

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATTER OF THE OBJECTION)
TO THE ISSUANCE OF SOLID WASTE PERMIT)
RENEWAL AND MAJOR AMENDMENT TO) Docket No. 09-5801
EASTERN LARAMIE COUNTY SOLID WASTE)
DISPOSAL DISTRICT LANDFILL (SHWD #10.330))

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On the 14th day of Janaury, 2010, the above entitled matter came before the Council for final hearing. Chairman Boal presided. Also in attendance were Vice-Chairman Tim Flitner, Secretary Tom Coverdale (appearing by video conference), Cathy Guschewsky, David Searle and John Morris. Dr. Fred Ogden was absent. Also present at the hearing were Jim Ruby, Executive Secretary of EQC, Joe Girardin, Paralegal for the EQC, and John D. Rossetti, Office of the Attorney General, legal counsel for the EQC. The Objectors, Robert and Barbara Musgrave, appeared personally and on their own behalf. The Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ) appeared by and through Senior Assistant Attorney General, Mike Barrash. Also present on behalf of the DEQ was Carl Anderson, the Administrator of the Solid and Hazardous Waste Division of the Department of Environmental Quality. The Permittee appeared through its legal counsel, Alex Davison and the President of the Permittee, Kelly Krakow. Testifying on behalf of the DEQ was Maggie McKenzie. Testifying on behalf of the Objectors was Robert Musgrave. Testifying on behalf of the Permittee was Clay Muirhead, Scott Larson, Kelly Krakow and Russell Hay. Exhibits 1, 2, 4, 8, 9, 10, 11, 12, 13, 14 and 15 and Exhibits D, E, F, J and L were offered and received.

FINDINGS OF FACT

1. Prior to 1993, the Eastern Laramie County Solid Waste Disposal District (“Permittee”) purchased land in Section 29, Township 15 North, Range 62 West, of the 6th P.M., Laramie County, Wyoming, from Robert Steege, that was being used as a landfill, for the purpose of continuing that use.

2. On or about March 2, 1993, Robert A. and Barbara K. Musgrave, husband and wife (“Objectors”), purchased land in the E½ and the SW¼ of Section 28, Township 15 North, Range 62 West, of the 6th P.M., Laramie County, Wyoming, from Robert Steege. The Permittee land and the Objectors’ land abut each other.

3. The Permittee has been operating its landfill continuously since Objectors purchased their land.

4. Prior to purchasing the property, Mr. Musgrave and Mr. Steege went around the property boundaries and Mr. Steege showed Mr. Musgrave the property lines.

5. Upon completion of the purchase, Objectors were provided a title insurance policy. (Exhibit L)

6. On or about August 17, 2009, Permittee filed a renewal permit application and major amendments with the Department of Environmental Quality, Solid and Hazardous Waste Division (“DEQ”). (Exhibit 4)

7. After review of the application, DEQ advertised, as required by law, that it had determined the application was complete and that unless objections were filed the permit would be granted.

8. After publication, the Objectors came forward and brought to the DEQ’s attention that they claimed title to land included in the application.

9. The basis for the objection is contained in Section 1.4 of Permittee's renewal permit application. "[T]he landfill's eastern perimeter fire lane and buffer zone have been developed approximately 45 feet over the eastern boundary of the Existing Landfill Area on property owned by Robert Musgrave." (Exhibit 4)

10. Department of Environmental Quality, Solid Waste Management, Rules and Regulations, Ch. 2, § 2(b)(i) states: "All permit application forms shall be signed by the operator, the landowner and any real property lienholder of public record."

11. As a result of the objection, this matter was set for hearing.

12. Clay Muirhead is an environmental engineer and principal in Terracon Consultants, Incorporated. Terracon was hired to prepare Permittee's renewal permit application. Mr. Muirhead prepared the legal description contained in Section 1.4 of the original application. (Exhibit 4) On December 23, 2009, after the original renewal application was denied, he prepared an amended legal description (Section 1.4). (Exhibit 14) After meeting with the county engineer and doing more research, Section 1.4 was amended to reflect a 40 foot right-of-way on each side of the section line.

13. Scott Larson is a civil engineer employed by Benchmark Engineers, P.C. Benchmark has been Laramie County Engineer since 1996. Benchmark was contacted by Permittee, after the objection was filed, to determine if there was a county highway or right-of-way in existence, if the highway or right-of-way was recorded and to shoot a survey.

