

Millcreek City Council

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January 27, 2026

Sent via email: jpgersons@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-IN161200002-25
 New I-80 Aggregate Mining Facility**

Dear Mr. Persons:

Millcreek, a Utah municipality, submits the following comments to the Department of Environmental Quality (DEQ), Division of Air Quality (DAQ), on the above-referenced Intent to Approve an air quality Approval Order (ITA) for an aggregate mining, crushing and screening facility known as the I-80 South Quarry to be operated by Granite Construction Company (Granite Construction or Applicant) 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, known as 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 proposed I-80 South Quarry.¹ In fact, a 2023 study traced fugitive dust transported from the existing quarry onto properties in Millcreek.² These fugitive dusts adversely affect air quality and properties in Millcreek and pose a threat to the health, safety, and general welfare of

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>, attached as Exhibit 1.

² Kyle Brennan, *Pilot Study on Tracing Fugitive Dust from the Parleys Canyon Kilgore Quarry, Utah*, HYDROSHARE (June 21, 2023), <https://doi.org/10.4211/hs.fc7d35c92e554fd098792550150bf227> (concluding that "approximately 60.35% of the dust sample collected from the Canyon Rim neighborhood is attributable to the Kilgore Quarry"), attached as Exhibit 2.

Millcreek residents. The proposed I-80 South Quarry in proximity to Millcreek's municipal boundary will likely cause similar impacts and harms.³

Millcreek supports DAQ's efforts to safeguard and improve Utah's air quality. However, this Project will not support that mission.

This letter, in combination with its exhibits, contains Millcreek's comments and requested actions regarding the ITA for the I-80 South Quarry and expresses Millcreek's opposition to the proposed approval.

1. Fugitive Emissions from Existing Mining in Parleys Canyon Demonstrate that DAQ's Current Approach Does Not Effectively Control Fugitive Emissions. Effective Control of Fugitive Emissions from the Proposed I-80 South Quarry Requires Site-Specific Modeling and Analysis of Wind Patterns in the Canyon.

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

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. Similarly, Figures 2 and 3 show dust from the mouth of Parleys Canyon blowing into Millcreek's Canyon Rim neighborhood on August 20, 2024.

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

³ Ex. 1, at Mayor's Declaration.



Figure 2. Dust Blowing into Millcreek on August 20, 2024, at 8:48 a.m., viewed from approximately 2847 S 2870 E

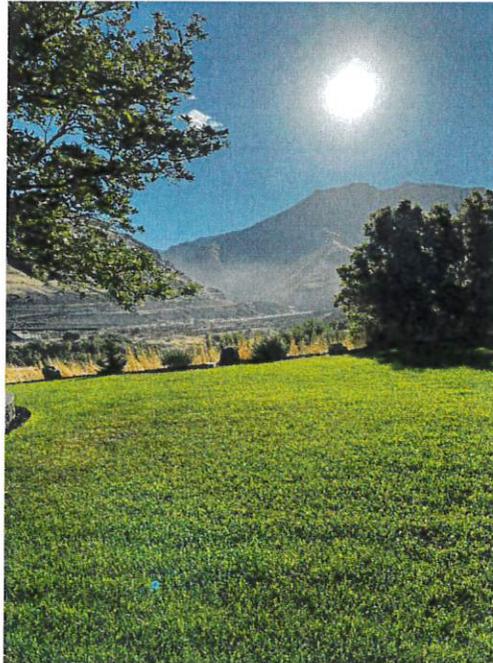


Figure 3. Parleys Canyon Dust on August 20, 2024, at 8:44 a.m., viewed from Louise Avenue and 2900 East Intersection



The new Project File states that its calculations rely on wind speed data from the Salt Lake City Airport.⁴ This is the same data source that was relied upon in Granite’s prior application.⁵

However, 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.”⁶ The National Weather Service indicated that the average wind speed on July 15, 2023 (the date of the photo in Figure 1) was 7.61 miles per hour.⁷ The wind speed data source used by DAQ, combined with DAQ’s assumptions about wind erosion, produces modeling that appears to contradict observed conditions in the area directly.

