

Oct 08, 2012

**Jim Ruby, Executive Secretary
Environmental Quality Council**

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)

**ORDER APPROVING JOINT STIPULATION TO MODIFY
ORIGINAL JOINT STIPULATION AND ORDER**

This case is before the Wyoming Environmental Quality Council (EQC) on Petitioner Envirotank, Inc.'s (Envirotank) appeal of Notice of Violation (NOV) & Order No. 4824-11 issued by Respondent Wyoming Department of Environmental Quality (DEQ) dated April 18, 2011. The contested NOV alleged violation of Envirotank's solid waste operating permit for its scrap tire processing facility on Clarkelen Road in Campbell County involving Envirotank's placement of whole scrap tires and certain tire parts for use as five (5) livestock windbreaks and/or corrals on property owned by Sandra Kay Lange, Mildred Rae Broyles and Peggy A. Sullivan (the Landowners) on Bell Road in Campbell County. The contested Order called for Envirotank to remove all whole scrap tires and certain tire parts from the Landowners' property to an authorized facility.

The Landowners moved to intervene and that motion was granted. The EQC held a contested case hearing in Cheyenne on March 8-9, 2012, pursuant to W.S. 35-11-112(a)(iii) and 35-11-701(c)(ii). Petitioner Envirotank, Respondent DEQ, and Intervenor Landowners, the only three parties in this case, appeared at the hearing, were represented by counsel, and presented evidence and argument. At the close of the evidentiary hearing, the five (5) EQC members present began deliberations, during which there appeared to be consensus for modifying the contested Order by approving Envirotank's offer to drill holes in all whole tires and removing the "fifth" windbreak in lieu of removing all whole tires. Tr. pp.449, 457-459. The EQC has authority to modify contested Orders under W.S. 35-11-112(c)(iii) and W.S. 35-11-701(c)(iii). Before the EQC made a decision, deliberations were tabled until the May meeting in Sheridan to give counsel for the parties an opportunity to brief certain questions of law.

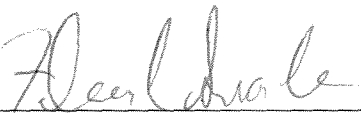
On May 7, 2012, the three Parties filed with the EQC a Joint Stipulation for Disposition of Case in this matter. Chapter I, Section 11 of the DEQ Rules of Practice & Procedure provides for disposition of contested cases by stipulation of the parties upon approval by the EQC. The EQC entered an Order Approving Joint Stipulation for Disposition of Case, filed May 16, 2012.

Paragraph 8 of the original Joint Stipulation provides that any modification of ¶1 agreed upon by the Parties must also be approved by the EQC. Accordingly, on August 24, 2012, the three Parties filed a Joint Stipulation to Modify Original Joint Stipulation and Order, which requests the EQC to approve their stipulated modification of ¶1 as specified therein. The EQC having considered the Parties' Joint Stipulation to Modify Original Joint Stipulation and Order, and finding it to be reasonable under the circumstances:

IT IS HEREBY ORDERED that:

1. The Parties' Joint Stipulation to Modify Original Joint Stipulation and Order in this case is approved, incorporated herein, and shall be binding upon them.
2. The Parties' original Joint Stipulation for Disposition of Case in this matter and the EQC's Order approving that original Joint Stipulation are deemed modified as specifically stipulated.
3. This Order shall be deemed the EQC's final action in the contested case for this matter, provided however, that the EQC retains jurisdiction only to resolve any issues between Parties that may arise under their modified Joint Stipulation.

DATED this 5th day of October, 2012.



David Seville, Vice Chair

CERTIFICATE OF SERVICE

I, Joe Girardin, certify that at Cheyenne, Wyoming, on the 15th day of October, 2012, I served a copy of the foregoing **ORDER APPROVING JOINT STIPULATION TO MODIFY ORIGINAL STIPULATION** by electronic mail to the following:

John Corra
Director, DEQ
john.corra@wyo.gov

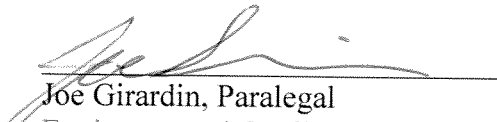
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Joe Girardin, Paralegal
Environmental Quality Council