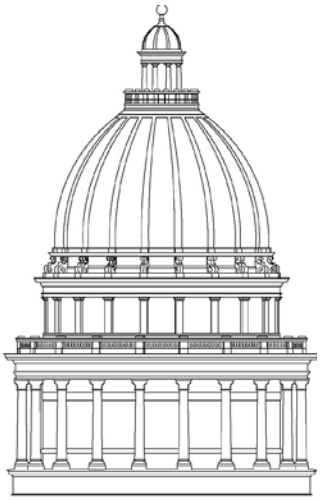
REPORT TO THE

UTAH LEGISLATURE

Number 2013-04



A Performance Audit of Sand and Gravel Air Quality Permitting and Compliance

July 2013

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH
Office of the Legislative Auditor General

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Senator Gene Davis • Representative Jennifer M. Seelig

JOHN M. SCHAFF, CIA
AUDITOR GENERAL

July 8, 2013

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Sand and Gravel Air Quality Permitting and Compliance** (Report #2013-04). A digest is found on the blue pages located at the front of the report. The audit scope and objectives are explained at the close of the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff

John M. Schaff, CIA
Auditor General

JMS/lm

Digest of
A Performance Audit of Sand and Gravel Air Quality Permitting and Compliance

Chapter I: Introduction

All conditions of air quality permits have not always been enforced, which raises concern. The Minor Source Compliance Section, which oversees sand and gravel compliance, should enforce the approved permit. In addition, case management within the Division of Air Quality (DAQ) permitting provides little assurance that permits are handled in a timely fashion. The timeliness of air quality permits is an important question that DAQ needs to address. To do this, DAQ's permitting branch needs to improve their case management, improve permit file documentation and then use that documentation to analyze permit timeliness.

Chapter II: Enforcement of In-Process Permits Raises Concern

In-Process Permits Have Been Used to Evaluate Compliance. DAQ's compliance branch should enforce the approved permit rather than an in-process permit. In-process permits have been used because a belief exists in the Minor Source Compliance Section that the process to issue a permit is slow and that operators should not be penalized if DAQ is the cause. However, enforcing an in-process permit undermines the regulatory effect of the approved permit.

Chapter III: Permitting Needs to Improve Case Management and Analyze Timeliness

Case Management Concerns Exist. First, permit modification files have been lost, allowing for the possibility that operators were negatively impacted. Second, documentation of permit engineer information requests was rarely available, which precluded our analysis of application completion timeliness.

Available Permit Process Timeliness Information Mixed. Some information gathered—sand and gravel operator interviews and one state comparison—supports the possibility that permit timeliness is not much of an issue. On the other hand, other information—in particular, the mitigating response of minor source compliance staff to perceived slowness of permit application completion—supports the possibility that permit timeliness is an issue. We acknowledge the positive information, but still have concerns with permit application completion timeliness. Since the information was not available for us to conduct an analysis, we believe the DAQ permitting branch should collect the necessary data and make the analysis.

REPORT TO THE

UTAH LEGISLATURE

Report No. 2013-04

A Performance Audit of Sand and Gravel Air Quality Permitting and Compliance

July 2013

Audit Performed By:

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Chapter I
Introduction

All conditions of each air quality permit have not always been enforced, which raises concern. In our opinion, the Minor Source Compliance Section should enforce the approved permit rather than an in-process permit. In addition, case management within the Division of Air Quality (DAQ) permitting provides little assurance that permits are handled in a timely fashion. The timeliness of air quality permits is an important question that DAQ needs to address. To do this, DAQ's permitting branch needs to improve case management, improve permit file documentation, and then use that documentation to analyze permit timeliness.

DAQ's mission is to protect public health and the environment from the harmful effects of air pollution. To accomplish this mission, DAQ enacts rules pertaining to air quality standards, develops plans to meet federal air quality standards, issues air quality permits, and ensures compliance with rules and permits. This audit focused exclusively on permitting and compliance monitoring of sand and gravel sites. There are approximately 200 sand and gravel sites in Utah, of which around 80 are permanent, full-time sites.

DAQ regulates air emissions from new and modified stationary sites.