As with the Applicant’s past application (DAQE-IN161200001-23), the air dispersion modeling for this application is fatally flawed. It is based on Salt Lake City airport meteorological data,

⁴ DAQE-IN161200002-25, Project File, at 15 (noting that “Parameter ‘U’ [the mean wind speed] is determined from historical data retrieved from the Salt Lake City Airport in Salt Lake City, UT over the past five (5) years (January 2015 – January 2020).”).

⁵ DAQE-IN161200001-23, Project File, at 324 (including identical language), attached hereto as Exhibit 3.

⁶ Ex. 3, at 88 (stating 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”).

⁷ National Weather Service, *Salt Lake City, Salt Lake City International Airport*, July 15, 2023, <https://www.ncdc.noaa.gov/cdo-web/datasets/GHCND/stations/GHCND:USW00024127/detail>. Similarly, the average wind speed on August 20, 2024, the date Figures 2 and 3 were taken, the average wind speed was 13.2 miles per hour.⁷

with no indication that such data is representative of the site location.⁸ During that prior application process, it was acknowledged that “local wind conditions and temperature patterns at the project site are markedly distinct from those observed and predicted at SLC [airport].”⁹ This flaw was reiterated after the Applicant changed its modeling approach.¹⁰

The Project File states that “the Applicant installed a meteorological station on-site to collect at least one year of in-situ meteorological data.”¹¹ But neither the ITA nor the Project File contains any disclosure of meteorological data collected thus far, nor does it rely on any such data.

Where the Applicant and DAQ have agreed that on-site meteorological data is necessary for “future air dispersion modeling and consistent with EPA guidance,”¹² and such data is actively being collected,¹³ there appears to be no legitimate reason to rush through the permitting process using data that is not representative of the location, rather than waiting until such data is available before considering an application. Approval of a project based on such flawed data—especially where both the Applicant and DAQ acknowledge in the Project File that the data it relies upon is flawed, and such flawed data would not support future air dispersion modeling—is unjustifiable.

Requested Actions:

- A. The current dust controls in place at Kilgore Quarry and the proposed controls in the ITA should be reassessed in light of the observed dust blowing off the Kilgore Quarry and the pilot study identifying Kilgore dust in Millcreek.
- B. DAQ should issue an order prohibiting the proposed construction and requiring that any future application be based on on-site meteorological data.

2. Real-Time Monitoring of Fugitive Emissions Should Be Required.

The ITA requires that opacity be measured periodically using Method 9.¹⁴ However, the way Method 9 will be used is not sufficiently definite, and it is not sufficient to ensure compliance with the relevant opacity limits. *See* UTAH ADMIN. CODE R307-309-5(1) (“[O]pacity caused by fugitive dust shall not exceed (a) 10% at the property boundary; and (b) 20% on site.”).

First, as with the prior ITA, this ITA fails to clarify the frequency of Method 9 measurement for each mining activity.¹⁵ “Since mining activities and sources will occur at all times, the lack of any consideration of frequency is a glaring deficiency.”¹⁶

⁸ *See* Dr. Ranajit (Ron) Sahu, Technical Comments on Utah DAQ’s Proposed Approval of Granite Construction Company’s I-80 South Quarry Project Number N161200001, at 3, 27–28 attached as [Exhibit 4](#).

⁹ SLR Report, July 4, 2024, at Section 3.2, attached as [Exhibit 5](#).

¹⁰ *See* Dr. Ranajit (Ron) Sahu, Comments on Granite’s Responses to the Utah DAQ Letters Dated July 4 and July 16, 2024, at 2–4, attached as [Exhibit 6](#).

¹¹ DAQE-IN161200002-25, Project File, at 2.

¹² *Id.*

¹³ *Id.* (“[T]he Applicant installed a meteorological station on-site to collect at least one year of in-situ meteorological data.”).

¹⁴ DAQE-IN161200002-25 ITA, at II.B.1.a.1, II.B.6.c.1, II.B.7.d.1.

¹⁵ *Compare* DAQE-IN161200002-25 ITA, at II.B.1.a.1, II.B.6.c.1, II.B.7.d.1, *with* [Ex. 3](#), at II.B.1.a.1, II.B.6.b.1.

