BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE OBJECTION TO THE ISSURANCE 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

EASTERN LARAMIE COUNTY SOLID WASTE DISPOSAL DISTRICT'S OBJECTION TO PROPOSED ORDER

COMES NOW, the Respondent and Applicant, the Eastern Laramie County Solid Waste Disposal District, ("Landfill") by and through Alexander K. Davison of Patton and Davison, and submits its Objections to the Proposed Order as follows.

I. Preliminary Statement

The District disagrees with the substance of the order but acknowledges that procedure dictates that objections be directed to the proposed findings of fact, conclusions of law and order. However, the District's silence on the substance of the proposed order should not be interpreted as agreement with any of its content.

Note that Permittee is misspelled throughout the proposed order.

II. Objections to Findings of Fact. The numbering sequence of the proposed order is adopted.

1. This paragraph is inaccurate to the extent it conflicts with or fails to include the following:

The action of the Laramie County Commissioners relevant to this proceeding occurred at a special session of the commissioners held on December 31, 1923. The action was taken "in accordance with Section 2977, Wyoming Compiled Statutes 1920, as amended by Chapter 100 of the Session Laws of Wyoming 1921." Exhibit 11 (final page). The Resolution passed by the commissioners established public highways which included *inter alia* an 80' right of way "beginning at the SE corner section 29-15-62; thence north on section lines between sections 28 and 29..." "The lines described are the centre lines of 80 feet rights-of-way."

2. The facts recited in this paragraph are not supported by the record. The transcript records that the word "consideration" appears only three times in the record as follows:

> Pg. 136 ln 14.
> Q. (BY CHAIRMAN BOAL) And do you know if any consideration was paid back then? Do you know?
> A (WITNESS LARSON) I have no knowledge, no.
> Q. Do you have any - do you know of any evidence to show that the County paid any money for that land?
> A. I have none.
> Q. But its your belief that they acquired title to this 80-foot strip of land by virtue of a resolution without paying any consideration?
> A I -
>
> MR. DAVISON: The witness testified he didn't know about the consideration.
> THE WITNESS: Right.

Moreover, the issue of consideration is irrelevant since the reservation of this right-of-way by Laramie County was **statutory** and there was no evidence that the statute required the county to pay consideration. Objectors came into title in 1993. (TR Pg 57 ln 16-18) Thus, even had consideration been required, the Objectors are without standing to raise the issue. Not only does the theory of failure of consideration not "run with the land", the statute of limitations on such a transaction could not be longer than 10 years. Thus, any claim would have expired by 1933, **SIXTY** years before the Objectors came into title.

3. The facts recited in this paragraph are not supported by the record. While it is correct that the existing CR 150 is not entirely within the county right-of-way, the record does not disclose its exact location. The record is entirely devoid of any evidence concerning whether or not consideration was paid by the county to the Objectors' predecessors for any land occupied by CR 150. Objectors offered no evidence that consideration was not paid which would be their burden under the law as correctly noted in the proposed Order. The record demonstrates that the road existed and was located outside the right-of-way **prior** to the Objectors coming into title (Exhibit 12). Mr. Musgrave viewed the property before he purchased it. (TR Pg 56 ln 21 - Pg 57 ln 9) Mr. Musgrave testified that he was aware of the boundaries because of his tour of the property with Mr. Steege. The irrefutable conclusion is that Mr. Musgrave either knew the road was on the property he was buying or that he bought the property believing his property line was east of the road. Either way, he got exactly the property he was shown by Mr. Steege – with or without the road.

In any event, the entire question of the location of CR 150 is entirely irrelevant since the encroachment at issue is within the right-of-way and has nothing at all to do with the location of the county road. The issue is whether the Objectors have established that they have an interest in the right-of-way, not whether Laramie County in days of yore improperly located a road on the property of a predecessor of the Objectors. If the road is unlawful, the Musgraves can take that complaint to the county or the district court. It is not relevant in this proceeding. However, the presence of this paragraph in the Proposed Findings exposes how deficient of logic and misguided the deliberation of the EQC was in this proceeding.

