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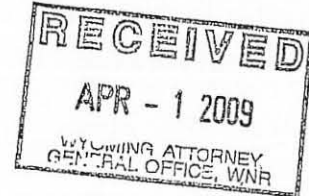
TELEPHONE (307) 634-1525 TELEFAX (307) 638-7335

O'KELLEY H. PEARSON
HOWARD V. SCOTLAND, III
KRISTI M. RADOSEVICH *

MARY A. THRONE
Of Counsel

*ALSO ADMITTED IN COLORADO

April 1, 2009



LeRoy C. Feusner, Administrator
Department of Environmental Quality
Solid and Hazardous Waste Division
Herschler Building
122 West 25th Street
Cheyenne, WY 82002

Dear Mr. Feusner:

Our firm represents Envirotank, Inc., and we are responding on the company's behalf to your letter of February 18, 2009, requesting additional information regarding the Lange Trust property.

Before responding to your specific questions, we would like to provide some general information regarding placement of scrap tires on the Lange Trust property. The current owner of Envirotank, Mr. Michael Bulger and C.E.O., L.J. Weatherwax, purchased the company in March 2006, and the DEQ permit was transferred to Mr. Bulger on April 19, 2006. Envirotank worked in close cooperation with the lessee of the Lange Trust property, Mr. Brian Morgan, regarding the placement and design of the windbreaks and tanks. Most of the coordination and communication between Mr. Morgan and Envirotank occurred through the company's employee Virgil Duha, who passed away on March 17, 2008. Further, the Lange Trust representatives have not yet granted Envirotank permission to enter the property to make accurate counts of the material on the property. Mr. Bulger and Mr. Weatherwax have, therefore, made every attempt to answer the questions you posed in your February 18, 2009, letter from bills of lading and conversations with Mr. Morgan.

The following responses are based on the best information available to Envirotank, as provided to us. Envirotank will supplement its answers if permission is gained from the Lange Trust property owner to enter and count the materials or additional information becomes available.

1. *How many whole tires has Envirotank transported to the Lange Trust property since the permit transfer?* The permit was transferred from Mr. Hull to Mr.

Bulger on April 19, 2006, and the company estimates approximately 350 whole tires have been transported to the property since that time. This estimate is based on Bills of Lading that describe the number of loads, rather than the number of tires delivered, which would vary depending on the size of the tires. Envirotank believes that the estimate of 350 is more likely than not higher than the number actually delivered.

2. *When did Envirotank transport those whole tires to the Lange Trust property?* The whole tires were transported to the property between September 2, 2006 and November 29, 2007, according to Bills of Lading. It is also possible that some of the tires were placed at an adjoining property.

3. *How many tire tops has Envirotank transported to the Lange Trust property since the permit transfer?* The company estimates approximately 260 tire tops have been transported since the permit transfer. The basis of this estimate is the same as that for the response to Question Number 1, above. Again, the estimate, if not precise, is likely to be high.

4. *When did Envirotank transport these tire tops to the Lange Trust property?* The tire tops were transported to the property between October 26, 2006 and March 26, 2007 and some may have been delivered to a different property.

5. *How many tires (whole or tops) were already on the Lange Trust property?* The current owner and C.E.O. do not have knowledge regarding how many whole tires or tire tops were already on the Lange Trust property prior to the permit transfer.

6. *How did Envirotank under its current ownership first find out about the Lange Trust property as a potential site for these tires?* Envirotank's current owner learned of the Lange Trust property as a potential site for beneficial use of the tires during the company's change of ownership in March 2006, from Virgil Duha, former operating manager, who worked with the property's lessee, Mr. Morgan, prior to the change of ownership.

7. *Under what authority did Envirotank under its current ownership believe it was operating when it undertook the placement of whole tires on the Lange Trust property?* Envirotank's current owner received permission to place tire materials for beneficial use on the Lange Trust property, through the lessee, Mr. Morgan, and in fact employees of Envirotank worked with Mr. Morgan on particular designs and specific locations for the windbreaks and watering tanks. Further, scrap tire materials had been used on the Lange Trust property prior to the Envirotank's current ownership, and a substantial period of time elapsed during which materials were delivered to the property without objection.

8. *What authorization from DEQ did Envirotank under its current ownership receive for this project?*

A. Envirotank operates pursuant to its DEQ permit. The permit application, approved by DEQ, and submitted prior to the current ownership, provided that

Envirotank would use the tires for agricultural uses. Prior to the issuance of the July 11, 2008, Solid Waste Guideline #21 regarding Scrap Tire Management, Envirotank had no reason to seek any authorization from DEQ.

When did the authorization from DEQ take place and from whom?

B. Envirotank has a DEQ Permit, authorizing its activity. Additional authorization from DEQ was received by Envirotank by letter from Timothy Link, dated October 24, 2008, provided that Envirotank could drill holes in tires on the Lange property. However, Envirotank has not yet been able to obtain access to the property.

9. *Did Envirotank under its current ownership review any State guidance prior to placement of the tires on the subject property? If so, what guidance was reviewed?* Envirotank reviewed its permit obligations and its principals recall reviewing guidance in place, which applied primarily to tire bales. Again, the delivery of materials occurred prior to the issuance on July 11, 2008, of Solid Waste Guideline #21 regarding Scrap Tire Management.

10. *Did Envirotank under its current ownership receive consent from the Lange Trust landowner for this project? When was the consent communicated to Envirotank and from whom?* As explained above, Envirotank's current ownership, consistent with the practice under the prior ownership, relied on Mr. Morgan, as lessee, for authority for Mr. Duha's placement of the tires.

