer station in Utah, so the effective fee on that waste will be less than the hypothetical local government. Solid waste in Utah fees should not be used to subsidize imported waste.

The League and their coalition partners feels that there should be a lower rate for non-commercial landfills, partially to compensate for the additional cost of transfer stations. The comment period is open until September 12th at 5:00PM. Please express any concerns that you may have.