

FILED

MAY 07 2012

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Jim Ruby, Executive Secretary
Environmental Quality Council

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)

JOINT STIPULATION FOR DISPOSITION OF CASE

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 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.

Since then the three Parties, through counsel, have discussed the matter and now agree to disposition of this case by this stipulation, upon EQC approval, pursuant to Chapter I, Section 11 of the DEQ Rules of Practice & Procedure.

THE PARTIES STIPULATE AS FOLLOWS:

1. Following the EQC's entry of an Order approving this Joint Stipulation, but not later than September 1, 2012:

a) Envirotank shall remove all scrap tires and tires parts constituting the unassembled "fifth" windbreak at the Landowners' property and transport them to an authorized facility or some lawful alternative site approved in writing by the DEQ, and provide confirming documentation; and

b) Envirotank shall drill four (4) holes at least one inch in diameter and spaced approximately ninety (90) degrees apart around the bottom / base (lowest portion) of each whole scrap tire in the four remaining windbreaks and / or corrals at the Landowners' property. Each hole shall be drilled completely through the bottom / base of the tire and on through any abutting wall of the tire below it. Holes drilled in this manner should be sufficient to drain standing water that could provide mosquito habitat.

2. Envirotank shall perform the activities described in ¶1 above in a manner that will minimize damage to the Landowners' property and interference with ranching operations.

3. Envirotank shall email Sandra Kay Lange (who will timely provide the email address) to notify her before entering the Landowners' property. The Landowners shall allow Envirotank access to the Landowners' property as necessary to accomplish the activities described in ¶1 above.

4. The Landowners shall allow DEQ staff access to the Landowners' property as necessary to confirm Envirotank's proper completion of the activities described in ¶1 above.

5. The EQC has not yet made a final decision regarding the violation alleged in the contested NOV. The three parties now agree that resolution of this matter in accordance with this Joint Stipulation will dispense with the need for a final decision by the EQC regarding the alleged violation. The Parties reserve the right to argue their respective positions on that issue in an unrelated future proceeding, if any. The Parties agree that full compliance with this Stipulation shall constitute full satisfaction for all the claims by the DEQ alleged in NOV No. 4824-11, and solely in reliance on this Stipulation, the DEQ will refrain from taking further enforcement action against Envirotank for the violations and all related claims alleged in NOV No. 4824-11.

6. Envirotank, by entering into this Stipulation, does not concede or admit to any liability or fault. This Stipulation constitutes no admission by Envirotank of fault or non-compliance, and Envirotank specifically denies any violation, as alleged in NOV No. 4824-11.

7. By entering into this Stipulation, the Landowners are not agreeing that they gave permission for placement of all of the scrap tire windbreaks and corrals on the Landowners' property, or that the scrap tire windbreaks and corrals were legally placed on the Landowners' property.

8. Any changes, modifications or amendments to this Stipulation which are mutually agreed upon by all the Parties shall be incorporated by written instrument executed and signed by all the Parties to this Stipulation. In addition, any changes, modifications or amendments to ¶1 above must also be approved by the EQC.

9. Envirotank may seek an extension of the completion date for the remedy described in ¶1 above without separate approval by the EQC if agreed to in writing and signed by all the Parties.

10. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Stipulation shall not be construed so as to create such status. The rights, duties and obligations contained in this Stipulation shall operate only between the Parties to this Stipulation and their successors and assigns, and shall inure solely to their benefit. The Parties to this Stipulation intend and expressly agree that only Parties signatory to this Stipulation shall have any legal or equitable right to seek to enforce it, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Stipulation, or to bring an action for the breach of this Stipulation.

11. This Joint Stipulation shall be binding upon the Parties, their successors and assigns.

12. Each Party shall bear its own costs and attorney fees incurred through the filing of this Joint Stipulation.

13. The three Parties request that the EQC enter an Order approving, incorporating and binding them to this Joint Stipulation.

14. The EQC's entry of an Order approving and binding the Parties to this Joint Stipulation shall be deemed the EQC's final action in this matter, provided however, that the EQC retains jurisdiction to resolve any disputes between Parties that may arise under this Stipulation.

15. The signatories are authorized to bind their respective parties to this Joint Stipulation.

DATED this 7th day of May, 2012.

FOR PETITIONER ENVIROTANK, INC.:

FOR INTERVENOR LANDOWNERS:

FOR RESPONDENT WYOMING DEP'T.
OF ENVIRONMENTAL QUALITY:

C. Anderson SHWD ADMINISTRATOR

John. Com, Director

APPROVED AS TO FORM:

FOR PETITIONER ENVIROTANK, INC.:

FOR INTERVENOR LANDOWNERS:

FOR RESPONDENT WYOMING DEP'T.
OF ENVIRONMENTAL QUALITY:

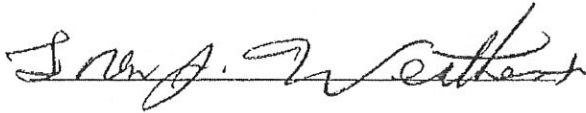
N. Banner

15. The signatories are authorized to bind their respective parties to this Joint Stipulation.

DATED this 4th day of May, 2012.

FOR PETITIONER ENVIROTANK, INC.:

FOR INTERVENOR LANDOWNERS:

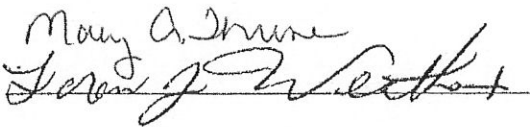


FOR RESPONDENT WYOMING DEP'T.
OF ENVIRONMENTAL QUALITY:

APPROVED AS TO FORM:

FOR PETITIONER ENVIROTANK, INC.:

FOR INTERVENOR LANDOWNERS:



FOR RESPONDENT WYOMING DEP'T.
OF ENVIRONMENTAL QUALITY:

15. The signatories are authorized to bind their respective parties to this Joint Stipulation.

DATED this ____ day of May, 2012.

FOR PETITIONER ENVIROTANK, INC.:

FOR INTERVENOR LANDOWNERS:

Heath C. Smith

FOR RESPONDENT WYOMING DEP'T.
OF ENVIRONMENTAL QUALITY:

APPROVED AS TO FORM:

FOR PETITIONER ENVIROTANK, INC.:

FOR INTERVENOR LANDOWNERS:

Heath C. Smith

FOR RESPONDENT WYOMING DEP'T.
OF ENVIRONMENTAL QUALITY:
