

Millcreek City Council

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July 27, 2023

Sent via email: jpersons@utah.gov
John Persons
Engineer
Utah Department of Environmental Quality
P.O. Box 144820
Salt Lake City, UT 84114-4820

**Subject: Comments of Millcreek
 Intent to Approve DAQE-IN161200001-23
 New I-80 Aggregate Mining Facility**

Dear Mr. Persons:

Millcreek, a Utah municipality, submits the following comments to the Department of Environmental Quality, Division of Air Quality (DAQ), on the above-referenced Intent to Approve an air quality Approval Order (AO) for an aggregate mining, crushing and screening facility known as the I-80 South Quarry to be operated by Granite Construction Company (Granite Construction) on the south side of I-80 in Parleys Canyon.

Millcreek is a municipality of more than 63,000 residents located in Salt Lake County. Millcreek borders Parleys Canyon, and many Millcreek residents live in an area on the south side of the rim of Parleys Canyon in the Canyon Rim neighborhood. These residents and their properties have been adversely impacted by fugitive dust emissions emanating from the existing rock quarry mining operations (Kilgore Quarry) located on the north side of I-80 across from the site of the new I-80 South Quarry.¹ In fact, a study recently traced fugitive dust transported from the existing quarry onto properties in Millcreek.² These fugitive dusts adversely affect air quality and

¹ Utah Division of Oil Gas & Mining, *Mineral Permit Files Permit S0350055 Millcreek's Objection to NOI to Commence Small Mining Operations of Granite Construction Company*, Exhibit A—Mayor's Declaration (June 27, 2022), <https://ut-dnr-ogm-prod-sf-public-bucket.s3.amazonaws.com/5635881.pdf>.

² Kyle Brennan, *Pilot Study on Tracing Fugitive Dust Using from the Parleys Canyon Kilgore Quarry, Utah*, HYDROSHARE (June 21, 2023), <https://www.hydroshare.org/resource/9554c54518534035a085fb7079fca5fa/>

properties in Millcreek and pose a threat to the health, safety, and general welfare of Millcreek residents. The new aggregate mining facility proposed in proximity to Millcreek’s municipal boundary will likely cause similar impacts and harms.³

Millcreek supports efforts of DAQ to safeguard and improve Utah’s air quality. However, the proposed approval of an AO for this Project will not support that mission.

This letter, in combination with the Technical Comments prepared by Dr. Ranajit (Ron) Sahu, contain Millcreek’s comments and requested actions regarding the Intent to Approve the proposed AO for the I-80 South Quarry and expresses Millcreek’s opposition to the proposed approval. Millcreek adopts Dr. Sahu’s comments and asks that the DAQ respond to the requests identified in Dr. Sahu’s comments and take the requested actions identified in this letter. Millcreek is concerned that the proposed AO and Project File will not adequately control potential fugitive emissions from the new I-80 South Quarry and do not meet the existing standards required for approval. In addition, Millcreek raises several concerns related to the reliability of the data that forms the basis for the Intent to Approve the AO.

The proposed AO should not be issued for the following reasons:

- 1. Effective Control of Fugitive Emissions from Existing and Proposed Mining in Parleys Canyon Requires More Site-Specific Modeling and Analysis of Wind Patterns in the Canyon and Imposition of More Aggressive Emission Controls.**

Fugitive dust emitted or entrained from the existing mining in Parleys Canyon continues to blow from the mouth of the canyon into Millcreek. The new I-80 South Quarry will only add to the fugitive dust emanating from the canyon. Permit limits and controls on the existing mining operation are not effectively controlling fugitive dust. The same types of controls are being proposed in the AO for the new I-80 South Quarry and will not provide effective continual control of fugitive emissions.

The unique dynamics of wind and entrainment of dust from mining operations in Parleys Canyon need to be more fully studied and understood, and more effective fugitive dust controls need to be identified and implemented.