11. *Did the former owners of Envirotank state or provide any documentation of the landowner's consent for this tire placement?* The former owner of Envirotank, Mr. Hull, did not provide any documentation of the landowner's consent for placement of material prior to the permit transfer.

The company placed materials on the Lange Trust property following coordination with Mr. Morgan. This was consistent with the past practice over a number of years of the prior owner. The new owners of Envirotank continued the practice.

Please contact our office if you have any further questions.

Sincerely,



Mary A. Throne

cc: Client

Mike Barrash
Wyoming Attorney General's Office
123 Capitol Avenue
Cheyenne, WY 82001



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

7 May 2009

Mary Throne
Hickey & Evans, LLP
1800 Carey Ave, Suite 700
P.O. Box 467
Cheyenne, WY 82003

Heather A. Jacobson
Jacobson Law Office
1839 Madora Avenue
Douglas, WY 82633

Reference: Envirotank/Sandra Kay Lange Trust Scrap Tire Matter

Dear Counsel:

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ), has reviewed both Sandra Kay Lange Trust's (Lange Trust) and Envirotank, Inc.'s (Envirotank) responses to the Department's requests for information in this matter. Based on those responses, it appears that:

1. Envirotank (both former and current businesses) placed whole tires and tire tops on the Lange Trust property between November of 2004 and November of 2007;
2. The current Envirotank placed approximately 350 whole tires and approximately 260 tire tops on the Lange Trust property between September of 2006 and November of 2007;
3. The total number of whole tires and tire tops that the former Envirotank placed on the Lange Trust property between November of 2004 and April of 2006 is not clear;
4. Lange Trust agreed to its lessee's (Morgan) request to allow Envirotank to place two (2) windbreaks on the Lange Trust property composed of an unspecified number of tires at an unspecified time;
5. All other tires (whole and tops) were placed on the property by the former and current Envirotank with the consent of Lange Trust's lessee (Morgan);
6. There is no record of the WDEQ authorizing either the former or current Envirotank placing any whole tires on the Lange Trust property;

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DEQ Exhibit 31

7. There is no record of the WDEQ exempting from permit requirements the placement of whole tires that are not completely earth-filled on the Lange Trust property.

In light of the above observations, some additional information would be helpful to the Department in evaluating the situation:

1. What is the total number of whole tires currently on the Lange Trust property?
2. What is the number of earth-filled whole tires currently on the Lange Trust property?
3. How many of the approximately 350 whole tires that the current Envirotank represents that it placed on the Lange Trust property were completely earth-filled?
4. When and how many earth-filled whole tires, non-filled whole tires, and tire tops did Lange Trust's lessee (Morgan) allow the former Envirotank to place on the Lange Trust property before April 19, 2006?
5. When and how many earth-filled whole tires, non-filled whole tires, and tire tops did Lange Trust's lessee (Morgan) allow the current Envirotank to place on the Lange Trust property since April 19, 2006?

After this additional information has been provided to the Department, and we have had an opportunity to review and evaluate all of the information, the Department will determine what next step(s) should be considered to achieve resolution of this matter.

Thank you for your cooperation and we look forward to hearing from you.

Sincerely,



LeRoy C. Feusner, P.E., BCEE
Administrator
Solid and Hazardous Waste Division

Cc: Bob Doctor, PG, WDEQ/SHWD-Casper
Dale Anderson, PG, WDEQ/SHWD-Casper
Bob Breuer, WDEQ/SHWD-Casper
Tim Link, WDEQ/SHWD-Cheyenne
Luke Esch, Attorney General's Office
Mike Barrash, Attorney General's Office

JUN 10 2009

JACOBSON LAW OFFICE, LLC

Heather A. Jacobson

ATTORNEY AT LAW
A Limited Liability Company
1839 Madora Avenue
Douglas, Wyoming 82633

Telephone (307) 358-3180

Fax (307) 358-3182

June 9, 2009

Leroy C. Feusner
122 West 25th Street
Cheyenne, WY 82002

RE: Lange/Envirotank

Dear Mr. Feusner:

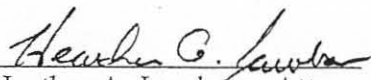
Thank you for your letter dated May 7th, 2009. After reviewing your letter Ms. Lange took the time to go to the property and document the tires by video and photograph. They also checked the tires for dirt, drainage holes and counted them. Please take the time to view the enclosed pictures and DVD. The pictures are representations of each of the Five (5) different sites that have tires located on them. However, to get the true picture of the devastation to the land, it is necessary to view the video. Following is the response to your questions contained in the May 7th letter.

1. There are 725 whole tires located on the Lange Trust property in Five (5) different locations in Section 14, 23 and 26 of the Lange Trust property. In addition to the whole tires above there are 1,574 half tires, not filled, and 50 plus rings dumped on the ground and stuffed inside stacked whole and half tires. This clearly shows the purpose of this project was to get rid of tires, not to benefit the land. The counts here are probably on the low side as some may have been missed due to the volume of tires.
2. None of the whole tires checked randomly are earth-filled, and some have standing water.
3. None of the half tires checked randomly are earth-filled.
4. Envirotank was to place two small windbreaks on the property. Small is defined as the size of a standard small windbreak size, around Sixty (60) feet.
5. We are not in possession of this information as the Lessee has only provided us with very general answers. However, as Lessee, Mr. Morgan did not have the authority at any time to receive any tires that had not been previously approved by the Lange Trust. As

previously stated the Lange Trust only authorized two small windbreaks. Any tires, other than those that had been authorized by the trust were placed there without authorization from the trust. Any further information as to any tires he authorized, without permission, can be obtained from Brian Morgan, 227 Bell Road, Gillette, Wyoming 82718.