¹⁶ [Ex. 4](#), at 3–4 (noting that the prior ITA, DAQE-IN161200001-23, “does not discuss the frequency of such [Method 9] measurements for each activity.”).

Second, Method 9 is particularly unsuitable for the operations described in the Project File. For example, the Project File indicates a maximum operating schedule that includes hours outside of daytime hours.¹⁷ But “Method 9 cannot be used at night.”¹⁸ Because the ITA requires the operator to comply with opacity requirements,¹⁹ yet “Method 9 cannot be implemented under all operating conditions,”²⁰ any approval should address how opacity limits will be continuously assessed.

A real-time perimeter fugitive dust monitoring system would address the deficiencies of the current proposed approach.

Requested Actions:

- A. DAQ should require a real-time perimeter fugitive dust monitoring system.
- B. If DAQ does not require such a system, DAQ should state the frequency of Method 9 measurements for each mining activity and provide a technical response on how opacity limits will be continuously assessed.

3. Effective Control of Fugitive Emissions from the Proposed I-80 South Quarry Requires More Aggressive Emission Controls.

“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). “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 R307-205-7. These regulatory requirements are mandatory.

However, Utah’s existing approach has proven inadequate to minimize fugitive dust, particularly near the proposed I-80 South Quarry.

A 2023 pilot study concluded that much of the dust deposited in the Canyon Rim neighborhood is emanating from the location of the Kilgore Quarry.²¹ The study used Strontium isotope ratios to trace dust transport from Kilgore Quarry to a downcanyon site in the Canyon Rim neighborhood of Millcreek.²² To conduct the study, Millcreek staff collected dust from the exterior wall of a utility shed on private property in the neighborhood.²³ “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.”²⁴ The study found that “the proportion of Kilgore dust in the Canyon Rim sample is estimated to be 60.35%.”²⁵ In addition, the study cited Utah Department of Transportation

¹⁷ DAQE-IN161200002-25 Project File, at 50, 53, 55, 57.

¹⁸ Ex. 4, at 4.

¹⁹ DAQE-IN161200002-25 ITA, at II.B.1.a, II.B.2.c, II.B.6.c, II.B.7.d.

²⁰ Ex. 4, at 31–32.

²¹ Ex. 2.

²² *Id.*

²³ *Id.* at 2.

²⁴ *Id.* at 2–3.

²⁵ *Id.* at 3.

(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.”²⁶ DAQ’s analysis does not address the results of this study, nor does it examine the extent to which 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 conclusion that existing fugitive dust controls are insufficient is consistent with the visual observations of dust emanating from the Kilgore Quarry, as depicted in Figure 1.

The observed dust blowing off the existing Kilgore Quarry and study results indicating that the dust present in the Canyon Rim neighborhood in Millcreek is majority Kilgore dust establish the need for more effective fugitive dust controls in and around the proposed project site.

The fugitive dust control measures to be used shall include: (a) Periodic watering of unpaved roads or; (b) Use of chemical stabilizers on unpaved roads or; (c) Paving of roads. (d) Immediate removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface. (e) Restricting the speed of vehicles in and around the mining operation, (f) Revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust. (g) Restricting the travel of vehicles on other than established roads. (h) Enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage. (i) Substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion. (j) Minimizing the area of disturbed land. (k) Prompt revegetation of regraded lands. (l) Planting of special windbreak vegetation at critical points in the permit area. (m) Control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the director. (n) Restricting the areas to be blasted at any one time. (o) Reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization. (p) Restricting fugitive dust at spoil and coal transfer and loading point. (q) Control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or other techniques as determined necessary by the director and upon concurrence by EPA.

UTAH ADMIN. CODE R307-309-10(3).

Rule 307-309-10(3) uses mandatory language (“shall include”), but not all of the requirements identified in the regulation are present in the ITA. For example, the ITA does not address vehicle speed.²⁷ It does not specify the frequency of revegetation, mulching, and stabilization.²⁸ It does not confirm that no haul trucks will be used on the site.²⁹ It fails to clarify why six acres of disturbed area are necessary, or whether a smaller acreage was considered and, if so, why it was

²⁶ *Id.* at 4.

