

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

FEB 19 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE OBJECTION)
TO THE ISSUANCE OF SOLID WASTE)
PERMIT RENEWAL AND MAJOR)
AMENDMENT TO EASTERN LARAMIE)
COUNTY SOLID WASTE DISPOSAL)
DISTRICT LANDFILL (SHWD FILE #10.330))

DOCKET NO. 09-5801

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
COMMENTS ON DRAFT FINDINGS AND CONCLUSIONS

Respondent Wyoming Department of Environmental Quality (DEQ) submits the following comments on the Wyoming Environmental Quality Council's (EQC) Draft Findings of Fact, Conclusions of Law and Order in the above-captioned matter. Among other things, there are four (4) principal points that need to be reconciled in the Draft Findings of Fact, Conclusions of Law and Order:

A. Nature of this case*

Strictly speaking, this contested case hearing was on objections to a "proposed" permit renewal held under WYO. STAT. ANN. § 35-11-502(k), not a contested case hearing where the final agency action being contested was the actual "issuance or denial of a permit."

See Tr.197, ll.3-4, 19-20; Draft Conclusion of Law #19.

B. Property ownership / landowner consent^o

The EQC decided that the permit should not be issued at this time (Tr.196, ll.11-13; Tr.197, ll.3-4; Tr.193, ll.7-10; Tr.200, ll.15-25; Tr.201, ll.1-6) because:

- i) the Solid Waste Rules require landowner consent on the permit application (Tr.197, ll.13-16; Tr.198, ll.19-21);
- ii) a legitimate issue or dispute exists regarding ownership of relevant property (Tr.197, ll.20-21; Tr.198, ll.15-16, 22-23; Tr.199, ll.17-18; Tr.200, ll.12-13);
- iii) resolving property ownership disputes is outside the scope of the DEQ's or the EQC's authority (Tr.195, ll.13-23; Tr.199, ll.19-22; Tr.200, ll.3-5, 11-14).

Although the Draft Order says "[t]he Objector[]s have clearly shown that they have a legal claim to the ownership of a 40' strip of land . . .," the EQC did *not* decide that one party or

the other clearly showed they had a legal claim to ownership of particular property in dispute. See Tr.197, ll.20-24; Tr.198, ll.22-23.

C. Sufficiency of permit conditions for litter control^a

The Draft Order states that “The Objector’s have also demonstrated by a preponderance of the evidence that the . . . existing permit conditions regarding litter control . . . are not restrictive enough.” Conditions in the existing (and proposed renewal) permit currently require daily pick up of litter. Tr.179, ll.8-18. The Objectors did not show that current / proposed permit conditions regarding daily litter pick up were not sufficient. Rather, the Objectors said that “[t]he litter control, we’re happy as long as they keep it picked up daily. It will be great.” See Tr.187, ll.4-5.

There was testimony that a chain-link fence was in place around those portions of the landfill where required by current regulations, with livestock fence in place as required for the remainder. Tr.178, ll.13-25; Tr.179, ll.1-6. One Council member expressed his opinion that, even if not required by regulations for the stretch with livestock fence, a chain-link fence would be more effective to catch windblown litter. Tr.198, ll.3-14. However, it is not clear in the transcript that insufficiency of permit conditions for litter control was a basis for any individual (Tr.198, ll.15-17) or the collective vote against the motion to approve issuance of the permit.

D. Sufficiency of permit conditions vs compliance with permit conditionsⁿ

The Draft Order states that “WHEREFORE, it is HEREBY ORDERED, that the [Permittee’s] application for renewal be denied for the following reasons:

. . . . 2. The Permittee has failed to comply with the current litter control requirements of their permit.”

There was testimony that the Permittee did not comply with the permit requirement for daily litter pick up on occasions during bad weather. Tr.179, ll.21-25; Tr.180, ll.1-15. Failure to comply with existing permit conditions is a compliance issue rather than a basis for not issuing a permit containing those conditions. The transcript does not reflect that the EQC decided the proposed permit should not be issued because current / proposed permit conditions regarding daily litter control were insufficient. Tr.193-201.

FINDINGS OF FACT

1. . . . the Laramie County Commissioners ~~through~~ resolved

Reason: apparent typo?

13. . . . in order to use that land for the ~~Perimeter's~~ Permittee's landfill operations.