If you have any questions or comments, please feel free to contact this office at any time. Thank you.

Sincerely,
Jacobson Law Office, LLC


Heather A. Jacobson, Attorney

HAI:tjk
CC: Mary Throne

Enclosure



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

Tuesday, June 9, 2009

Certified #7008 0150 0001 1173 9474
Return Receipt Requested

Mr. Dave Kyle
336 Clarkelen Road
Gillette, WY 82718

Reference: Complaint Follow Up; Request For Information

Dear Mr. Kyle:

It has recently been brought to our attention that a number of whole scrap tires are currently accumulated or stored at an unpermitted site located at 336 Clarkelen Road in Campbell County, which is adjacent to Envirotank, Inc.'s permitted facility. It is our understanding that you own the property at 336 Clarkelen Road and are employed by Envirotank.

Accumulation or storage of solid waste, including whole scrap tires, at a site without a permit or exemption from DEQ is a violation of the Wyoming Environmental Quality Act (Act) and the Wyoming Solid Waste Management Rules & Regulations.

When the DEQ has cause to believe there is a violation of the Act or rules, W.S. 35-11-701(a) calls for the DEQ to investigate it. To that end, DEQ asks for a written response from you providing the following information:

1. How many whole scrap tires are currently accumulated or stored on your property at 336 Clarkelen Road in Campbell County?
2. Where did the whole tires currently accumulated or stored on your property at 336 Clarkelen Road in Campbell County come from?
3. Who put them there and when?

The department is requesting a written response from you within ten (10) working days of the date of this letter to clarify these issues. Please address your response to Tim Link or me at the above address.



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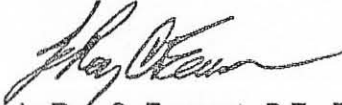
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DEQ Exhibit 33

Mr. Kyle, 6/9/2009

Sincerely,

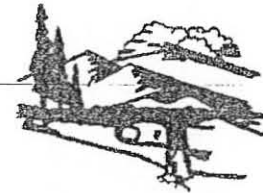


LeRoy C. Feusner, P.E., BCEE
Administrator
Solid and Hazardous Waste Division

C: L J Weatherwax, Envirotank, Inc.. P.O. Box 302, Ft. Lupton, CO 80621
Dale Anderson, SWP&CA, WDEQ/SHWD Casper Office, Casper, WY
Bob Breuer, I&C Program Manager, WDEQ/SHWD Casper Office, Casper, WY
51.031



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

Tuesday, June 9, 2009

Certified #7008 0150 0001 1173 9122
Return Receipt Requested

Mr. L J Weatherwax
Envirotank, Inc.
P.O. Box 302
Ft. Lupton, CO 80621

Reference: Complaint Follow Up; Request For Information

Dear Mr. Weatherwax:

It has recently been brought to our attention that a number of whole scrap tires are currently accumulated or stored at an unpermitted site owned by Mr. Dave Kyle located at 336 Clarkelen Road in Campbell County, which is adjacent to Envirotank, Inc.'s permitted facility. It is our understanding that Mr. Dave Kyle is an Envirotank employee, and that these tires belong to and/or were placed at the unpermitted site by Envirotank.

Accumulation or storage of solid waste, including whole scrap tires, at a site without a permit or exemption from DEQ, or at a permitted site in excess of permitted quantities, is a violation of the Wyoming Environmental Quality Act (Act) and the Wyoming Solid Waste Management Rules & Regulations or the permit.

When the DEQ has cause to believe there is a violation of the Act or rules, W.S. 35-11-701(a) calls for the DEQ to investigate it. To that end, DEQ asks for a written response from Envirotank providing the following information:

1. Do the whole tires currently accumulated or stored on property at 336 Clarkelen Road in Campbell County belong to and/or were they placed there by Envirotank?
2. If so, when and how many tires?
3. If so, what authorization from DEQ does Envirotank claim to have for such activity?

The DEQ is requesting a written response from you within ten (10) working days of the date of this letter to clarify these issues. Please address your response to Tim Link or me at the above address.



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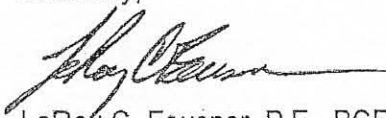
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DEQ Exhibit 34

Envirotank Inc., 6/9/2009

Sincerely,



LeRoy C. Feusner, P.E., BCEE
Administrator
Solid and Hazardous Waste Division

C: Dave Kyle, 336 Clarkelen Road, Campbell County, WY 82718
Dale Anderson, SWP&CA, WDEQ/SHWD Casper Office, Casper, WY
Bob Breuer, I&C Program Manager, WDEQ/SHWD Casper Office, Casper, WY
51.031

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O'KELLEY H. PEARSON
HOWARD V. SCOTLAND, III
KRISTI M. RADOSEVICH *

MARY A. THRONE
Of Counsel

*ALSO ADMITTED IN COLORADO

July 2, 2009

LeRoy C. Feusner, Administrator
Department of Environmental Quality
Solid and Hazardous Waste Division
Herschler Building
122 West 25th Street
Cheyenne, WY 82002

Re: Envirotank


Dear Mr. Feusner:

As stated in other correspondence to you, our firm represents Envirotank, Inc., and we are responding on the company's behalf to your letter of June 9, 2009, requesting additional information regarding tire material on the Kyle property near the Envirotank processing facility.