²⁷ *See generally* DAQE-IN161200002-25 ITA.

²⁸ *Id.*

²⁹ *Id.*

not required.³⁰ It does not specify how quickly disturbed land area will be revegetated, or whether complete or partial enclosures are required.³¹ While it does require overburden to be used as a windbreak, it does not require windbreak vegetation.³² The period between disturbing the soil and revegetation or stabilization is not specified.³³ And it does not specifically require enclosures and stabilization to control dust from storage piles.³⁴ Each of these requirements should be included in the ITA.

Utah’s regulations for high wind events are inadequate to minimize fugitive dust. DAQ regulations provide an exception that exempts opacity standards when wind speed exceeds 25 miles per hour, provided the fugitive dust control plan is followed, and the owner/operator takes certain contingency measures. UTAH ADMIN. CODE R307-309-5(3). In such circumstances, Utah requires owners or operators to implement “one or more” contingency measures, including “(a) Pre-event watering; (b) hourly watering; (c) additional chemical stabilization; [and] (d) ceas[ing] or reduc[ing] fugitive dust producing operations to the extent practicable.” UTAH ADMIN. CODE R307-309-5(3).³⁵

This creates a gap in the regulations when a source is located in an area—such as Parleys Canyon—that frequently experiences high wind speeds. This gap is particularly relevant in this case, where the Applicant has been collecting on-site meteorological data, but such data has not been considered when determining which contingency measures should be applied. Given this known high-wind environment, DAQ should require that the Applicant employ all four contingency measures when wind speeds exceed 25 mph.

Recent legislation has only increased the importance of DAQ’s specification of detailed requirements in the permitting process. In 2025, Utah’s legislature adopted H.B. 355, which generally required that local legislative bodies not restrict the expansion of vested critical infrastructure materials uses.³⁶ And, even if such local legislative bodies make an endangerment finding, H.B. 355 requires that such bodies only impose mitigation measures “that are reasonable and do not exceed requirements imposed by permits issued by a state agency such as an air quality permit.” UTAH CODE § 17-27a-1003(4)(b). In light of this new law, it is especially vital that DAQ’s permitting process be highly specific and clarify permit requirements with sufficient detail to be enforceable. While the Applicant lacks a vested critical infrastructure materials use, in light of this statutory change, DAQ should adjust the level of detail in its permits in the future.

Requested Actions:

- A. DAQ should require all of the fugitive dust control measures identified in UTAH ADMIN. CODE R307-309-10(3).
- B. DAQ should require all four contingency measures identified in UTAH ADMIN. CODE R307-309-5(3) when wind speeds exceed 25 mph.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ 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). DAQ should consider promulgating similar regulations.

³⁶ *See* H.B. 355 (2025).

- C. The fugitive dust control and contingency measures in the ITA should be made more specific and address the noted areas of concern.
- D. DAQ should also reassess the current regulatory structure for fugitive dust to ensure that regulations minimize fugitive dust and include more stringent contingency measures for high-wind events.

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

As with the prior application, the requirements identified in the ITA are not sufficiently specific to be enforceable.³⁷ For example, the new ITA, like the old, does not specify where water sprayers will be located, what water flow rates will be used, or how the selected water flow rate will ensure control efficiencies within the desired range are maintained.³⁸ It does not clarify how meeting opacity limits ensures that control efficiencies will be maintained.³⁹ It does not specify how paved roads will be maintained.⁴⁰ It fails to address the frequency of road sweeping and watering, or the quantities of water to be used for such purposes.⁴¹ It does not clarify the quantities of chemical suppressants and water to be used on unpaved roads, or how the road base will be maintained.⁴²

Beyond this lack of detail, the language of the requirements and limitations is often subjective. For example, the owner/operator is charged with “perform[ing] monthly periodic inspections to check that water is flowing to water sprays associated with each crusher, screen, and conveyer.”⁴³ 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.”⁴⁴ This fails to address how the owner/operator should respond to water sprays observed not to be flowing *outside* 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.