DAQ's permitting branch is responsible for implementing state and federal air permitting programs intended to regulate air emissions from new and modified stationary sites. The permits issued are legally enforceable documents that specify construction limitations, emission limits, and how the emission sources must be operated.

For areas not in compliance with the National Ambient Air Quality Standards (NAAQS), such as the Salt Lake area, the permit process seeks to ensure that air quality is not further degraded from the existing levels by new emission sources. For areas that are in compliance with the NAAQS, the permit process seeks to ensure that new emissions do not significantly worsen air quality.

To accomplish this goal, the permitting branch issues two types of permits. One is an operating permit, which consolidates air quality requirements from all state and federal programs. Operating permits are typically given to the larger stationary sources in the state, such as

oil refineries and power plants (but some smaller sources may also require an operating permit). The second type is a New Source Review (NSR) Approval Order (permit), which is a pre-construction permit for new and modified sources. This type of permit is required of all sources of air pollution above minimal levels. This type of permit is typically the authorization needed by sand and gravel sites.

DAQ's compliance branch is responsible for ensuring compliance with all the requirements outlined in permits and rules. The Major Source Compliance Section inspects large facilities and audits continuous emission monitoring systems. The Minor Source Compliance Section is responsible for inspections of small- to medium-sized facilities. These inspections often include auditing dust control measures, particularly with sand and gravel sites.

Audit Scope and Objectives

This audit on sand and gravel permitting was originally requested in 2010 and was based on a variety of issues identified in a 2009 letter of complaint. After considering the specific examples provided, we chose two broad objectives for review. Specifically:

- Determine if the sand and gravel permitting process takes too long
- Determine if sand and gravel permits are equitably enforced

Chapter II
Enforcement of In-Process Permits Raises Concern

DAQ's compliance branch should enforce the approved permit, not an in-process permit. For two years, two sites were identified as being in compliance with their approved permit when neither was. In both cases, an in-process permit was considered by the compliance inspector. Currently, a belief exists in minor source compliance that the process to issue a permit is slow and that operators should not be penalized if DAQ is the cause. However, enforcing an in-process permit undermines the regulatory effect of the approved permit.

The permitting and compliance branches work together to ensure that source emissions of hazardous air contaminates stay within acceptable levels established by the Environmental Protection Agency (EPA). The permit engineers, in collaboration with the operator, develop a series of operational constraints designed to keep the source within acceptable emission levels. (Operational constraints include setting production limits, establishing hours of operation limits, and specifying the emission limits.) Together these operational constraints, when approved, make up the permit; an approved permit functions as an operator's regulatory document. Compliance inspectors visit emissions sites on a periodic, unannounced basis (once every five years is required by the EPA) to ensure that the site operator is complying with each operational constraint listed in the approved regulating permit.

An approved permit functions as a source's regulatory document.

In-Process Permits Have Been Used To Evaluate Compliance

DAQ compliance inspectors declared two sand and gravel sites in compliance with their approved permit when they were not. Instead, compliance was assessed, in part, against an in-process permit, a permit that had not yet been approved by DAQ.

There are approximately 200 sand and gravel sites in Utah; of these, around 80 are full-time permanent sites. We chose 31 of these permanent sand and gravel sites and, for each site, reviewed all compliance inspections housed in DAQ's file room (102 compliance

inspections in total). Of these 102 inspections, 50 were found to be in compliance with their permit and 33 were found to be out of compliance with one or more conditions of their permit. (A determination could not be made for 19 inspections because the site was shut down.)

According to *Administrative Rule* R307-401-5(1), any person intending to:

- Construct a new installation which will or might reasonably be expected to become a source of air pollution, or
- Make modifications to or relocate an existing installation which will or might reasonably be expected to increase the amount of air pollution

shall submit a notice of intent to the Air Quality director and receive an approval order (i.e., a permit) prior to initiation of construction, modification, or relocation.

Two sites were identified as being in compliance with their permit when they were not.

Our review of the 31 sites' compliance inspection reports revealed two sites for which compliance was assessed, in part, against an in-process permit. In both cases, the site operators violated R307-401-5(1) by making modifications prior to permit approval, but compliance staff did not cite either site for the violation. Instead, both sites were identified as being in compliance with their permit as if they were operating under the in-process permit.