The limits and controls currently in use at the Kilgore Quarry are not adequately controlling fugitive emissions from that operation. For example, on July 15, 2023, at 9:20 a.m., the photo in Figure 1 was taken from I-80, showing dust blowing off the existing Kilgore Quarry.

Figure 1. Dust Blowing Off Kilgore Quarry on July 15, 2023, at 9:20 a.m. Near Mile 131.

(concluding that “approximately 60.35% of the dust sample collected from the Canyon Rim neighborhood is attributable to the Kilgore Quarry”).

³ Utah Division of Oil Gas & Mining, *supra* note 1, at Exhibit A.



Figure 1 demonstrates that fugitive dust continues to blow from an existing quarry just across I-80 from the I-80 South Quarry even when the conditions and sources of data relied upon by DAQ are “not expected to cause windblown dust.”⁴ The National Weather Service—the source identified in the AO to measure wind speed—indicated that the wind speed at 9:20 a.m. on July 15, 2023 (the date and time of the photo in Figure 1) was 7 miles per hour.⁵ However, in the Project File, DAQ stated that “wind speeds for wind erosion are thought to start at 12 MPH, so the 6-10 mph range is not expected to cause windblown dust.”⁶ The wind speed data source relied upon by DAQ combined with DAQ’s assumptions for wind erosion produce modeling that seems to directly contradict observed conditions in the area.

“Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.” UTAH ADMIN. CODE R307-309-10(2). However, Utah’s regulations for high wind events are inadequate to minimize such dust. DAQ regulations provide an exception whereby opacity standards do not apply when wind speed exceeds 25 miles per hour if the fugitive dust control plan is followed and the owner/operator takes certain contingency measures. UTAH ADMIN. CODE R307-309-5(3). This creates a gap in the regulations when a source is located in an area—like Parleys Canyon—that frequently has high wind speeds. While Utah’s regulations only require “one or more” contingency measures including the option to “[c]ease or reduce fugitive dust producing operations to the extent practicable,” *see* UTAH ADMIN. CODE R307-309-5(3)(d), other states require that dust producing operations cease during high wind events *in addition to other measures*. *See, e.g.*, N.M. CODE R. § 20.11.20.16(A), (C)(5) (requiring all persons responsible for

⁴ Project File at 88.

⁵ National Weather Service, *Salt Lake City, Salt Lake City International Airport*, July 15, 2023, at 9:20 a.m., <https://www.weather.gov/wrh/timeseries?site=kslc>.

⁶ Project File at 88.

fugitive dust control activities to “stop[] active operations that are capable of producing fugitive dust” in addition to implementing other measures during high wind events).

A recent pilot study concluded that much of the dust deposited in the Canyon Rim neighborhood is emanating from the location of the Kilgore Quarry.⁷ The study used Strontium isotope ratios to trace dust transport from Kilgore Quarry to a downcanyon site in the Canyon Rim neighborhood of Millcreek.⁸ To conduct the study, Millcreek staff collected dust from the exterior wall of a utility shed on private property in the neighborhood.⁹ “The University of Utah Geology and Geophysics Department’s ICPMS laboratory conducted the isotope analysis” on the dust samples and bedrock samples that “were collected along I-80 road cuts adjacent to the quarry.”¹⁰ The study found that “the proportion of Kilgore dust in the Canyon Rim sample is estimated to be 60.35%.”¹¹ In addition, the study cited Utah Department of Transportation (UDOT) data “reveal[ing] significant wind speeds, with an average annual occurrence of wind exceeding 25 mph 25% of the time” and “wind speeds above 15 mph were recorded for the majority of the time, occurring 80% annually.”¹² DAQ’s analysis does not address the results of this study, nor does it examine to what extent an additional quarry in roughly the same area within Parleys Canyon with similar types of controls would increase the dust blown into this area of Millcreek.