As a further example, the owner/operator is not required to vacuum sweep and flush paved haul roads when they “are covered in snow and ice.”⁴⁵ But the relevant regulatory citation does not clarify when a road is considered “covered in snow and ice.”⁴⁶

³⁷ See DAQE-IN161200002-25 ITA, at 7–12; Ex. 4, at 30–33 (noting myriad ways in which the ITA’s requirements were not sufficiently specific to be enforceable).

³⁸ DAQE-IN161200002-25 ITA, at II.B.2.a; Ex. 4, at 31.

³⁹ DAQE-IN161200002-25 ITA, at II.B.2.c, II.B.6.c; Ex. 4, at 31–32.

⁴⁰ DAQE-IN161200002-25 ITA, at II.B.4.a; Ex. 4, at 31.

⁴¹ DAQE-IN161200002-25 ITA, at II.B.4.b; Ex. 4, at 31.

⁴² DAQE-IN161200002-25 ITA, at II.B.5.b; Ex. 4, at 32.

⁴³ DAQE-IN161200002-25 ITA, at 11.B.2.b.

⁴⁴ *Id.* at 11.B.2.b.

⁴⁵ *Id.* at II.B.4.b.

⁴⁶ *Id.*; see also UTAH ADMIN. CODE R307-401-8.

Similarly, “use of a chemical suppressant, water application, or other control options contained in R307-309” is required for “unpaved areas where mobile equipment is operating,” but there is no clear definition for what constitutes such areas.⁴⁷

Any ITA should also be sufficiently specific to make high-wind contingency measures enforceable, including by specifying the amount of watering required, the water flow rates to be used, that those flow rates are sufficient, and the quantities of chemical suppressants to be used. DAQ’s current requirement that “[t]he owner/operator shall not conduct any blasting when wind speeds are greater than 25 mph”⁴⁸ is insufficient to meet the mandatory requirement that owners and operators minimize fugitive dust. *See* UTAH ADMIN. CODE R307-309-10(2) (“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 R307-205-7 (“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.”).

By placing the monitoring and enforcement mechanism on the owner/operator, DAQ creates an incentive and means whereby the applicant can comply with the ITA’s requirements and limitations while willfully ignoring conditions that clearly indicate negative impacts on air quality.

To ensure compliance with the requirements and limitations, DAQ should require that information be reported to DAQ and made public, rather than just made available on-site.⁴⁹ DAQ has the authority to require such information and to make it available to the public. *See* UTAH ADMIN. CODE R307-102-1(2) (requiring periodic report “and any other information as the director may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards”; making such information “available to the public during normal business hours at the [DAQ]”). In addition to reporting, DAQ is authorized to inspect the project “at a reasonable time for the purposes of ascertaining the state of compliance” with the relevant statutes and regulations. UTAH CODE § 19-2-108(7)(a). To ensure such compliance, the ITA should specify a minimum inspection frequency.

Finally, as discussed separately above, DAQ should require a real-time perimeter fugitive dust monitoring system. Such a system would provide continuous, reliable information on whether the requirements and limitations are met and whether they are sufficient to meet the relevant opacity limits. It would also simplify compliance with reporting requirements. As with opacity compliance, PM10 and PM2.5 data should similarly be collected on-site and provided to DAQ.

Requested Actions:

- A. DAQ should address each of the enforceability issues identified in these comments.
- B. 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.

⁴⁷ DAQE-IN161200002-25 ITA at II.B.5.b; *see also* UTAH ADMIN. CODE R307-401-8.

⁴⁸ DAQE-IN161200002-25 ITA, at II.B.6.b.

⁴⁹ DAQE-IN161200002-25 ITA, at II.B.1.b.1, II.B.1.d.1, II.B.2.b.1, II.B.3.a, II.B.4.a.1, II.B.4.b.1, II.B.5.b.1, II.B.6.a.1, II.B.6.e.1, II.B.6.f.1, II.B.7.a.1, II.B.7.c.1, II.B.7.e.1.

- C. The ITA 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.
- D. DAQ should commit to monitoring and enforcing requirements and limitations, either in addition to or instead of placing such responsibility on the owner/operator.
- E. DAQ should require the Applicant to submit directly to DAQ the information collected pursuant to the requirements and limitations, and should make that information publicly available.
- F. The ITA should specify a minimum frequency of DAQ inspections.
- G. DAQ should require real-time perimeter fugitive dust monitoring and onsite collection of PM10 and PM2.5 data.