This First Site, Operating in the St. George Area, Was Found in Compliance for Two Years Even Though Unapproved Equipment Was Observed by the Inspector. Both the July 2007 and June 2008 compliance inspections noted that a piece of equipment had been replaced by another piece of equipment capable of operating at a higher processing capacity. The inspector noted that this equipment replacement was listed in the operator's May 2007 in-process permit, therefore the site should be considered in compliance. We could not find the operator's May 2007 permit request in DAQ's files and so could not review it. (This file was later found by DAQ permitting and is discussed in Chapter III.)

A different compliance conclusion was reached in September 2009. The inspector noted the unapproved equipment and found the

site out of compliance. The operator sent a letter to DAQ, pointing out the fact that their permit request listed the unapproved equipment and asked that the equipment be approved so they could be in compliance. Because of air quality concerns, a new permit was not issued. The unapproved equipment was ultimately removed.

This Second Site, Operating in the Salt Lake Valley, Was Allowed to Exceed Its Production Limit for Two Years. During both the August 2007 and August 2008 compliance inspections, the inspector observed that the site had exceeded its approved 630,000 tons production limit by 80,600 tons and 182,000 tons, respectively. The site was found in compliance because a permit request had been submitted in September 2006 requesting a production increase. We could not find this operator's September 2006 permit request in DAQ's files and so could not review it. However, we did find a May 2009 permit request asking for, among other things, a production increase. This new permit was issued in December 2009.

DAQ Compliance Uses Enforcement Discretion

Even though *Administrative Rule* R307-401-5(1) states that a person shall not make any modifications prior to receiving a permit, the Minor Source Compliance Section has used discretion in interpreting this rule. This discretion is justified by the belief that the permitting process can be slow in cases where an operator has submitted an incomplete permit application. The philosophy within minor source compliance is that if DAQ permitting is the cause of that slowness, then the operator should not be penalized. DAQ permitting may contribute to permit slowness by not documenting their information requests, not making information requests as specific as needed, not putting due dates on requested information, and not tracking requested information.

Minor source compliance believes the permitting process can be slow when an operator has submitted an incomplete permit application.

A submitted permit modification application is considered by compliance inspectors when a site operator is found to be out of compliance during an inspection. In these cases, the compliance inspector tries to identify who is responsible for any permit approval delay to determine whether a permit violation has occurred. This determination is made through a permit file review.

Minor source compliance believes it is difficult to consider an operator in violation if:

- The operator has not heard from the permit engineer regarding the permit modification request and
- The permit engineer cannot produce documentation of timely permit modification information requests

If, after reviewing all documentation in the permit file, the compliance inspector believes the permit engineer is the cause of the delay, then the operator will not be penalized. If the operator is believed to be the cause of the delay, then the operator will be penalized. As discussed in Chapter III, the permit engineers rarely documented their information requests. Consequently, compliance inspectors would likely view them as the cause of any delay.

Considering an in-process permit in compliance undermines the regulatory effect of the approved permit.

We are concerned that DAQ compliance staff has in the past and may in the future enforce an in-process permit rather than the approved, regulating permit. Considering an in-process permit in a compliance review undermines the regulatory effect of the approved permit and may encourage operators to move beyond what DAQ has approved. In our opinion, possible delays in the permitting process should be dealt with directly within permitting and not mitigated by compliance actions.

Recommendation

1. We recommend that the DAQ compliance branch enforce the approved permit.

Chapter III
Permitting Needs to Improve Case Management and Analyze Timeliness

Case management within DAQ permitting provides little assurance that permits are handled in a timely fashion. Although some outside information supports the possibility that permits are generally issued in a reasonable time period, other information does not. In our opinion, the timeliness of air quality permits is an important question that DAQ needs to address. To do this, DAQ permitting needs to improve case management, improve permit file documentation, and then use that documentation to analyze permit timeliness.

The air quality permitting process can be separated into two distinct phases:

- Declaring an Application Complete—When an operator submits a permit application, a DAQ permit engineer reviews it to determine whether all documents and information have been submitted. If so, the application is declared complete. If not, missing information is requested from the operator. Information requests can occur multiple times. Based on our review, this phase accounts for 60 percent of total permit processing time.