The observed dust blowing off the existing Kilgore Quarry, study results indicating that the dust present in the Canyon Rim neighborhood in Millcreek is majority Kilgore dust, and UDOT data revealing wind speeds that differ significantly from the National Weather Service data on which DAQ relies together establish the need for more thorough analysis of the conditions in Parleys Canyon and how those conditions relate to fugitive dust. And, based on this further analysis, DAQ should reassess the dust controls proposed in the AO for the I-80 South Quarry.

Requested Actions:

- A. DAQ should conduct a thorough analysis of the conditions in Parleys Canyon, recognizing the unique topography and wind conditions in the area.
- B. The current dust controls in place at Kilgore Quarry and the proposed controls in the AO should be reassessed in light of the observed dust blowing off the Kilgore Quarry, pilot study identifying Kilgore dust in Millcreek, UDOT wind speed data, and further analysis conducted by DAQ.
- C. DAQ should also reassess the current regulatory structure for fugitive dust to ensure that the regulations minimize fugitive dust and include adequate contingency measures for high wind events.

2. The Requirements and Limitations Identified in the Proposed AO Do Not Adequately Ensure Effective, Continual Control of Fugitive Emissions and Compliance with Emission Limits.

⁷ Brennan, *supra* note 2.

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.* at 2–3.

¹¹ *Id.* at 3.

¹² *Id.* at 4.

The Requirements and Limitations in the AO¹³ are flawed and largely unverifiable. For example, the owner/operator is charged with “perform[ing] monthly inspections to check that water is flowing to water sprays associated with each crusher, screen, and conveyer.” And, “[i]f the owner/operator finds that water is not flowing properly during an inspection of the water sprays, the owner/operator shall initiate corrective action within 24 hours and complete corrective action as expeditiously as practical.”¹⁴ This fails to address how the owner/operator should respond to water sprays that are observed to not be flowing *outside* of an inspection, seemingly allowing the owner/operator to be willfully blind to such conditions so long as they do not occur during a monthly inspection.

In addition, while the Requirements and Limitations include opacity testing, they fail to clarify when the owner/operator must conduct such testing for intermittent sources, creating an incentive for the owner/operator to do the required opacity testing when the conditions are better and to refrain from doing so when they are worse.

Additional unverifiable assumptions from the Special Conditions are specifically identified in Dr. Sahu’s report.

By placing the monitoring and enforcement mechanism on the owner/operator and allowing the owner/operator to determine when it conducts inspections to comply with the requirements and limitations, DAQ creates an incentive and means whereby the applicant can comply with those requirements and limitations while willfully ignoring conditions that clearly indicate negative impacts on air quality.

Requested Actions:

- A. DAQ should clarify to what extent the owner/operator is responsible for monitoring and enforcement and to what extent DAQ will review and independently confirm the accuracy of the information that the applicant is required to provide to DAQ.
- B. The Intent to Approve should clarify that the owner/operator has continuing obligations that may be triggered outside of the designated inspection periods when observed conditions indicate a need for corrective action.
- C. DAQ should commit to monitoring and enforcement of requirements and limitations either in addition to or instead of placing such responsibility on the owner/operator.

3. The NOI and Proposed AO Do Not Take Into Account the Applicant’s True Intention to Develop a Much Larger Mining Operation and the Extent of Common Ownership or Control of the New I-80 South Quarry and the Existing Kilgore Quarry.

The new I-80 South Quarry is identified as a minor source based on the limited information provided by Granite Construction in its Notice of Intention (NOI). The Division has not done due diligence to determine whether the actual intent of the applicant is to develop a much larger mining operation which would emit much greater quantities of fugitive dust and other air pollutants and potentially implicate permitting requirements for major sources. In fact, there are

¹³ Intent to Approve at 7–13.

¹⁴ Intent to Approve at 9.

many public indications that this is precisely the applicant’s intent. The Division should recognize the applicant’s true intent to develop a much larger mining operation and deny the NOI on that basis.

The applicant has also made public representations concerning its relationship to the ownership of the existing Kilgore Quarry, which also warrants investigation into the nature and extent of any common ownership or control of the I-80 South Quarry and the Kilgore Quarry.