5. The Emissions Estimates are Incorrect.

The Project File’s reliance on AP-42 is inappropriate for developing PTE emission estimates.

DAQ’s emission estimates are, at best, average values, not maximum potential emissions.⁵⁰ “AP-42 emission factors . . . cannot be used to estimate potential emissions.”⁵¹ AP-42 emission factors “are designed only to approximate average emission rates, not the maximum emission rate necessary to appropriately calculate PTE for permitting purposes.”⁵²

“Use of these factors as source-specific permit limits and/or as emission regulation compliance determination is **NOT** recommended by EPA. Because emission factors essentially represent an average of a range of emission rates, approximately half of the subject sources will have emission rates greater than the emission factor. . . . As such, a permit limit using an AP-42 emission factor could result in approximately half of the sources being in noncompliance.”⁵³

In addition, the AP-42 factors relied upon by the applicant and DAQ are often poor.⁵⁴ As with the prior application, this new application relies on emission factors rated C, D, or E, which are “very poor in terms of accuracy.”⁵⁵ For example, the reference relied upon for emission factors for Aggregate Processing Equipment⁵⁶ is rated “E.”⁵⁷

⁵⁰ Ex. 4, at 5 (noting that “total potential emissions” means the maximum possible emissions but, where the values used are based on emissions calculations relying predominately on EPA’s AP-42 document, “[a]t best, the emission factors . . . are average and not maximum values”).

The current Project File makes clear that the emission estimates were based upon AP-42. DAQE-IN161200002-25 Project File, at 61–84 (noting, in each instance, reliance on AP-42 as the applicable reference).

⁵¹ Ex. 4, at 5–6 (discussing the references to AP-42 in the prior Engineer Report). *See also* DAQE-IN161200002-25 Project File, at 61–84 (citing many of the same references to those in the prior Engineer Report).

⁵² Ex. 4, at 6–7 (citing to AP-42 itself).

⁵³ AP-42 Introduction, p. 2, available at https://www.epa.gov/system/files/documents/2024-01/introduction_2024.pdf.

⁵⁴ Ex. 4, at 8–10, 12–16 (discussing the poor rating of various AP-42 emission factors).

⁵⁵ *Id.*, at 12–16; *see also* DAQE-IN161200002-25 Project File.

⁵⁶ DAQE-IN161200002-25 Project File, at 62.

⁵⁷ Ex. 4, at 12.

During President Trump’s first 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”; “AP-42 emission factors should only be used as a last resort.”⁵⁸

The Project File also appears to include erroneous information. For example, the Project File includes two versions of similar documents, which list different emission totals.⁵⁹ This is confusing as it is not clear which version should be considered.

DAQ has statutory authority to “require, as a condition precedent to the construction, modification, installation, or establishment of the air pollutant source or indirect source, the submission of plans, specifications, and other information as the director finds necessary to determine whether the proposed construction, modification, installation, or establishment will be in accord with applicable rules. . . .” UTAH CODE § 19-2-108(3)(a). Because the emissions estimates are known to be incorrect, DAQ should not issue the Approval Order and should require reliable emission estimates before considering any new application.

Requested Actions:

- A. DAQ should explain and justify any reliance on AP-42 emission factors.
- B. DAQ should require reliable, source-specific emission data prior to any ITA and, if unavailable, issue an order prohibiting the proposed construction.

6. The ITA Does Not Take Into Account the Applicant’s True Intention to Develop a Much Larger Mining Operation.

DAQ has not conducted due diligence to determine whether the Applicant's actual intent is to develop a much larger mining operation that would emit much greater quantities of fugitive dust and other air pollutants, potentially implicating permitting requirements for major sources. In fact, there are many public indications that this is precisely the Applicant’s intent. DAQ should recognize the Applicant’s true intent to develop a much larger mining operation and prohibit the proposed construction on that basis.