- Writing and Issuing the Permit—After the application is declared complete, the engineer (with input from the operator) writes the permit specifying the operating constraints. An internal permit peer review is conducted and the public is usually given a 30-day period to comment on the permit. After the comment period has passed, the permit is either modified based on public comments or issued. Again, based on our review, this phase accounts for 40 percent of total permit processing time.

The majority of permit time is spent completing the operator's application.

Case Management Concerns Exist

Permitting's case management needs improvement. First, permit modification files have been lost, allowing for the possibility that operators were negatively impacted. Second, permit file documentation has been inadequate to allow an analysis of timeliness.

Compliance Review Identified Two Lost Files

In Chapter II, two cases were highlighted. In both cases, the compliance inspector had determined each site was in compliance with their permit when, in fact, they were not. The compliance inspector observed, in each case, that the site operators had applied for permit modifications. In other words, each operator had an in-process permit. As noted in Chapter II, we wanted to review the permit modification requests, but were unable to find the files. DAQ, at our request, sought to locate the files and reported the following:

One file was found on a manager's desk where it had been sitting, inactive, for eight months.

- The 2007 St George permit file was found. While the permit had been approved in September 2012, the permit file was found on a section manager's desk where it had been sitting, inactive, for about eight months. The only file work that remained was for the permit to be issued to the operator. If the operator was waiting for this new permit before making modifications, as *Administrative Rule* R307-401-5(1) requires, then DAQ's inaction might have negatively impacted the operator. Management appeared unaware of the missing file and its incomplete status. We believe the only reason this file was found and the inaction discovered was because we asked to review the file. It was, for all practical purposes, a lost file.

- The 2006 Salt Lake permit file is lost. The only information that exists is the date the permit modification request was received by DAQ. After the assigned permit engineer left DAQ's employment, the file was never found and no file information was entered into the new database system. After submitting another permit modification request in May 2009, the site operator received a new permit in December 2009.

That these two files were lost concerns us because we were not looking for lost files. We wanted to review two files cited in exceptional compliance inspections. That we would discover, in the manner that we did, the only lost, inactive DAQ permit files is unlikely and worrisome.

Permit File Documentation Lacking

Since application completion accounts for 60 percent of total permitting time, our original intention had been to analyze whether the time needed to complete an application was reasonable. However, information necessary to begin the analysis—documentation of permit engineer information requests—was rarely available. Consequently, we could not perform our planned analysis.

During the permit application completion phase, both the operator and the permit engineer can take time. Therefore, it is important to distinguish the time that the permit engineer takes from the time that the operator takes. Once this distinction is made, then an analysis can occur as to how the time is spent and if any actions could be taken to reduce that time.

In order to make this distinction, it was necessary to identify when and what data permit engineers requested from operators. We were particularly interested in determining if the permit engineers:

- Took too long to make an information request
- Made information requests that were too general in nature, thus necessitating another information request
- Made unnecessary information requests

It is important to distinguish the time the permit engineer takes from the time the operator takes.

However, in the 75 permit files we reviewed, this information was generally not documented. Consequently, we could not determine which party (the permit engineer or the operator) used what percent of the time and for what purpose. (In 2011, the DAQ Permit section made some policy changes in an effort to address the above issues. While seven of the seventy-five cases reviewed may have been impacted by these policy changes, this number is too small to allow for any analysis.)

In our opinion, DAQ needs to improve overall case management as well as the permit engineer's documentation of information requests

in the permit files. Good case management should ensure that an accurate and adequate record of all in-process permits is maintained and that appropriate information is sent to management in a timely manner. Case file documentation should include the date the information request was made by the permit engineer, who received the information request, and what information was requested by the permit engineer. This documentation could then be used to analyze application completion timeliness, which we believe DAQ needs to do.

Although we could not directly analyze permit timeliness using the permit files, we collected other information as possible indicators of timeliness.