There are a number of facts that trigger DAQ scrutiny of Granite Construction’s true intentions for the scope of its mining operations in Parleys Canyon.

On November 12, 2021, Tree Farm LLC simultaneously filed two Notices of Intent with the Utah Division of Oil, Gas and Mining (DOGGM), seeking both a small mineral permit and a large mineral permit.¹⁵ In its Notice of Intention to Commence Large Mining Operations, Tree Farm LLC identified the total area of disturbance of 634 acres over roughly 100 years.¹⁶ DOGM, on May 23, 2022, permitted Tree Farm to withdraw both Notices of Intent and re-file a small mine NOI.¹⁷ On June 15, 2022, Granite Construction Co. (on behalf of Tree Farm) filed a new small mine NOI.¹⁸ The NOI had the same project location as the prior Small Mine NOI filed by Tree Farm and Tree Farm was listed as the owner of the land surface and minerals. In reviewing the new Small Mine NOI, DOGM stated:

Regardless of Granite and Tree Farms’ long-term intentions for this property, the Granite NOI is an application for a small mine permit and, in compliance with the small mine requirements, only seeks to disturb twenty acres. If at some point Granite wished to mine outside those boundaries, it would be required to submit a large mine NOI to the Division and go through the large mine permitting process.¹⁹

But DAQ is not only permitted to consider the “long-term intentions for this property,” the EPA guidance and facts and circumstances of this case—including Tree Farm’s previous simultaneous filings with DOGM—indicate that DAQ should do so.

¹⁵ Utah Division of Oil Gas & Mining, *Mineral Permit Files: Permit M0350054 Notice of Intention to Commence Large Mining Operations* (Nov. 12, 2021), <https://ut-dnr-ogm-prod-sf-public-bucket.s3.amazonaws.com/5631531.pdf> [hereinafter M0350054 NOI]; Utah Division of Oil Gas & Mining, *Mineral Permit Files Permit S0350053 Notice of Intention to Commence Small Mining Operations* (Nov. 12, 2021), <https://ut-dnr-ogm-prod-sf-public-bucket.s3.amazonaws.com/5631215.pdf>.

¹⁶ M0350054 NOI, *supra* note 15, at 9.

¹⁷ Utah Board of Oil, Gas & Mining, *Combined Order Granting Stipulation and Denying Motion for Policy Guidance 5* (May 23, 2023), <https://ut-dnr-ogm-prod-sf-public-bucket.s3.amazonaws.com/5635324.pdf>.

¹⁸ Utah Division of Oil Gas & Mining, *Mineral Permit Files Permit S0350055 Notice of Intention to Commence Small Mining Operations* (June 15, 2022), <https://ut-dnr-ogm-prod-sf-public-bucket.s3.amazonaws.com/5635875.pdf>.

¹⁹ Utah Division of Oil Gas & Mining, *Mineral Permit Files Permit S035055, Order on Notice of Intention to Commence Small Mining Operations and Objections 12* (Aug. 22, 2022), <https://ut-dnr-ogm-prod-sf-public-bucket.s3.amazonaws.com/5636553.pdf>.

In addition to the simultaneous large and small permits sought from DOGM and stated intentions to develop a large mining operation, there are other facts that trigger scrutiny of the applicant's actual intent.

Public statements made in litigation imply that the I-80 South Quarry is tied to, and perhaps an extension of, the existing Kilgore Quarry. Tree Farm, LLC is currently in litigation with Salt Lake County regarding the applicability of a County zoning ordinance.²⁰ In its Complaint, Tree Farm stated that it “owns or has interest in over 1,000 acres of property in Parley’s Canyon within the Forestry and Recreation Zone.”²¹ Tree Farm also attached two Declarations and Notices of Vested Mining Use stating that “entities owned or controlled by Defendant Sachs acquired the Property with the intent to mine it,” that “[s]ince at least 1993, Declarants have operated as a joint venture regarding such Property,” citing a 1995 “Notice of Intention to Commence Large Mining Operations with respect to a portion of the Property” that was filed “by Rock and Roll Land Company, Inc., as owner, and Harper Contracting, Inc., as operator” and which was approved by DOGM in 1996, and tying Tree Farm, LLC to the mining operations of Rock and Roll Land Company, Inc.²²

