

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In the Matter of the Appeal of Notice of)	
Violation and Order #4824-11 Issued to:)	
Envirotank, Inc. (51.031))	Docket No. 11-5208A
P.O. Box 302)	
Ft. Lupton, CO 80621)	

LANDOWNERS' PRE-HEARING MEMORANDUM

COME NOW the Landowners, Sandra Kay Lange, Mildred Rae Broyles, and Peggy A. Sullivan, by and through their attorney, Heather A. Jacobson, Jacobson Law Office, LLC, and hereby submit to the Court the following Pre-Hearing Memorandum:

1) NATURE OF THE CASE:

Between 2005 and 2008, Envirotank placed five, huge structures on real property belonging to Landowners in a manner that was contrary to their DEQ permit and without seeking a DEQ exemption. Beginning in 2008, DEQ notified Envirotank that it was in violation of its permits and DEQ's rules and regulations, yet Envirotank has failed to take any substantive action to remove the tires as requested by DEQ. Therefore, on April 18, 2011, DEQ issued a Notice of Violation that is the subject of this appeal. Landowners have intervened because Landowners did not give permission for the tires to be placed on their property and wish the tires to be removed.

2) CONTENTIONS AND LEGAL THEORIES:

DEQ:

That Envirotank's placement of non-earth filled whole tires and any scrap tire materials, other than the lower halves used for stock water tanks, or the upper portions for use in stacks for windbreaks, at Landowner's property was not authorized by Envirotank's permit and was not exempt, and therefore is a violation of the permit and W.S. §35-11-502(a).

ENVIROTANK:

- 1) The placement of whole tires on Landowners property is not a violation of the act or regulations.
- 2) Envirotank is not the sole responsible party.
- 3) Removal of the whole tires is not the appropriate remedy if a violation is found.

LANDOWNERS:

The construction of the tire structures on the property was a violation of Envirotank's permit and DEQ regulations, and there is nothing that Envirotank can do to bring the structures into compliance except remove them.

3) WITNESSES:

May Call:

Sandy Lange
270 Esterbrook Rd.
Douglas, WY 82633

Ms. Lange may be called to testify as to her management of the property, the reasons behind her management decisions and her discussions with Mr. Brian Morgan. She may testify to her complete lack of communication with Envirotank until after the first DEQ letter and her lack of knowledge that the structures were being constructed. She may testify as to the damage that the tires are doing to the property and the fact that they serve little or no use. She also may testify to any other matters related to this dispute.

Landowners reserve the right to call any other witnesses listed as a witness in any other parties' Prehearing Memo and have those witnesses testify as to their knowledge of the facts and issues in this case.

4) EXHIBITS:

Lange 1a – 1r – Google Earth Pictures of tire structures, piles and pictures of the inside of tire stacks.

Lange 2 – CBM Associates, Inc. Water Supply Well Analytical Data.

Lange 3 – Printed map with handwritten details added.

Landowners reserve the right to admit any other exhibit listed as an exhibit in any other parties' Prehearing Memo

5) **PROPOSED LIST OF UNCONTESTED FACTS:**

- 1) Landowners are the owners of the real property described as follows:

Township 48 North, Range 73 West of the 6th P.M.

Section 14: W1/2; NE1/4; W1/2SE1/4 and that part of the NE1/4SE1/4 lying west of what is commonly known as the Bell Road.

Section 22: E1/2SE1/4

Section 23: SW1/4; W1/2NW1/4; SE1/4NW1/4; SW1/4SE1/4

Section 26: W1/2; NE1/4; N1/2SE1/4

Containing 1500 acres, more or less

- 2) Landowners leased the real property to Brian Morgan from April 1, 2004, to March 31, 2010.
- 3) Between approximately April of 2005 and November of 2008, Brian Morgan allowed Envirotank to construct four (4) separate structures made out of unfilled whole tires, partial tires, tire sidewalls, and tire scraps on the Landowners property. The tires were delivered to construct another structure on the property, but the structure was not completed.
- 4) There are currently approximately 725 whole tires, 1574 half tires, and 50 plus tire side walls located on the fifteen hundred (1500) acres.
- 5) None of the tires and/or tire structures are filled with dirt.
- 6) Envirotank never applied for nor received an exemption for the placement of the tires on the property.
- 7) On July 28, 2008, the DEQ sent a Letter of Violation to Envirotank and Landowners stating that location of the tires on the property was a violation of the permit and law and all tires should be removed within sixty (60) days.

8) The Landowners visited the property after receipt of the Letter of Violation and discovered the existence of the five (5) tire structures for the first time.

9) Envirotank did not remove the tires after receipt of the Letter of Violation.

10) DEQ issued a Notice of Violation to Envirotank on April 18, 2011.

11) Envirotank timely appealed the Notice of Violation on April 29, 2011.

12) Landowners were allowed to intervene in the appeal on June 17th, 2011.

6) AMENDMENTS TO PLEADINGS:

The Landowners have no amendments to the pleadings.

7) DISCOVERY:

Discovery has been completed by both parties.

8) ESTIMATED LENGTH OF HEARING:

Landowners estimate that the hearing in this matter should take no more than one (1) day.

9) LEGAL BRIEFS OR MEMORANDUMS:

Plaintiff has no plan to submit any legal briefs or memorandums of law at this time.

10) NATURE AND SUBSTANCE OF STIPULATIONS:

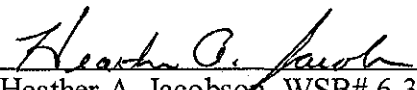
Landowners and DEQ have not entered into any stipulated agreements at this time.

11) **OTHER RELEVANT INFORMATION OR ISSUES:**

Landowners are unaware of any other relevant information or issues that should be brought before the council at the Pre-Hearing Conference.

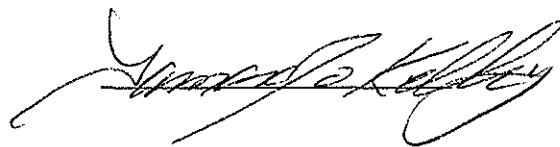
Respectfully submitted this 24th day of February, 2012.

Sandra Kay Lange, Mildred Rae
Broyles, and Peggy A. Sullivan,
Landowners

By: 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Pre-Hearing Memo was served by depositing the same in the US Mail, first class postage prepaid, or by email, on the 27 day of February, 2012, to the following:



Environmental Quality Council
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