Available Permit Process Timeliness Information Mixed

Some information gathered—sand and gravel operator interviews and one state comparison—supports the possibility that permit timeliness is not a significant issue. On the other hand, other information—in particular, the mitigating response of minor source compliance to perceived permitting slowness—supports the possibility that permit timeliness is an issue.

Some Information Supports Sand and Gravel Permit Timeliness

Interviews with sand and gravel operators, a permit approval timeliness comparison with a neighboring state, and survey responses from air quality permit holders of all categories (not just sand and gravel) support the possibility that air quality permits are issued in a timely manner.

Favorable Comments Were Made by Many Sand and Gravel Operators. Three of five members of the Association of General Contractors' (AGC's) sand and gravel committee (a committee representing large sand and gravel operators) made positive comments about the permit process. In fact, two members commented that they do business in multiple states and Utah's permitting timeliness compares favorably. In addition, we spoke with six smaller sand and

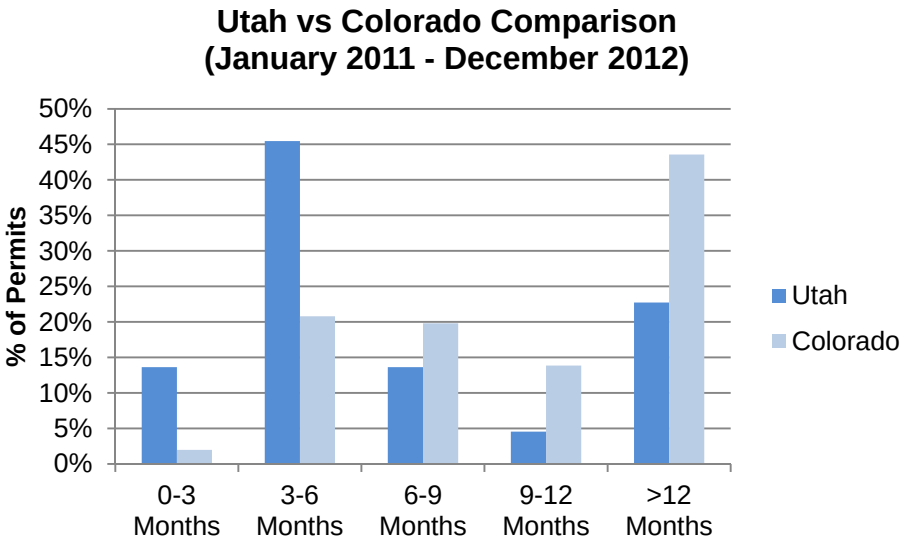
Two operators who do business in multiple states indicated Utah's permitting timeliness compares favorably.

gravel operators about their experience with DAQ. All said they were satisfied with their experience, DAQ permit engineers, and the overall permit process.

Utah Compares Favorably to Colorado. In Colorado, a state with a permit review system similar to Utah's, it takes 368 days on average to approve a sand and gravel permit, while in Utah it takes an average of 262 days to approve a sand and gravel permit. Figure 2.1 below shows a breakdown of time needed to issue a sand and gravel air quality permit in Utah and Colorado as a percent of their total sand and gravel permits. During this time period, Utah issued 22 sand and gravel permits; Colorado issued 101.

Utah's permit approval process takes less time, on average, than Colorado's.

Figure 2.1 A Comparison of Utah's and Colorado's Overall Time Necessary to Complete a Permit. In Utah, 23 percent of sand and gravel permits took more than a year to approve, while 44 percent of Colorado's permits took more than a year.



As shown in Figure 2.1, the majority of Utah's sand and gravel air quality permits (59 percent) were issued within six months. In Colorado, 23 percent were issued in a similar time frame.

Fifty-nine and twenty-three percent, respectively, of Utah's and Colorado's sand and gravel air quality permits were issued within six months.

