

**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))
P.O. Box 302)
Ft. Lupton, CO 80621)

Docket No. 11-5208A

FILED

JUN 30 2011

*Jim Ruby, Executive Secretary
Environmental Quality Council*

LANDOWNERS' RESPONSE TO ENVIROTANK, INC'S APPEAL

COMES NOW Sandra Kay Lange, Mildred Rae Broyles and Peggy A. Sullivan, hereinafter referred to as "Landowners," by and through their counsel, Heather A. Jacobson, of Jacobson Law Office, LLC, and hereby file this Response to Envirotank, Inc.'s Appeal:

B. Decision Subject to Appeal

Landowners hereby adopt the Wyoming Department of Environmental Quality's Response to Envirotank, Inc.'s Petition, except for the following specifically referenced paragraphs:

None.

C. Basis for Appeal

Landowners hereby adopt the Wyoming Department of Environmental Quality's Response to Envirotank, Inc.'s Petition, except for the following specifically referenced paragraphs:

8(d). Moreover, the placement of the tires was done with the approval of the owner's Lessee and the approval of the owner.

Admit that the Lessee of the property contacted the Landowners in November of 2004 and obtained permission for two small windbreaks to be built on the property, but **Deny** that the landowner gave permission for any further placement of whole, or partial tires.

8(e). In any event, Envirotank was entitled to rely on the Lessee in placing the tires.

Deny that Envirotank was entitled to rely on the Lessee to give permission to place whole or partial tires on the property of the Landowners.

8(f). Lange Trust benefitted from the placement of the tires as owner of the property and is as responsible for any remediation as Envirotank.

Deny that Lange Trust “benefitted from the placement of the tires” as the sheer amount of tires placed on the property has actually caused significant damage and devaluation to the property and further **Deny** that Landowners are in any way liable for Envirotank’s conduct.

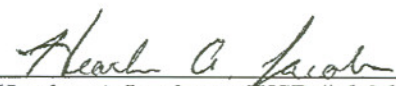
8(g) The tires were placed for the beneficial use of the owner or their agent and the burden of remediation should not be placed on only one party.

Admit that Landowners authorized the placement of two windbreaks in 2004, but **Deny** that the remainder of the tires were authorized by the Landowner and therefore were not “placed for the beneficial use of the owner.” **Deny** that the Lessee was an “agent” of the Landowner and **Deny** that Landowner should share in any burden of remediation.

Dated this 30th day of June, 2011.

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

By:


Heather A. Jacobson, WSB # 6-3648
Attorney for the Landowners
Jacobson Law Office, LLC
1839 Madora Avenue
Douglas, WY 82633
Phone: (307) 358-3180
Fax: (307) 358-3182

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing LANDOWNERS' RESPONSE TO ENVIROTANK, INC'S APPEAL was sent on the 30th of June, 2011 by electronic mail to the following:

John Corra Director, DEQ John.corra@wyo.gov	Carl Anderson, Administrator DEQ Solid/Hazardous Waste Division carl.anderson@wyo.gov
Mary Throne Throne Law Office mthrone@thronelaw.com	Asst. Attorney General Mike Barrash mbarra@state.wy.us
Environmental Quality Council Kim Waring kim.waring@wyo.gov	

Also by depositing the original and 5 copies in the United States mail addressed to:

Environmental Quality Council
Kim Waring
122 West 25th St.
Herschler Building, Rm. 1714
Cheyenne, WY 82002


Tamara J. Kelley, Assistant
Jacobson Law Office, LLC
1839 Madora Avenue
Douglas, WY 82633
Phone: (307) 358-3180
Fax: (307) 358-3182