Despite Tree Farm’s affirmative public declarations to tie itself to the existing mining operation in Parleys Canyon, Granite Construction in its NOI for the new I-80 South Quarry fails to identify whether or not its proposal is linked in any way to the existing Kilgore Quarry by any common ownership or control, such that, together, they may be considered an aggregated and major source.

Although DOGM granted the Stipulated Motion dismissing the small and large Notices of Intent on May 23, 2022, on July 6, 2022—nearly a month after filing a new Small Mine Notice of Intent—Granite Construction filed a Storm Water Pollution Prevention Plan (SWPPP) for the I-80 South Quarry.²³ In the SWPPP, Granite stated that the SWPPP was “for the 634 acres I-80 South Quarry located in Parley’s Canyon,” far exceeding the 20-acre cap identified in the Intent to Approve.²⁴ The SWPPP identifies a “mining boundary” encompassing 609 acres.²⁵ It stated that the estimated project start date was 4/4/2022 while the estimated project end date was 2/24/2100.²⁶

Because the preconstruction review of a major source is very different from that of a minor source, “it is improper to construct a source with a minor source permit when there is intent to operate as a major source.”²⁷ EPA guidance warns that when “a source attempts to expedite construction by securing minor source status through permits containing operational restrictions from which the source intends to free itself shortly after completion of construction and commencement of operation,” “[s]uch attempts are treated as unlawful circumvention of the

²⁰ *Tree Farm, LLC v. Salt Lake County*, Case No. 220902840 MI (Utah 3d District Court).

²¹ *Tree Farm, LLC v. Salt Lake County*, Case No. 220902840 MI (Utah 3d District Court), Complaint at 4.

²² *Id.* at Exhibits B & C.

²³ SWPPP (July 6, 2022), attached as Exhibit A.

²⁴ Exhibit A at 3.

²⁵ Exhibit A at fig. 2.

²⁶ Exhibit A at Appendix 1.

²⁷ Terrell E. Hunt & John S. Seitz, *Guidance on Limiting Potential to Emit in New Source Permitting*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 11 (June 13, 1989).

preconstruction review requirements.”²⁸ When improper classification as a minor source is suspected, “EPA enforcement and source personnel should be alerted so details may be worked out in the initial review steps such that a sham permit is not issued.”²⁹

While not an exhaustive list, EPA guidance has clarified that when permitting and enforcement authorities examine potential sham permitting, they should scrutinize: (1) applications that relate to the same process or units that the source files either before initial operation of the unit or after less than a year of operation”; (2) “[a]pplications for commercial loans . . . to see if the source has treated the projects as one modification for financial purposes” and whether “the project would not be funded or if it would not be economically viable if operated on an extended basis . . . without the other projects”; (3) “[r]eports of consumer demand and projected production levels” to determine “[i]f reported levels are necessary to meet projected consumer demand but are higher than permitted levels; (4) “[s]tatements by representatives of the source to EPA or to State or local permitting agencies about the source’s plans for operation” and whether “it is reasonable to expect that company management would coordinate the planning and execution of projects considering their intrinsic relationship with each other (physical proximity, stages of production process, etc.) and their impact on economic viability of the plant.”³⁰

In 2018, the EPA reiterated that what is considered a “project” for aggregation purposes “is a case-by-case decision that is both site-specific and fact-driven” and that such determination is important to preventing sources from “carv[ing] up a higher-emitting project into two or more lower-emitting ‘projects’ and avoid[ing] triggering major NSR requirements.”³¹

There are indications in this case that the applicant seeks to “turn[] the statutory scheme on its head by using federally enforceable minor source permits in a manner inconsistent with the statute and with EPA’s intention” by “improperly obtaining minor status for a new source or modification”³² or by treating as a separate project what is—as argued in the litigation with Salt Lake County—a modification or extension on the existing Kilgore Quarry.