Customer Satisfaction Surveys Show Majority of Permit Holders Are Satisfied. DAQ has conducted two customer satisfaction surveys targeting all air quality permit holders, not just sand and gravel permit holders. When asked to rate their agreement with the following statement, "The time it took to get my (permit) seemed reasonable", 76 percent and 80 percent of operators either

agreed or strongly agreed in 2010 and 2012, respectively (77 percent agreed on average for both years). Some comments from the surveys included the following:

- "The permitting part of the program is very efficient in our opinion."
- "The staff has always displayed a high level of professionalism and has been extremely pleasant in discussing various issues."
- "Overall, very pleased with response and service provided by staff."
- "The DAQ people have always been very good to work with. I have been working with them for 18 years and they have always been very helpful."
- "I work with many state air agencies and Utah is the best! Very helpful."
- "I work with regulators in Nevada, Idaho, Wyoming, Oregon, Ohio, and New Mexico. UDAQ employees are the most knowledgeable, willing to work toward solutions, and are the most friendly regulators I work with – all the while enforcing the regulations (and they return phone calls)."

While this information supports a positive assessment of permit timeliness, other information casts doubt.

Some Information Supports Permit Timeliness Problems

The response of DAQ sand and gravel compliance to perceived permitting slowness and some responses to the customer satisfaction survey support the possibility of problems with permit timeliness.

Some in DAQ compliance have taken action to lessen the impact of permit processing delays on site operators.

DAQ Minor Source Compliance Section Has Tried to Mitigate Perceived Permit Timeliness Problems. As discussed in Chapter II, in cases where a site operator is found to be out of compliance with their permit but has a permit modification in process, the operator will not be penalized if the compliance inspector comes to believe that any permit processing delays were caused by the permit engineer. That this DAQ section, which works closely with permitting, has taken action to lessen the impact of permit processing

delays on site operators suggests permit timeliness might be a problem.

Customer Satisfaction Surveys Show Almost a Quarter of Permit Holders Are Dissatisfied with Timeliness. Twenty-three percent of all DAQ permit holders (not just sand and gravel) either disagreed or strongly disagreed that the time it took to get their permit was reasonable. In our opinion, 23 percent is not an inconsequential minority. The following comments are excerpted from survey responses by those who were dissatisfied:

- "The permitting process is too slow which we can't understand why."
- "Staff was hard to reach, out of the office, on vacation, did not respond to calls or emails for days."
- "Our permits take a long time. Too long. Mostly because your engineers keep asking us for information and more information."

This last point, that engineers frequently ask for more information, was reinforced in our discussion with AGC's sand and gravel committee. Three members agreed that permit engineers make many data requests.

While we acknowledge the positive information, the case management issues discussed earlier cause us to have continued concern over permit timeliness. We believe DAQ should collect all information necessary for the analysis of permit application completion timeliness and then conduct that analysis.

Recommendations

1. We recommend that DAQ management ensure that the permit engineers document when and what information was requested from an operator to complete the permit application.

2. We recommend that DAQ analyze the permit application completion phase. This analysis should include a determination of whether permit engineers take too long to request information, make information requests that are too general, or make unnecessary information requests.

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Agency Response

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State of Utah
GARY R. HERBERT
Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

DAQP-040-13

June 26, 2013

John M. Schaff, CIA
Office of the Legislative Auditor General
W315 House Building
State Capitol Complex
Salt Lake City, Utah 84114

Dear Mr. Schaff:

Re: Division of Air Quality Response to the Legislative Audit Report, A performance Audit of Sand and Gravel Air Quality Permitting and Compliance (Report No. 2013-03)

Thank you for the opportunity to respond to the above-referenced Legislative Audit Report. We appreciate the opportunity for your staff to interact with the staff of the Division of Air Quality (DAQ) in order to evaluate the performance of the Division's activities relating to permitting and compliance at Sand and Gravel Operations. The Department of Environmental Quality (DEQ) actively seeks opportunities to improve processes and environmental outcomes and welcomes this outside look into these programs within DAQ. As discussed below, the recommendations have been reviewed and concrete actions are underway or have been implemented to ensure that the deficiencies are corrected.

Producers of sand and gravel provide a key service in producing the materials that form the structure of roadways, buildings and homes throughout the state. Due to the location of the resource that they process, the operations are often very visible in terms of surface disturbances and the processing operations are often a source of windblown dust and fine particulate matter that if left uncontrolled impacts the health and welfare of neighboring property owners.