Finally, Exhibit 4 Section 1.4, referenced for support of this paragraph, has been superceded and amended by Terracon in Exhibit 14. This paragraph therefore places the EQC in the precarious position of relying on text that has been declared inaccurate by its author, Witness Clay Muirhead. Such a finding is *per se* arbitrary and not supported by substantial evidence.

4. No objection.

5. The facts recited in this paragraph are not supported by the record. The landfill property was purchased from Steege prior to 1993 and by the time Exhibit 12, the Intermountain survey, was done, the property already belonged to the landfill. Exhibit 12 was done on behalf of the District as it notes.

6. While it is true that the 80' county right-of-way is not specifically mentioned in the Exhibit L, the exhibit is not relevant to the issue of ownership of the right-of-way and does not establish that the Objectors have title to the right-of-way property. Moreover, the policy specifically excludes boundary line disputes that would be disclosed by an accurate survey (Exhibit L (2) Pg 64). Such a survey actually existed from 1991 forward as to the landfill property. (Exhibit 12) The law in Wyoming is that one is charged with knowledge of the public real estate records. Mr. Larson testified that Exhibit 11 can be found in the public records (TR. Pg 138 ln 10 – Pg 139 ln 5) and Exhibit 12 shows that it was recorded prior to the Objectors' purchase of the property. Both book and page are obvious on the document.

7. No objection.

8. No objection.

9. The Objectors made a number of allegations regarding the ownership of a portion of land occupied by the landfill. But the paragraph as written is worded in a manner that concedes the fact which remains in question. The District therefore objects to the paragraph as written.

10. This paragraph incorrectly characterizes the action of the Laramie County Board of Commissioners in that it states that the board "attempted" to grant consent to the Permittee. In fact, the Commissioners **did** grant permission to the District as stated in the resolution (Exhibit 15) which speaks for itself. There may be a question of whether or not the Commissioners grant is effective depending on whether or not the county has such and interest in the right-of-way. But it is not correct to frame the legal issue by stating factually that the Commissioners "attempted" to grant permission.

The timing of the resolution is irrelevant to a determination of whether or not the Objectors own the property at issue. Indeed, the resolution only becomes necessary for the purpose of satisfying the landowner permission requirement in the event the Objectors fail to establish ownership.

11. No objection.

12. No objection.

13. No objection. Note that there may be a typographical error in line two. (Perimeter's should be Permittee's).

14. No objection to the first sentence. The second sentence is a conclusion of law based on the assumption that the only manner in which the county could grant permission to the landfill to conduct its operations in the right-of-way is by way of resolution. There is absolutely no evidence in the record that the county has never in any way granted the landfill

permission to conduct operations in the right-of-way. The issue of whether prior permission or subsequent ratification by a landowner is not addressed in the DEQ regulations, so the question of the sequence of obtaining permission is not consequential as it pertains to landfill operations if the right-of-way is owned and controlled by the county.

Although the Objectors have not given permission to the landfill, the predecessor in interest to the Objectors, Robert Steege, certainly did. There is a legitimate argument that this permission given by Robert Steege is binding on the Objectors as his successors. The recitation of facts should include the fact that Steege's sale of the landfill property to the District was consent to the operation of the landfill.

15. No objection.

16. This paragraph is not supported by substantial evidence. The inspection reports provided by the DEQ (Exhibits 8, 9, 10) note no violations for litter accumulations either on or off the landfill. Moreover, the paragraph does not completely describe the permit requirements. (TR Pg 31 ln 31 – Pg 34 ln 12; TR Pg 35 ln 23 – Pg 36 ln 4). Litter compliance is not an appropriate matter for consideration in this proceeding (TR Pg 36 ln 5 – ln 18).

17. No objection.

Suggested additions to findings of fact.