14. Mr. Larsen reviewed the minutes from a meeting of the Board of County Commissioners of Laramie County, dated December 31, 1923, reflecting an 80 foot right-of-way located on the center line between Sections 28 and 29 (the disputed property). (Exhibit 11) This document was obtained from the county clerk's office. He also looked at the official county road map. Although he is not sure whether all county rights-of-way

are shown on this map, the one in dispute is. Mr. Larson also looked at the record of survey prepared by Intermountain Professional Services, Inc., dated April 1, 1991. (Exhibit 12) This survey shows the county right-of-way in question. As a result of reviewing these documents, Benchmark prepared a survey, dated January 4, 2010, depicting the county right-of-way.

15. As an engineer, Mr. Larson is familiar with the grantor/grantee index. He is not aware whether or not the December 31, 1923, commission meeting minutes are recorded with respect to the Musgrave's property. Mr. Larson was not sure where the Intermountain record of survey was located in the county records. He was unaware of any place, other than the commission minutes, where the right-of-way in question is recorded.

16. Kelly Krakow is the Mayor of the Town of Albin and president of Permittee. He became aware of the boundary dispute between Permittee and Objectors in 2005. At that time, Permittee met with the county attorney, commissioners and the head of the Road and Bridge Department. Research was done and it was determined a right-of-way existed on the disputed land. Nothing was done to resolve the issue at that time.

17. As the result of the Musgrave's objection, and the question of who owns the disputed ground, Permittee went to the Board of County Commissioners. The Commission adopted Resolution #100105-10 allowing Permittee to use a particularly described right-of-way for landfill purposes. (Exhibit 15)

18. The title insurance policy obtained by Objectors does not reference a county road or right-of-way affecting Objectors' property. Robert Steege did not tell Objectors that a right-of-way encroached on the property purchased. Robert Musgrave did not contact the Laramie County Road and Bridge Department about any right-of-way because no road existed on the property line.

19. Maggie McKenzie is the supervisor of District 1 of the Solid Waste Permitting and Corrective Action Program in the Solid and Hazardous Waste Division. The review of Permittee's renewal permit application and expansion was made under her supervision. In the initial review process, no discrepancies were discovered. Because Permittee's application included an expansion request, public notice was required.

20. After notice, Objectors' objection came to light. The Objectors contended that Permittee's operations were occurring on property owned by them and Permittee's litter collection program was not being followed.

21. Because Solid Waste Management Rules and Regulations require the owners of land to be permitted to sign the application, the permit could not be granted. Further review of the renewal permit application confirmed the objection. (Section 1.4, Exhibit 4) The land ownership issues needed to be resolved before the permit could be issued.

22. Routine litter inspections are conducted as well as inspections in response to complaints. Inspection reports reviewed by Ms. McKenzie did not indicate excessive litter at the time of those inspections.

23. According to Ms. McKenzie, maps were attached to the Permittee's renewal permit application. These maps reflect a county road right-of-way. (Exhibits 1 and 2) She was not in a position to ascertain who the owner of the disputed property was. Therefore, Ms. McKenzie was unable to determine whether the signature requirement had been met.

24. Robert Musgrave, one of the Objectors, picks up litter about every third day. Sometimes he gets a bagful, other time a truck load. Part of the boundary fence is chain link and part is barbed wire. Litter will blow through the barbed wire boundary fence. Permittee employees are allowed to come on Objectors' property to pick up litter.

25. Russ Hay is the operations manager for Permittee. He has worked at Permittee's landfill for approximately five years. Employees try to pick up litter every day that the landfill is open. Mr. Musgrave will let him know if there are litter problems and Mr. Hay will try to go out and take care of the litter.

26. Part of the boundary fence is three-strand barbed wire. The wind blows all the time causing the litter. Even though the Permittee's permit requires daily control of litter, because of weather conditions, such as blizzards and temperature, litter control is maintained, weather permitting. According to Mr. Hay, it would be inhumane to require an employee to go out and pick up litter in those conditions.

27. Mr. Hay is familiar with the roads in the vicinity of the Permittee's boundary fence. There is no county road on the section line, just what appears on the map, the right-of-way. (Exhibit 13) There is an existing, unpaved road east of the landfill fence, maintained by the county, totally outside of the right-of-way depicted on the map.

28. Objectors are the owners of the E $\frac{1}{2}$ and the SW $\frac{1}{4}$ of Section 28, Township 15 North, Range 62 West, of the 6th P.M., Laramie County, Wyoming. (Exhibit L)

29. Permittee is the owner of land in Section 29, Township 15 North, Range 62 West, of the 6th P.M., Laramie County, Wyoming.

30. The 40-foot strip of land at issue is located on Objectors' land and contains a fire road, fence and a monitoring well used by Permittee.

31. The Permittee has shown that Laramie County claims an interest in the 40-foot strip of land at issue and that Permittee has permission for use of the land from Laramie County. (Exhibits 1, 2, 11 and 15)

32. The Permittee must have consent from the owner of the 40-foot strip of land located in Section 28 in order to use that strip of land for landfill purposes. Consent has not been given by Objectors.