The Division of Air Quality's legislative mandate is contained in the Utah Air Conservation Act (19-2, Utah Code Annotated). The charge includes provisions 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 development of this state, and facilitate the enjoyment of the natural attractions of this state. The programs of DAQ include planning and air monitoring, permitting and compliance that ensure that the listed goals are maintained through the application of rules and federal regulations designed to minimize the health and welfare impacts from sources of air contaminants.

DAQ regulates sand and gravel operations through rules that limit the visible emissions from disturbed areas, verifying that the operators are using equipment that meets the applicable performance standards relating to air emissions, and through case-by-case permitting of new or modified sources to ensure that the best available control technologies are implemented and that the resulting emissions will not cause or contribute to an area exceeding an ambient air quality standard.

Compliance with the rules and permitting requirements is verified through the review of reporting combined with periodic on-site inspections to verify compliance with the applicable requirements. The compliance and permitting programs have contributed to a downward trend in emissions and in ambient concentrations of fine particulate matter over the past 30 years while construction and the demand for the materials associated with sand and gravel operations has increased.

As noted in the Audit Report, the scope of the audit had two objectives:

- Determine if the sand and gravel permitting process takes too long
- Determine if sand and gravel permits are equitably enforced

The Audit Report does not contain an affirmative declaration concerning the evaluation of the objectives but does contain information that compares the permitting time both with customer expectations and other state programs. Information provided in the form of customer surveys show that an average of 77% of permitted customers agree that the time to issue a permit is reasonable. The comparison provided in Figure 2.1 contrasts the time to issue permits with the neighboring state of Colorado and shows that permits were issued significantly faster in Utah.

The timeliness of issuing permits is of concern to DAQ. In 2011, a process improvement exercise that included extensive stakeholder participation focused on the DAQ permitting program. The outcome of the exercise included steps to ensure: 1) that the operators desiring a permit had the information and requirements necessary to submit a complete application, and 2) the additional tracking of the progress by management. Over the past year after implementing the improvements, an average of 92% of all permits were issued within 110-days.

In relation to equitable enforcement, the Audit Report references two instances where sand and gravel sources were declared to be in compliance with all conditions of their

permit when in fact they were not. In each of the inspections for the two sources the inspector incorrectly stated that the company was in compliance. The documentation reviewed by the inspector indicated that that each company had initiated the permitting process in order to correct the deficiency.

RESPONSE TO THE AUDIT REPORT RECOMMENDATIONS

Chapter 2.

1. We recommend that the DAQ compliance branch enforce the approved permit.

   Response:

   DAQ will ensure that the compliance inspectors document all non-compliance with the applicable permit conditions and make recommendations that address the circumstances of the violation. The appropriate compliance response within the provisions of 19-2-110 will include the options of a Notice of Violation or obtaining voluntary compliance through warning, conference, conciliation persuasion and other appropriate means. In the future, if a unique circumstance similar to the ones referenced in the audit report are discovered, DAQ will work with permitting and the company to ensure that the requirements are understood before making a recommendation for an appropriate enforcement response.

Chapter 3.

1. We recommend that DAQ management ensure that the permit engineers document when and what information was requested from an operator to complete the permit application.

   Response:

   DAQ management has already begun a process that will ensure that the tracking of requests and responses to requests for information are documented in the division's TEMPO enterprise database. Managers will observe permitting workflows and provide reports of the status of information requests and responses.

2. We recommend that DAQ analyze the permit application completion phase. This analysis should include a determination of whether permit engineers take too long to request information, make information requests that are too general, or make unnecessary information requests.

   Response:

   This concern was the subject of a process improvement exercise in 2011. Tools are now in place as a result of process improvements initiated since 2011 to

ensure that the tracking of permits entering the system after that date includes documentation of timelines and requests for information. DAQ will ensure that the system is evaluated monthly to confirm that the tracking objectives are met.

We appreciate the time and effort expended by the auditors to look in-depth into the permitting and compliance activities related to the regulation of sand and gravel operations. We are confident that the recommendations either have been or can be adequately and promptly addressed to ensure that the Division's regulatory functions are performed at all times in keeping with the highest standards.

Sincerely,

For Bryce C. Bird, Director
Utah Division of Air Quality