Envirotank will remove all tire material from the Kyle land by July 31, 2009, absent any weather delays. We will certainly contact you if there are any delays.

Please let us know if you need any further information.

Sincerely,


for
Mary A. Throne

cc: Client
Mike Barrash
Wyoming Attorney General's Office
123 Capitol Avenue
Cheyenne, WY 82001

HICKEY & EVANS, LLP

1800 CAREY AVENUE, Suite 700
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O'KELLEY H. PEARSON
HOWARD V. SCOTLAND, III
KRISTI M. RADOSEVICH *

MARY A. THRONE
Of Counsel

*ALSO ADMITTED IN COLORADO

July 2, 2009

SOLID AND HAZARDOUS
WASTE DIVISION

JUL - 3 2009

LeRoy C. Feusner, Administrator
Department of Environmental Quality
Solid and Hazardous Waste Division
Herschler Building
122 West 25th Street
Cheyenne, WY 82002

Re: Envirotank/Sandra Kay Lange Trust Scrap Tire Matter

Dear Mr. Feusner:

As you know, our firm represents Envirotank, Inc., and we are responding on the company's behalf to your letter of May 7, 2009, requesting additional information regarding the whole tires on the Lange Trust property.

Since my last letter to you, we have tried to gather more information about the tires and the tire tops on the Lange Trust property. It remains difficult to gather conclusive information regarding when tires were placed on the property. As explained in our April 1, 2009 letter to you, Envirotank has bills of lading for approximately 350 whole tires and 260 tire tops and has not been able to confirm whether all of those were transported to the Lange Trust property. In any event, we continue to believe that the bills of lading represent the maximum number of tire tops and whole tires transported to the Lange property after the permit transfer to Envirotank on April 19, 2006. At this point, we have not located any records to indicate that any more tires were placed by Envirotank on the property following its purchase of the company. Thus, we cannot agree with the information provided to you in the June 9, 2009 letter from counsel for the Lange Trust.

The following responses are based on the best information available to Envirotank, as provided to us. Envirotank will supplement its answers if it obtains additional information responsive to the questions:

1. *What is the total number of whole tires currently on the Lange Trust property?* In what has been described as the "unfinished project," we estimate there are

LeRoy C. Feusner

7/2/2009

Page 2

110 whole tires. It is likely that these tires were placed after Envirotank acquired the property. During a site visit, I observed three other completed projects, but did not have an opportunity to count the whole tires. It is my understanding that there is a fifth site on the Lange Trust property. Envirotank does not dispute the number of sites on the property.

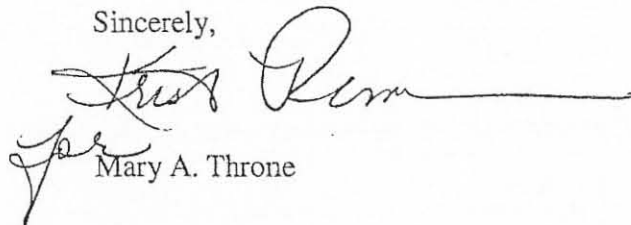
2. & 3. *What is the number of earth-filled whole tires currently on the Lange Trust property?/How many of the approximately 350 whole tires that the current Envirotank represents that it placed on the Lange Trust property were completely earth-filled?* None of the tires placed by Envirotank were earth-filled. Envirotank cannot comment on all of the tires on the property. Again, Envirotank has not yet been able to confirm whether the approximately 350 tires represented by its Bills of Lading were delivered to the Lange Trust.

4. *When and how many earth-filled whole tires, non-filled whole tires, and tire tops did Lange Trust's lessee (Morgan) allow the former Envirotank to place on the Lange Trust property before April 19, 2006?* This information is not available to the current Envirotank.

5. *When and how many earth-filled whole tires, non-filled whole tires, and tire tops did Lange Trust's lessee (Morgan) allow the current Envirotank to place on the Lange Trust property since April 19, 2006?* Any tires or tire tops placed by Envirotank were authorized by Mr. Morgan. At the unfinished project, the estimate is 110 whole tires—none earth-filled. The tire tops are very difficult to count, and so the company believes the initial count of approximately 260 tire tops is accurate based on the Bills of Lading.

Envirotank is committed to working with DEQ and the landowner to resolve this matter. Envirotank will continue to work to gather accurate information about the scrap tires on the Lange Trust property. We look forward to discussing this matter with you in more detail.

Sincerely,



Mary A. Throne

cc: Client
Mike Barrash
Wyoming Attorney General's Office
123 Capitol Avenue
Cheyenne, WY 82001

ENVIROTANK, INC.
P O Box 302, Ft. Lupton CO 80621
303-857-5000 voice 303-857-9631fax

Mr. Tim Link
Department of Environmental Quality
Herschler Building
122 West 25th Street
Cheyenne, WY 82002

August 12, 2009

Dear Mr. Link,

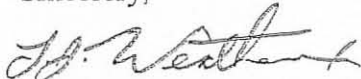
Per your recent Gillette inspection and conversation with Mike Bulger, you should be aware that all tires with exception of Mr. Kyle's original personal tires have been removed by our July 31st commitment.

Enclosed is background (disposal receipts, transportation shipment records, etc.) per your request.