“It is much easier, both in technical and practical terms, to consider the air quality impacts and pollution control requirements of a major new source of air pollution before it has been constructed and has begun operation than after.”³³

The applicant has identified its intent in other contexts to be a much larger mining operation than that which was examined by DAQ and has also indicated in litigation and public declarations

²⁸ John B. Rasnic & George T. Czerniak, *Applicability of New Source Review Circumvention Guidance to 3M – Maplewood, Minnesota*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 2 (June 23, 1993); *see also* UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting c.6* (Draft Oct. 1990) [hereinafter *New Source Review Manual*] (“Permits with conditions that do not reflect a source’s *planned* mode of operation may be considered void and cannot shield the source from the requirement to undergo major source preconstruction review.”).

²⁹ *New Source Review Manual*, *supra* note 28, at c.6.

³⁰ Rasnic & Czerniak, *supra* note 28, at 3–4; *see also* 54 Fed. Reg. 27,274, 27,281 (June 28, 1989) (to be codified at 40 C.F.R. pt. 51 and 52) (identifying similar factors).

³¹ 83 Fed. Reg. 57,324, 57,325–26, 57,331 (Nov. 15, 2018).

³² 54 Fed. Reg. 27,274, 27,281 (June 28, 1989).

³³ *Id.*

that there is a relationship between the I-80 South Quarry and the Kilgore Quarry. Thus, additional inquiry and review by DAQ is needed to examine whether the intent of the applicant is to develop an operation that would, either by itself or in combination with the Kilgore Quarry, be considered a major source requiring more thorough preconstruction review.

Requested Actions:

- A. DAQ should not issue the proposed AO.
- B. DAQ should investigate the true intent of the applicant regarding the scope of intended mining operations and relationship of those operations to the existing Kilgore Quarry. Such analysis should include:
 - a. Inquiry of the applicant as to any links to the existing Kilgore Quarry.
 - b. Review of:
 - i. Applicant's statements to DOGM;
 - ii. Applicant's assertions in its litigation with Salt Lake County and connection to the existing quarry in Parleys Canyon;
 - iii. Public statements made by the applicant;
 - iv. Financial documents related to the facility and its funding;
 - v. Consumer demand and projected production levels; and
 - vi. Economic viability of the proposed operation.

4. The Modeling Is So Significantly Flawed That It Cannot Be Properly Relied Upon.

Millcreek adopts and incorporates the Technical Comments prepared by Dr. Sahu and adopts those comments as its own. Millcreek also summarizes some of those comments here as especially pertinent.

First, the project description and definition are not clear. In regard to Phase 2, DAQ does not provide any basis for the assumption that disturbed areas will not grow in size as operations continue. DAQ also assumes a static configuration for Phase 2 air dispersion modeling analysis. And DAQ does not clarify actual production rates.

Second, the Potential-to-Emit emissions inventory for both PM10 and PM2.5 (as well as other pollutants) are grossly deficient. DAQ's emission estimates are, at best, average values, not maximum potential emissions. And reliance on AP-42 is inappropriate for developing PTE emission estimates. In addition, the AP-42 factors relied upon by the applicant and DAQ are often poor. During President Trump's administration, the EPA sent an Enforcement Alert specifically warning against the use of AP-42, as "a permit limit using an AP-42 emission factor would result in half of the sources being in noncompliance" and that "AP-42 emission factors should only be used as a last resort."³⁴

Third, because the emissions inventory are deficient, analysis and conclusions relying on such—including DAQ's determination that the proposed mine will be a minor source—are also deficient.

³⁴ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *Enforcement Alert 1–2* (Nov. 2020), <https://www.epa.gov/sites/default/files/2021-01/documents/ap42-enforcementalert.pdf>.