33. Permittee is required by its current permit to conduct “Daily inspection and pick up of litter from the haul road, perimeter fences, and pasture land immediately outside the landfill boundary[.]” (Exhibit 4)

34. Objectors have demonstrated that Permittee has failed to comply with existing permit conditions regarding litter control and that the permit conditions are not being followed.

35. The Permittee has failed to consistently comply with the daily pick up of litter from perimeter fences and pasture land immediately outside of the landfill boundary.

CONCLUSIONS OF LAW

36. “The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions.” WYO. STAT. ANN. § 35-11-112(a).

37. 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).

38. “The council shall: . . . (iv) Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act[.]” WYO. STAT. ANN. § 35-11-112(a)(iv).

39. The Council has jurisdiction over this contested case hearing.

40. “The district court shall have jurisdiction of all causes both at law and in equity . . . and of such special cases and proceedings as are not otherwise provided for. The district court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court They shall have such appellate jurisdiction in cases arising in . . . other inferior courts in their respective counties as may be prescribed by law.” WYO. CONST. art. 5, § 10.

41. The district court has jurisdiction over actions to quiet title interests in real property. *See generally* WYO. STAT. ANN. §§ 1-32-201 through 1-32-216.

42. “All permit application forms shall be signed by the operator, the landowner and any real property lienholder of public record.” Department of Environmental Quality, Solid Waste Management, Rules and Regulations, Ch. 2, § 2(b)(i).

43. Either the Objectors or Laramie County appear to have legal claim to the 40-foot strip of land that is in question and contained within the legal description of Permittee’s renewal permit application. At the time of the contested case hearing in this matter, neither the Objectors nor Laramie County had signed the renewal permit application as required by rule.

44. The Council does not have jurisdiction to quiet title the ownership interest to the 40-foot strip of land that is at issue in this contested case hearing. That jurisdiction lies exclusively with the District Court of Laramie County.

45. The standard of proof in this contested case hearing is the preponderance-of-the-evidence standard. *See JM v. Dep’t of Family Servs.*, 922 P.2d 219, 223 (Wyo. 1996).

46. If the Council has jurisdiction to determine the ownership interest to the 40-foot strip of land at issue in this matter, it would conclude that Objectors are the owners. Prior to the Objectors purchasing their property, Mr. Musgrave and Mr. Steege viewed the boundaries of the property. No mention of a county right-of-way was made and no roadway was present. The title insurance policy issued to Objectors does not indicate any right-of-way exception. On the other hand, no evidence was presented by Permittee that would indicate that the alleged Laramie County right-of-way or county road was recorded as to any land that it might affect. This does not mean to say that Laramie County has not established a county road, only that Permittee has failed in its burden of showing there was a county road, which finding only applies to the parties hereto, because the county was not a party to these proceedings. *See Kern v. Deerwood Ranch*, 528 P.2d 910, 911-12 (Wyo. 1974); *JM v. Dep't of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996).

47. "Each facility shall maintain an effective routine litter collection program. These routine programs shall take place both within the landfill perimeter, as well as off-site, where possible. Special operating practices may be required for use during high wind periods." Department of Environmental Quality, Solid Waste Management, Rules and Regulations, Ch. 2, § 5(1).

ORDER

The burden of proof was on the Objectors, Mr. and Mrs. Musgrave, to show by a preponderance of the evidence that the proposed permit should not be issued for at least one of three reasons:

- (a) Permittee was not the owner of all the land included in the renewal permit application, landowner consent is necessary for the issuance of the permit and Objectors, as one of those land owners, have not given consent;
- or

(b) Permittee has failed to comply with conditions restricting litter on the Objectors' property by Permittee; or

(c) Permit conditions regarding the daily pick up of litter are not sufficient to protect the Objectors' property from the accumulation of litter from Permittee's landfill operation.

It was moved by Councilman Searle to approve the permit. The motion was seconded by Councilwoman Guschewsky. There were no voters in support of the motion. Voting Nay were: Chairman Boal, Vice-chairman Flitner, Secretary Coverdale, Councilwoman Guschewsky, Councilman Searle and Councilman Morris. Councilman Ogden was absent.

WHEREFORE, IT IS HEREBY ORDERED, Permittee's permit renewal application be denied for the following reasons:

1. Permittee has not complied with Department of Environmental Quality, Solid Waste Management, Rules and Regulations, Ch. 2, § 2(b)(i).
2. Permittee has not complied with the current litter control requirements of their permit and Department of Environmental Quality, Solid Waste Management, Rules and Regulations, Ch. 2, § 5(1).

SO ORDERED this _____ day of March, 2010.

Dennis Boal, Presiding Officer
Environmental Quality Council