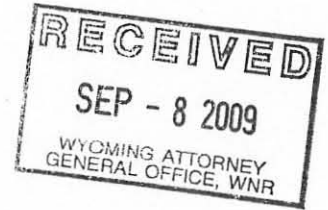
Our whole tire and tops are still over permit numbers. We are limiting mine intake until whole tire cut tank orders and out state tire top deliveries bring us into compliance. These numbers should start to equalize by the end of September.

Please advise if we can answer any other questions you might have.

Sincerely,



LJ Weatherwax, President
Envirotank, Inc.



JACOBSON LAW OFFICE, LLC
ATTORNEY AT LAW
A Limited Liability Company
1839 Madora Avenue
Douglas, Wyoming 82633

Heather A. Jacobson

Telephone (307) 358-3180

Fax (307) 358-3182

September 3, 2009

Mr. Mike Barrash
Senior Assistant Attorney General
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002

RE: EnviroTank/Lange Trust Matter

Dear Mr. Barrash:

This letter is a follow up to our telephone conference on August 11th, 2009. First, let me take the time to thank you for having that discussion with my client and I. I think that it helped to clarify each party's stance on the issues. However, as we made clear on the phone, we don't necessarily agree with everything that was stated. Specifically, we continue to have the following issues:

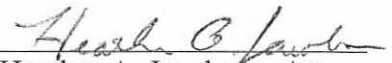
- 1) We believe that it is clear under Wyoming law that a lessee does not have the ability to bind a lessor and authorize permanent improvements to real property without the explicit permission of the lessor. EnviroTank has admitted it knew Brian Morgan was a lessee and did not own the real property. Therefore, they knew that he did not have the right to grant permission for the disposal of the tires on the property. Based upon this fact, Envirotank's placement of the tires on the property was not legal and they should be forced to remove all tires, tops, sidewalls and scraps from the Lange Trust property.
- 2) We do not agree with your assertion that EnviroTank is not liable for any tires placed on the property prior to the purchase of the company and transfer of the permit to the current owners. If a new permit had been issued, rather than a transfer of the old permit, your position may be logical. However, EnviroTank transferred the old permit and should be liable for any violations of this permit, whether they occurred before the current ownership or not. And we further believe that the placement of the tires on the Lange Trust property is a violation of their permit. The disposing of tires out of their yard in this manner is an illegal discharge. If the hazardous substance was a liquid contained in barrels and hauled off and dumped in this manner, it would be clearly a discharge in violation of the permit. As there is no meaningful difference

between a liquid hazardous substance and a solid hazardous substance, we believe that this should also be considered an illegal discharge.

- 3) We are unclear why you are relying on EnviroTank's estimate of how many tires they have placed on the property solely based on the bills of lading. What both EnviroTank and you have overlooked is that this property is merely a few miles away from EnviroTank's yard. The connecting road is a gravel county road. No bill of lading would normally be required to haul the tires and scrap from their yard to the property. Thus, solely relying on the bills of lading completely disregards any and all tires and scrap hauled directly from the yard to the property. The only tires and scraps that would be accounted for on the bills of lading would be those hauled in from a distance. This clearly is not a reasonable estimate of the tires that EnviroTank has dumped on the property.

After reviewing the above issues, and our arguments supporting our stance on those issues, we would appreciate it if you would contact us with your thoughts on this matter. Also, we would like a summary of your telephone conference with EnviroTank and their council and the status of any resolution, or proposed resolution. If you have any other questions or comments, please feel free to contact this office at any time. Thank you.

Sincerely,
Jacobson Law Office, LLC


Heather A. Jacobson, Attorney



Department of Environmental Quality



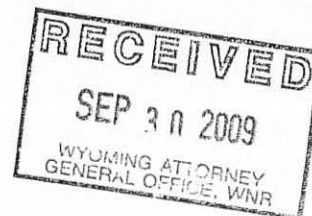
To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

September 29, 2009

Heather A. Jacobson
Jacobson Law Office
1839 Madora Avenue
Douglas, WY 82633



RE: EnviroTank/Sandra Kay Lange Trust - Scrap Tire Matter

Dear Ms. Jacobson:

The Wyoming Department of Environmental Quality (DEQ) appreciates your cooperation in the investigation of this matter and shares your concern regarding these issues. However, DEQ would like to respond to the issues raised in your September 3, 2009 letter and clarify its current position on the issues as DEQ understands them today based on the parties' responses to DEQ's request for information. DEQ responds to each of your issues as follows:

1. DEQ does not feel it is necessary to delve into the realm of lessor-lessee law under these circumstances. Lessor and lessee relationships are private contractual arrangements between two parties and not regulated under the Wyoming Environmental Quality Act. Mr. Morgan's authority under the lease is a matter for the lessor and lessee to sort out. The bare fact that Mr. Morgan is a lessee does not in itself inform third parties about the scope of his authority. In this case, it is undisputed that consent was given by the Lange Trust to Brian Morgan for at least some of the tires to be placed on the property.
2. As we discussed on the phone, DEQ is still in the process of determining when the tires were placed on the property and who is responsible. Based on the information available to DEQ at this point, including information provided by Envirotank and your client, it appears that the previous owners of Envirotank had placed some of the tires on the Lange Trust property prior to the transfer of the permit. When the permit was transferred to the current Envirotank, the DEQ April 19, 2006, letter approving the transfer (attached) stated that the current Envirotank would be "responsible for all wastes **which have been placed at this facility by previous operators**" (my emphasis). The Lange Trust property is not the facility described in the permit; therefore, any wastes placed there by prior companies would not be the responsibility of the current Envirotank based on the language in the permit transfer.

