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FILED
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Jim Ruby, Executive Secretary
Environmental Quality Council

Attorneys for the State of Wyoming,
Department of Environmental Quality

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE OBJECTION)
TO THE PROPOSED RENEWAL PERMIT,) Docket No. 11-5602
SAND DRAW LANDFILL, SHWD FILE #10.195)

DEQ'S ANNEX OF UNDISPUTED MATERIAL FACTS

Accompanying its motion for summary judgment, DEQ submits the following annex of undisputed material facts in accordance with Wyoming Rule of Civil Procedure 56.1.

1. The Fremont County Solid Waste Disposal District (District) received its last renewal operating permit for Sand Draw in 1995. (Ex. 1).
2. In 1999, the R-8 groundwater monitoring well at the Sand Draw landfill showed a ten-foot fluctuation in the water table. (Ex. 3).
3. The fluctuating groundwater levels contradicted the previous understanding that the water below Sand Draw was non-recharging. (Ex. 4, at 3-4).

4. The revelation that groundwater beneath Sand Draw is recharging required the District to begin groundwater monitoring in the expansion area prior to expanding. (Ex. 5).

5. In 2000, the District's consultants pumped the R-8 groundwater monitoring well dry. (Ex. 6).

6. In less than two weeks, the groundwater in the R-8 well had recharged to within two feet of its original level. (Ex. 6).

7. The presence of recharging groundwater in the expansion area required the District to either demonstrate that disposal in the expansion area would not alter groundwater, or to utilize engineered containment in the expansion area. SWRR ch. 2, §§ 4(j), 6(b)(i)(B).

8. The District requested and received a series of extensions on the 1995 permit to allow the District more time to study groundwater conditions. (Exs. 7, 8, 11, 15, 17).

9. Since 2004, the District has operated the Sand Draw landfill without a permit. (Ex. 16, at 3; Ex. 35, at 2 ¶ 17).

10. The District knew as early as 2001 that the presence of recharging groundwater beneath Sand Draw "could greatly impact the volumetric capacity of the landfill." (Ex. 9, at 2; Ex. 13, at 2; Ex. 14, at 2).

11. The District sought funding for long-term waste disposal that would allow the District to either line the expansion area or develop a new landfill. (Ex. 14, at 3; Exs. 25-27).

12. The District failed to obtain funding for long-term waste disposal. (Ex. 24, at 6; Exs. 25-27).

13. DEQ allowed the District to vertically expand the original disposal cell at Sand Draw as a short-term, emergency solution to the District's disposal capacity crisis. (Ex. 12, at 1; Ex. 13, at 2).

14. DEQ made it clear to the District from the outset that vertical expansion was not a long-term fix. (Ex. 12, at 1; Ex. 13, at 2).

15. DEQ informed the District that the District would more than likely need to construct one or more new landfills. (Ex. 13, at 2).

16. The District did not construct any new landfills.

17. The District admittedly sought the advice of consultants that would allow the District to use the Sand Draw expansion area without engineered containment. (Ex. 31).

18. The District first consulted Willowstick Technologies, LLC. (*Id.*; Ex. 30).

19. Willowstick informed the District that groundwater monitoring data were not anomalous. (Ex. 30, at 1).

20. Willowstick informed the District that fluctuations in groundwater monitoring wells corresponded very closely. (*Id.* at 1-2).

21. Willowstick informed the District that its services may not be necessary, because "the historic and recorded groundwater measurements [at Sand Draw] are most likely accurate and consistent with what one would expect to find[.]" (*Id.* at 1).

22. The District then hired Donald Siegel to prepare a report concluding that engineered containment would not be necessary in the expansion area. (Ex. 33).

23. Siegel's report was submitted to DEQ in draft form, without the underlying data upon which it relied. (*Id.*).

24. 2009 groundwater monitoring detected the presence of volatile organic compounds beneath the Sand Draw landfill. (Ex. 37).

25. Pursuant to a court order, the District submitted a permit renewal application in December of 2010. (Ex. 39).

26. The permit application included two appendices that were not certified by a professional Wyoming geologist or engineer.

27. In accordance with the Solid Waste Rules and Regulations, DEQ refused to accept application materials not certified by a professional Wyoming geologist or engineer. (Ex. 45).

28. The District proposed in its 2010 permit renewal application to vertically expand the existing disposal unit at Sand Draw for 30 years.

29. This proposal contradicted DEQ's longstanding assertion that vertical expansion was only a short-term remedy to the District's capacity challenges. (Ex. 12, at 1; Ex. 13, at 2).

30. DEQ concluded in its initial application review that the proposed vertical expansion constituted a new cell or unit subject to engineered containment requirements. (Ex. 41).

31. The District responded in writing to DEQ's conclusion that the proposed vertical expansion constituted a new cell or unit subject to engineered containment requirements. (Ex. 42).

32. DEQ took the District's written response under advisement, in accordance with Wyo. Stat. Ann. § 35-11-502(h).

33. DEQ agreed with the District's written objections and revised its permit application review accordingly. (Ex. 44).

34. DEQ conditioned vertical expansion beyond 2018 on the District's ability to demonstrate that the facility was not altering and would not alter groundwater. (Ex. 45).

35. DEQ agreed to classify the groundwater beneath Sand Draw in accordance with the Water Quality Rules and Regulations prior to the due date for the next renewal permit application.

36. DEQ agreed to establish groundwater protection standards for Sand Draw in accordance with the Solid Waste Rules and Regulations (SWRR) prior to the due date for the next renewal permit application.

37. The District has not submitted a demonstration that engineered containment is not required in the expansion area that comports with the SWRR.

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Dated this 21 day of October, 2011.

ATTORNEYS FOR DEQ

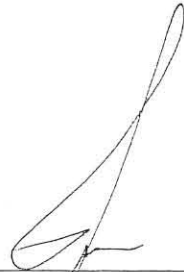


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21 day of October, 2011, a true and correct copy of *DEQ's Annex of Undisputed Material Facts* was served by placing the same in the United States mail, postage pre-paid, return-receipt requested to the following:

Rick L. Sollars
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277 Lincoln Street
Lander, Wyoming 82520



Wyoming Office of the Attorney General