Reason: apparent typo?

14. . . . (?) ~~All~~ placed there by the Permittee without the consent of the landowner.

Reason: not a complete sentence?

16. The Permittee has ~~consistently~~ failed to consistently comply with daily pickup of litter . . .

Reason: There was testimony that the Permittee did not consistently (did not always) pick up litter on a daily basis, rather than that the Permittee consistently failed to (never did) pick up litter on a daily basis. Tr.179, II.21-25; Tr.180, II.1-15.

CONCLUSIONS OF LAW

19. ~~The issuance or denial of a permit is a final agency action by the department for purpose of appeal. The Council shall: "Conduct hearings in any case contesting the grant, denial, suspension, revocation, or renewal of any permit " Wyo. Stat. § 35-11-112(a)(iv).~~

The administrator's determination that a proposed permit is complete and "suitable for publication" prior to issuance is subject to a contested case hearing before the Council on substantial written objections filed within thirty (30) days after the last publication. WYO. STAT. ANN. § 35-11-502(h)-(k).

Reason: *This was a hearing on objections to a *proposed* permit (prior to issuance) held pursuant to WYO. STAT. ANN. § 35-11-502(h)-(k).

~~18~~ 20. (b) Permit application requirements:

(i) All permit application forms shall be signed by All persons signing the application shall be duly authorized agents. WHSWD Rules Chap. 2

Reason: should be #20. Also, the *Hazardous Waste* Rules are separate and different from *Solid Waste* Rules.

~~19~~ 21. It was moved by Councilman Searle

Reason: should be #21.

ORDER

The burden of proof . . . that the proposed Permit should not be ~~ordered~~ issued for at least one of two reasons

Reason: *This contested case hearing was on objections to “proposed” issuance of a renewal permit under WYO. STAT. ANN. § 35-11-502(k). Tr.197, ll.3-4, 19-20.

1. . . . and the Musgraves’s

Reason: apparent typo?

2. That the conditions contained within the permit restricting litter ~~of~~ on the Musgrave’s property

Reason: apparent typo?

~~The Objectors’s have clearly shown that they have a legal claim to the ownership of~~

Reason: °The EQC did *not* decide that one party or the other clearly showed they had a legal claim to ownership of particular property in dispute. See Tr.197, ll.20-24; Tr.198, ll.22-23.

The Objectors’s have also demonstrated by a preponderance of the evidence that the Permittee has failed to comply with existing permit conditions regarding litter control ~~and that the conditions are not restrictive enough to protect the Objector’s property from the accumulation of litter from Permittee’s operation.~~

Reason: °Evidence was presented that the Permittee did not consistently pick up litter on a daily basis, as is currently required by a condition of both the existing and proposed renewal permit. That is what the Council found (see Draft Findings #15 & #16 and reason #2 for Order denying renewal on last page). °Evidence of failure to comply with existing permit conditions does not in itself establish that the conditions are “not sufficient,” and it is not clear from the transcript that insufficiency of permit conditions for litter control was a basis for any individual (Tr.198, ll.15-17) or the collective vote against the motion to approve issuance of the permit.

WHEREFORE, it is HEREBY ORDERED, that the ~~Perimeter’s~~ Permittee’s

Reason: apparent typo?

1. The Permittee has not complied with WHSWD Rules Chap. 2 Sec. 2(b)(i).

Reason: The *Hazardous* Waste Rules are separate and different from *Solid* Waste Rules.

2. The Permittee has failed to comply with the current litter control requirements of their permit.

Reason: Failure to comply with the *current litter control requirements of a permit* would be cause for an enforcement action, rather than for denial of the permit. As noted above, failure to comply with existing permit conditions is generally a compliance issue rather than a basis for not issuing a permit containing those conditions. The transcript does not reflect that the EQC based their decision that the proposed permit should not be issued either on the Permittee's noncompliance with current / proposed permit conditions regarding daily litter control or on the ground that those conditions were insufficient. Tr.193-201.

DATED this 19th day of February, 2010.



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CERTIFICATE OF SERVICE

This certifies that true and correct copies of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S COMMENTS ON DRAFT FINDINGS AND CONCLUSIONS were served this 19th day of February, 2010 by hand delivery or United States mail, first class postage prepaid, and by email addressed as follows:

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