DEQ Exhibit 39

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ADMIN/OUTREACH (307) 777-7758 FAX 777-2610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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Heather A. Jacobson
September 29, 2009
Page 2

3. DEQ would like to clarify that it is not relying specifically on Envirotank's estimates from the bills of lading. DEQ requested information from both parties and appreciates the cooperation received from both. As we discussed on the phone, if either party has additional information, DEQ will review it.
4. Your September 3, 2009 letter also requested a summary of DEQ's telephone conference with Envirotank's counsel. The telephone conference took place on August 13, 2009 and was very similar to the conference call with you. DEQ explained its understanding of the facts and how some of the tires on the Lange Trust property were not authorized under Wyoming regulations. Envirotank's counsel expressed an interest in reaching an agreement that would be acceptable to all involved parties and stated that she would contact you to discuss such an agreement.

If you can think of any additional information that would help DEQ review this matter, please send these materials. Thank you for your cooperation and we look forward to hearing from you.

Sincerely,



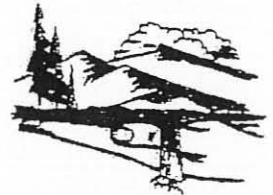
Carl Anderson, Ph.D.
Administrator
Solid and Hazardous Waste Division

Enc: DEQ letter dated April 19, 2006, approving permit transfer

Cc: Bob Breuer, WDEQ/SHWD- Casper
Tim Link, WDEQ/SHWD-Cheyenne
Luke Esch, Attorney General's Office
Mike Barrash, Attorney General's Office



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

April 19, 2006

CERTIFIED MAIL #7004 2890 0004 5120 1234
RETURN RECEIPT REQUESTED

Mr. Michael Bulger
Envirotank, Inc.
4210 Combine Place
Brighton, CO 80601

RE: Approval of Transfer, Solid Waste Chapter 6 Operating Permit
Envirotank, Inc., SHWD File # 51.031

Dear Mr. Bulger:

On April 3, 2006, the Wyoming Department of Environmental Quality (WDEQ), Solid and Hazardous Waste Division (SHWD) received a request to transfer the Solid Waste Chapter 6 operating permit for the Envirotank Inc. (SHWD File # 51.031) from Mr. John Hull to Mr. Michael Bulger. The current permit for this facility was issued on November 15, 2004, and is valid until November 15, 2012. The referenced permit encompasses approximately 10 acres at 377 Clarkelen Road, in the NW ¼ Section 28, T48N R73W, Campbell County, Wyoming.

The purpose of this letter is to acknowledge that the WDEQ/SHWD has approved the requested permit transfer. A copy of the approved permit transfer form is enclosed. As operator of this facility, Michael Bulger is now responsible for complying with the referenced permit and the applicable Solid Waste Rules and Regulations. As operator of this facility, Michael Bulger is also responsible for all wastes which have been placed at this facility by previous operators and any corrective actions which may be necessary to mitigate any and all releases from the referenced facility.

This facility is subject to the financial assurance requirements of Chapter 7 of the Solid Waste Rules and Regulations. The financial assurance mechanism provided for this facility is a cashier's check, number 0676703964 issued by Wells Fargo Bank, Plano Texas. The amount of the financial assurance mechanism is \$ 22,887. This mechanism was reviewed and approved by the Department.

The operator of the facility authorized by this permit shall be responsible for complying the terms of the permit application specified above and this permit. Based on



2334

Mr. Michael Bulger
April 19, 2006/Page 2 of 2

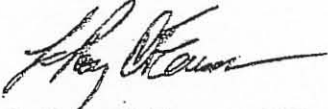
an inspection conducted prior to the permit transfer, the Department has concluded that this permit shall be issued under the following conditions:

Permit Condition #1

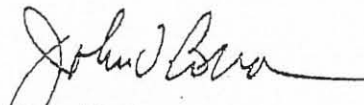
As described in the approved permit application, the operator of this facility shall complete the planting of trees to screen the facility. This work shall be completed no later than July 1, 2006.

If you have any questions regarding the approval of this permit transfer, please contact Dale Anderson at (307) 473-3472.

Sincerely,



LeRoy C. Feusner, P.E., BCEE
Administrator
Solid and Hazardous Waste Division



John V. Corra
Director
Department of Environmental Quality

encl. : Approved Permit Transfer Form (SHWD File # 51.031)

Copy: Dale Anderson ☞ Casper SHWD File # 51.031 (w/ encl.)

Sal Tim Link ☞ Cheyenne SHWD File # 51.031 (w/ encl.)

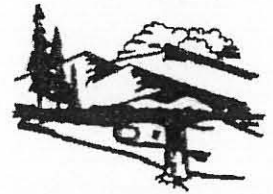
Deanna Hill ☞ Cheyenne LQD (w/ encl.)



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

SIHWDFile# 51.031
Envirotank



Dave Freudenthal, Governor

John Corra, Director

6/28/2010

Certified #7007 0710 0000 3817 5178
Return Receipt Requested

Michael Bulger
Envirotank Inc. (51.031)
P.O. Box 302
Fort Lupton, CO 80621

RE: **Warning Letter**

Dear Mr. Bulger:

On 5/27/2010, department personnel, Tim Link, conducted an inspection of your facility to evaluate compliance with the Wyoming Solid Waste Rules and Regulations (SWRR). There was no one onsite during the inspection but Mr. Link had notified you by phone prior to coming onto the facility.