Several facts 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 (DOG M), seeking both a small mineral permit and a large mineral permit.⁶⁰ In its Notice of Intention to Commence Large Mining Operations, Tree Farm

⁵⁸ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *Enforcement Alert 1–2* (Nov. 2020), <https://www.epa.gov/sites/default/files/2021-01/documents/ap42-enforcementalert.pdf>. See also *Ex. 4*, at 10–12 (discussing the Enforcement Alert).

⁵⁹ Compare DAQE-IN161200002-25 Project File, at 22 (Table 4-1), with 105; see also DAQE-IN161200002-25 Project File at 70–72, 82–84 (including two sets of Diesel-Fired Engine tables).

⁶⁰ 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*

LLC identified the total area of disturbance of 634 acres over roughly 100 years.⁶¹ DOGM, on May 23, 2022, permitted Tree Farm to withdraw both Notices of Intent and re-file a small mine NOI.⁶² On June 15, 2022, Granite Construction Co. (on behalf of Tree Farm) filed a new small mine NOI.⁶³ 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.⁶⁴

EPA guidance and facts and circumstances of this case—including Tree Farm's previous simultaneous filings with DOGM—indicate that DAQ should consider the Applicant's intent.

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

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.⁶⁵ 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.⁶⁶ The SWPPP identified a “mining boundary” encompassing 609 acres.⁶⁷

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.”⁶⁸ 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

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>.

⁶¹ M0350054 NOI, *supra* note 60, at 9.

⁶² 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>.

⁶³ 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>.

⁶⁴ 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>.

⁶⁵ SWPPP (July 6, 2022), attached as Exhibit 7.

⁶⁶ *Id.* at 1.1.

⁶⁷ *Id.* at fig. 2.

⁶⁸ 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), attached as Exhibit 8.

commencement of operation,” “[s]uch attempts are treated as unlawful circumvention of the preconstruction review requirements.”⁶⁹ 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.”⁷⁰

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.”⁷¹

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.”⁷²

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.”⁷³

“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.”⁷⁴

The applicant has indicated in other contexts its intent to be a much larger mining operation than that examined by DAQ. Thus, additional inquiry and review by DAQ are needed to determine

⁶⁹ 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), attached as [Exhibit 9](#); 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), attached as [Exhibit 10](#) (“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.”).

⁷⁰ [Ex. 10](#), at c.6.

⁷¹ [Ex. 9](#), at 3–4; see also 54 Fed. Red. 27,274, 27,281 (June 28, 1989) (to be codified at 40 C.F.R. pt. 51 and 52) (identifying similar factors).

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

⁷³ 54 Fed. Red. 27,274, 27,281 (June 28, 1989).

⁷⁴ *Id.*

whether the applicant intends to develop an operation that would be considered a major source requiring more thorough preconstruction review.

Requested Actions:

- A. DAQ should not issue an Approval Order.
- B. DAQ should investigate the true intent of the applicant regarding the scope of intended mining operations. Such analysis should include:
 - a. Review of:
 - i. Applicant’s statements to DOGM;
 - ii. Public statements made by the applicant;
 - iii. Financial documents related to the facility and its funding;
 - iv. Consumer demand and projected production levels; and
 - v. Economic viability of the proposed operation.
- C. If DAQ issues an Approval Order, DAQ should make explicit that any changes to the project will require a new DAQ review process, including a new public input process.

7. 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 protect and improve Utah’s air, land, and water while supporting communities and growth statewide.”⁷⁵ The mission of the Department of Environmental Quality (DAQ) is “Safeguarding and improving Utah’s air, land and water through balanced regulation.”⁷⁶

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, 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).

⁷⁵ Utah Department of Environmental Quality, About DEQ (Aug. 5, 2025) <https://deq.utah.gov/general/about-deq>.

⁷⁶ Utah Department of Environmental Quality, Division of Air Quality (January 15, 2026), <https://deq.utah.gov/air-quality/about-the-division-of-air-quality>.

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).

DAQ has failed to determine whether approval of the facility is within the scope of the statutory purpose of DAQ and DEQ. The ITA 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 must also do so within the constraints of the statutory authority granted to it by state statute. Neither the ITA nor the Project File addresses how this project fits within that authority.

Requested Actions:

- A. 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,

A handwritten signature in cursive script that reads "Cheri Jackson".

Mayor Cheri Jackson