Also because of the deficient emissions inventory, the air dispersion modeling is significantly flawed and unreliable. This modeling uses the emissions inventory as a critical input.

Fifth, the air dispersion modeling suffers other flaws including use of inaccurate meteorological data collected far from the proposed mine site. As identified above in Part 1, the meteorological data within Parleys Canyon differs significantly from the data at the airport. DAQ does not address or explain why reliance on the airport data is justified.

Sixth, DAQ almost exclusively relies on opacity measurements despite the limitations of Method 9 and fails to address how Method 9 is adequate given those limitations.

Seventh, the permit conditions are, in many instances, unverifiable. This issue is also raised in Part 2 above and specific examples are highlighted in Dr. Sahu's comments. In addition, Dr. Sahu identifies specific claims about control efficiency that lack enforcement or verification provisions.

Finally, DAQ discusses Best Available Control Technology (BACT) despite the area's non-attainment for PM_{2.5} and does not support the assertions that certain options are not economically feasible.

Requested Actions:

- A. DAQ should respond to each of the requests in Dr. Sahu's report specifically identifying flaws in the AO and Project File and requesting DAQ to respond.

5. Approval of This Facility Is Contrary to the Purpose of DEQ and DAQ.

“The mission of the Utah Department of Environmental Quality’s [sic] (DEQ) is to safeguard and improve Utah’s air, land, and water. The agency works with businesses, industry, state and local government, and the public to reduce or eliminate pollution. DEQ’s vision — clean air, land, and water for a healthy and prosperous Utah — supports this mission.”³⁵ “The mission of the Department of Environmental Quality (DAQ) is Safeguarding and improving Utah’s air, land and water through balanced regulation.”³⁶

These are not just mission statements; they are explicit statutory requirements. The purpose of Utah’s Environmental Quality Code is to “safeguard public health and quality of life by protecting and improving environmental quality while considering the benefits to public health, the impacts on economic development, property, wildlife, tourism, business, agriculture, forests, and other interests, and the costs to the public and to industry.” UTAH CODE § 19-1-102(3).

The purpose of the Division of Air Quality is to administer Utah’s Air Conservation Act. UTAH CODE § 19-1-105(1)(a). That Act proclaims that “[i]t is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property,

³⁵ Utah Department of Environmental Quality, About DEQ (Aug. 8, 2022) <https://deq.utah.gov/general/about-deq>.

³⁶ Utah Department of Environmental Quality, Division of Air Quality (2023), <https://deq.utah.gov/division-air-quality>.

foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.” UTAH CODE § 19-2-101(2).

DAQ rules “for the purpose of administering a program under the federal Clean Air Act” may differ from “corresponding federal regulations which address the same circumstances” only if “the different rule will provide reasonable added protections to public health or the environment of the state or a particular region of the state.” UTAH CODE § 19-2-106(1).

There is no absolute right to an air pollution permit. “A person may not operate a source of air pollution required to have a permit under Title V of the 1990 Clean Air Act without having obtained an operating permit from the director under procedures the board establishes by rule.” UTAH CODE § 19-2-109.1(2).

By focusing only on the procedures in the Utah Administrative Code, DAQ has failed to determine whether approval of the facility is within the scope of the statutory purpose of DAQ and DEQ. The Notice of Intent to Approve adopts a myopic focus on the procedural requirements and fails to analyze whether or how the project would safeguard public health and quality of life. Although DAQ certainly must follow the regulatory structure for permitting, it also must do so within the constraints of the statutory authority granted to it through state statute. Neither the Intent to Approve nor the Project File address how this project fits within that authority.

Requested Actions:

- A. As an initial step, DAQ should examine its statutory purpose and that of the Department of Environmental Quality and explain whether and how the facility would support or hinder such purpose.

Millcreek values DAQ’s consideration of the comments above and appreciates the opportunity for public comment and engagement throughout this process.

Sincerely,



Mayor Jeff Silvestrini