- In 1923, the county reserved an 80' statutory right-of-way. (Exhibit 11)
- This right-of-way is shown on the plat survey of the landfill done by Jeff Jones and recorded in 1991. (Exhibit 12)
- Landfill operations have encroached into the county right-of-way from at least 1991. (TR Pg 165 ln 25 – Pg 166 ln 7)

- This encroachment was present and evident at the time the Objectors bought their property in 1993.
- The Objectors did not have their property surveyed. They did not conduct a search of the county records. They did not check with anyone at the county regarding the county road. (TR Pg 69 ln 22-23; Pg 70 ln 8-11; Pg 72 ln 9-14)
- The DEQ has accepted letters of permission from non-operator landowners in satisfaction of the requirement of having property owners sign applications. (TR Pg 29 ln 6 – Pg 30 ln 14)

III. Objections to Conclusions of Law.

18. No objection.

19. No objection.

18 (Second) No objection.

19 (Second) This paragraph contains a recitation of the vote conducted rather than a conclusion of law. It is therefore not necessary.

Suggested additions to conclusions of law.

The following suggested additions to the conclusions of law are based on the statements made by the members during the deliberations.

- Personal bias is an appropriate component in decision making. (TR Page 193, ln 22-23)
- Since, in previous cases before the council private landowners have frequently lost, a presumption in favor of the private landowner in this case is appropriate. (TR Page 194, ln 7-9)

- The failure to achieve settlement in this case should be construed against the government (Laramie County), notwithstanding that the county is not a party in this proceeding, and such presumption is a sufficient basis for ruling against the Permittee even though the Permittee is a separate legal entity from the county. (TR Page 194, ln 7-10)
- Public policy favors ruling against the Permittee for the reason that it is necessary to put heat on the government to settle and do the right thing. (TR Page 194, ln 9-10)
- In constructing County Road 150 outside the right-of-way, Laramie County engaged in a backdoor, elaborate government taking and is culpable. Such culpability is attributable to the Permittee. (TR Page 194, ln 19-21)
- Although the Objector has the burden of proof in this matter, the Permittee has the burden of proving that county control of the statutory right-of-way includes the right to locate a landfill in the right-of-way. (TR Page 195, ln 5-9)
- The statutory right-of-way did not confer on the county the right to do whatever they want with the right-of-way. If the county wants to do that, it must use condemnation proceedings. (TR Page 195, ln 9-12)
- The EQC lacks jurisdiction to decide the land ownership issue and the permit cannot be approved until that issue is decided. (TR Page 195, ln 13-23)
- Consideration of settlement negotiations is appropriate in this proceeding and since the case was not settled, the permit should not be approved. (TR Page 196, ln 1-5)

- Notwithstanding precedent of the Wyoming Supreme Court to the contrary, the Internet definition of right-of-way controls over the Wyoming Supreme Court and the Internet says a right-of-way, in the context of property law, is only the right to travel over and use a right-of-way in a manner not inconsistent with the landowner's rights. (TR Page 196, ln 14-24)
- In a case where it is clear that the ownership of the land is not clear, a permit cannot be granted. (TR Page 197, ln 19-24, Page 198 ln 18-23)
- The EQC has jurisdiction to determine that the Objector has an ownership interest in the disputed property, but lacks jurisdiction to determine if the county has a an ownership interest in the disputed property that is superior. (TR Page 198 ln 24 – Page 199 ln 7; Page 199, ln 17-22)
- A statutory dedication which grants a fee simple determinable is insufficient to vest the county with the right to allow operation of a landfill on the right-of-way. (TR Page 199, 7-22)

IV. Objections to Ordering Section.

First Paragraph. No objection to the content but it is a conclusion of law rather than an ordering clause. "Objector's" should be "Objectors".

Second Paragraph. Although the District does not agree with this paragraph it is an accurate statement of the conclusion of law reached by the EQC on this issue. It might be better included with the Conclusions of Law. "Objector's" should be "Objectors".

Third Paragraph. None of the members of the council cited the litter issue as grounds for voting against the issuance of the permit. This is also a conclusion of law rather than an

ordering clause. If it is supported by the record it might be better included with the Conclusions of Law. "Objector's" should be "Objectors".

V. Wherefore clause.

1. No objection.

2. This was not recited as a reason for denying the permit by any of the council and should be removed.

DATED this 19th day of February, 2010.

EASTERN LARAMIE COUNTY SOLID WASTE DISPOSAL DISTRICT

By: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered via the United States Mail, postage pre-paid to the following on the 19th day of February, 2010.

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