As a result of the inspection, the following violations of the SWRR were observed:

1. If waste management is outdoors, there is not a minimum 10' fire lane around units or within the site perimeter. [SWRR, Chapter 6, Section 4(b)(iii)] There was vegetative overgrowth within the 10 foot fire lane surrounding the entire facility and the fire lane was therefore, inadequate.
2. Outdoor waste piles are constructed less than fifty (50) feet from facility property boundaries. [SWRR, Chapter 8, Section 2(c)(iii)] It appeared there were some tires that were less than 50 feet along the south perimeter of the site.
3. The facility accepts and manages wastes and quantities that are not in the permit and/or authorized by DEQ. [SWRR, Chapter 6, Section 5(b)(i)] The total onsite tire inventory performed during the inspection indicated the permitted allotment for whole scrap tires of 70 whole tires and 200 tops/sidewalls (which are almost down to the limit), had been exceeded. The total onsite inventory for number of tanks was 37, and this was below the permitted allotment for tanks (75) (See inventory results below). This violation has been observed during 7 out of the 9 inspections that have been performed at your facility over the past several years (see attached compliance site history).



5139

DEQ Exhibit 40

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7937 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5973	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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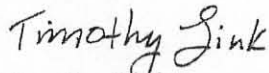


During the inspection, Mr. Link conducted a count of the current tire inventory at your facility. The count revealed approximately the following quantities at the time of the inspection: 310 whole raw tires; 37 tanks; and 203 tops/sidewalls. The tire counts during a previous inspection of the site on 8/5/2009, were as follows: 535 whole raw tires; 28 tanks; and 411 tops/sidewalls. However, the results of the 5/27/2010 inspection revealed a significant decrease in the total amounts of whole raw tires and tops/sidewalls onsite since the previous inspection on 8/5/2009.

In conclusion, the department continues to see significant improvement with the efforts being made to decrease the scrap tire and tops/sidewalls permitted overage, however as indicated under #3, there has been a consistent history at the site of noncompliance with this item. Therefore, to avoid further enforcement action, we are requesting a written response from you within twenty (20) days of your receipt of this letter, explaining how (including destinations of tires to be removed) you will get the total onsite inventory down to the permitted limits by October 1, 2010. We are also requesting that you provide documentation describing where any removed amounts are taken.

Should you have any questions concerning the results of this inspection or our request for additional information, please feel free to contact me at (307) 777-7164.

Sincerely,



Timothy Link

Natural Resources Program Principal
Solid and Hazardous Waste Division

Enclosures: Copies of inspection checklist, photo log

Cc: Dale Anderson, SWP&CA, WDEQ/SHWD Casper Office, Casper→
Bob Breuer, I&C Program Manager→
Envirotank Casper File (51.031)

Dena Egenhoff, SWP&CA, WDEQ/SHWD Cheyenne Office, Cheyenne→
Envirotank File (51.031)

Carl Anderson, Administrator, SHWD, Cheyenne

JUL 14 2010

Envirotank, Inc.
P O Box 302, FT. Lupton CO 80621
303-857-2737 voice 303-857-9631 fax

July 12, 2010

Timothy Link
Wyoming Department of Environmental Quality
Solid and Hazardous Waste Division
Herschler Building
122 West 25th Street
Cheyenne, WY 82002

Dear Mr. Link,

Thank you for your encouraging 06/28/2010 letter. We too felt we are making progress albeit slowly. Inclement weather and a very slow economy remain our biggest obstacles.

In response to your noted items:

1. At the time of your inspection, the 10-foot fire lane had been treated with vegetative ground sterilizer, Permatex. The perimeter has been dragged once to clear dead weeds and will be drug again this month to obtain a good clean fire lane.
2. Tires on south perimeter are being moved to meet the 50-foot requirement. Furthermore, on site cut tank inventory and cut sidewalls will be placed so as to not allow water accumulation.
3. Whole tire inventory is still one of our biggest management challenges, that being trying to satisfy source mine's schedule of typically releasing 50-100 units at one time and trying to stay within permit guidelines. Current whole tire numbers will go down as customer demand for cut tanks increases.

The good news is we have secured a contract for all of our sidewalls to go out of state for legitimate pond erosion control. Our sidewall count by October 1st should be very low.

Sincerely,



Michael Bulger, President
Envirotank, Inc.

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE
NOTICE OF VIOLATION
ISSUED TO:

ENVIROTANK INC. (51.031)
P.O. BOX 302
FT. LUPTON, CO 80621

)
)
) DOCKET NO. 4771-10
)
)

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1. On November 15 2004, the DEQ Solid & Hazardous Waste Division (SHWD) issued the Envirotank facility a Low-Hazard/Low-Volume (LH/LV), Chapter 6, solid waste operating permit, for the storage and processing of scrap tires. The Envirotank facility is located approximately 14 miles south of Gillette and 3 miles east of highway 50, located on Clarkelen Road, Campbell County, Wyoming. Specifically, the facility is located in the SW1/4, NW1/4, Section 28, T48N, R73W, Campbell County, Wyoming. Permit Condition #6 of this permit states, "As listed in the application permit, not more than thirty (30) raw tires, seventy-five (75) finished tanks, and two hundred (200) tops shall be stored at this facility at any time".

2. The Wyoming Solid Waste Rules & Regulations (SWRR), Chapter 6, Section 5 (b) Low hazard and low volume transfer, treatment and storage facilities states: "All low hazard and low volume transfer, treatment and storage facilities, excluding mobile transfer, treatment and storage facilities, shall be operated in accordance with the standards described in this section.

3. On April 19, 2006, a permit transfer was issued for the facility. The permit transfer letter states that the operator of the facility is now responsible for complying with the provisions of the November 15, 2004, permit and the applicable SWRR.

4. On the following dates, the SHWD conducted inspections of the Envirotank Inc. facility. The inspections revealed the following amounts of whole scrap tires were being stored at the facility: 11/19/2008, 123 whole tires; 8/5/2009, 535 whole tires; 5/27/2010, 310 whole tires.

The whole tire amounts observed during these inspections exceeds the allowable permitted amount of thirty (30) raw whole tires. Therefore, Envirotank Inc. was in violation of SWRR, Chapter 6, Section 5(b)(i), for exceeding the permit waste quantities allowed in the facility permit.

5. On June 28, 2010, the SHWD sent Envirotank Inc. a Warning Letter listing the exceedance amount observed during the 5/27/2010, inspection, and requesting that Envirotank Inc. get the total onsite raw whole tire inventory down to the permitted limits by October 1, 2010.

On October 22, 2010, the SHWD conducted a follow up inspection of the facility and determined there were 340 whole raw scrap tires at the facility. Therefore, Envirotank Inc. was in violation of SWRR, Chapter 6, Section 5(b)(i), for exceeding the permit waste quantities allowed in the facility permit.

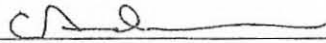
6. PURSUANT TO WYOMING STATUTE 35-11-901 (A) any person who violates any provision of the Environmental Quality Act, or any rules, standard, permit, license, or variance adopted thereunder is liable to a penalty not to exceed ten thousand dollars (\$10,000) for each day of violation, which penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming.



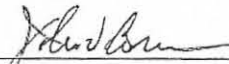
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7. THIS NOTICE OF VIOLATION is being sent to you pursuant to Wyoming Statute 35-11-701(c) which requires that in any case of the failure to correct or remedy an alleged violation the Director of the Department of Environmental Quality shall cause a written notice to be issued and served upon the person alleged to be responsible.

Signed this 24 day of Nov, 2010.



Carl Anderson, Ph.D.
Administrator
Solid & Hazardous Waste Division



John V. Corra
Director
Dept. of Environmental Quality

JAN 24 2011

Envirotank, Inc.
P O Box 302, FT. Lupton CO 80621
303-857-2737 voice 303-857-9631 fax

January 12, 2011

Timothy Link
Wyoming Department of Environmental Quality
Solid and Hazardous Waste Division
Herschler Building
122 West 25th Street
Cheyenne, WY 82002

Dear Mr. Link,

We are finally in receipt of your November 22, 2010 notice of violation letter. Again I would like to point out our mailing address is P. O. Box 302, Ft. Lupton CO 80621.

Since your October 22, 2010 inspection report we have as of today's date reduced our whole tire count to approximately 85 whole units with no inbound units scheduled. These units will be cut to tanks by February 10, 2011. Whole tire count will be below our 30 units permitted.

Sidewalls (tops) on the property currently are at 217. An ongoing windbreak project in Montana will reduce this count to zero by February 10, 2011 if weather permits. Our permit allows 200 units.

Finished (cut) tank inventory today is 16, however with normal cutting production anticipated in the next 30 days, our finished tank inventory on site will grow to 100+ units unless confirmed / delivered sales reduce this count. Our permit allows 75 units.

In conclusion, we are requesting another compliance inspection being done by you in mid to late February 2011.

If this inspection concludes we are in compliance with our permit numbers, we would respectfully request a removal of our notice of violation.

Sincerely,

Michael Bulger, President
Envirotank, Inc.

Cc: Eugene J. Hynes, Attorney, Mary Thorne, Attorney

cc for Corra

JACOBSON LAW OFFICE, LLC

Heather A. Jacobson

ATTORNEY AT LAW
A Limited Liability Company
1839 Madora Avenue
Douglas, Wyoming 82633

Telephone (307) 358-3180

Fax (307) 358-3182

February 2, 2011

Mr. John V. Corra
Director
Wyoming Department of Environmental Quality
122 West 25th Street
Cheyenne, WY 82002

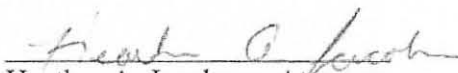
RE: Lange/Envirotank

Dear Director Corra:

This office represents Ms. Sandy Lange in regards to a dispute with EnviroTank and its dumping of thousands of large tires on the Lange property. We have involved your office since 2009 with the ongoing issues and requesting its assistance. Unfortunately, your office has failed to do anything at all about the situation to date. The official position seems to be encouraging the negotiation of a settlement between the parties, rather than enforcing your department's rules and regulations regarding the placement of these large tires and scrap. This has been incredibly frustrating to my client. Therefore, we are requesting an in-person meeting with yourself, the assistant attorney general currently handling the matter, and whichever DEQ employee that will be handling this specific issue. We hope that this meeting will allow the matter to finally proceed and gain the assistance of your office in pursuing the enforcement of the rules and regulations of the DEQ.

My client and I will make ourselves available to meet in Cheyenne whenever it is convenient for you to discuss the matter. If you have any questions or comments, please feel free to contact this office at any time. Thank you.

Sincerely,
Jacobson Law Office, LLC


Heather A. Jacobson, Attorney

CC: Lange
Governor Mead