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Jim Ruby, Executive Secretary
Environmental Quality Council

**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 MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

The Wyoming Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ) submits this memorandum in support of its motion for summary judgment filed concurrently with this memorandum.

INTRODUCTION

The Fremont County Solid Waste Disposal District (District) raises three baseless objections to DEQ's permitting processes. First, the District objects to DEQ's groundwater protection permit condition, asking the Council to set aside the legal protections for Wyoming's groundwater resources and to allow the District to continue stacking wastes for another thirty years on a landfill cell that is already altering groundwater. DEQ's groundwater protection permit condition is supported by the Environmental Quality Act, DEQ regulations, and evidence that the Sand Draw landfill

is altering groundwater. Second, the District objects to DEQ's permitting process, even though DEQ followed the statutory process. Finally, the District objects to DEQ's refusal to accept materials submitted along with the District's permit application that were not certified by a professional Wyoming engineer or geologist. In accordance with the law, DEQ required the District's application materials to be certified by a professional geologist or engineer. Each of DEQ's permit conditions are supported by the law and the facts. All of the District's objections therefore fail, and DEQ is entitled to judgment as a matter of law. Accordingly, DEQ requests that the Council deny each of the District's objections and grant summary judgment in DEQ's favor.

BACKGROUND

The District operates the Sand Draw landfill, which is the subject of this case. Because this dispute is more than a decade in the making, understanding its contours requires a review of the history of Sand Draw, with particular attention to groundwater characterization and contamination, landfill capacity, and multiple attempts by both parties to bring the operation of Sand Draw into compliance with the Environmental Quality Act and Solid Waste Rules and Regulations (SWRR).

I. SITE HISTORY

In October of 1995, several years after the Wyoming legislature substantially revised the waste management provisions of the Environmental Quality Act, Wyo. Stat. Ann. §§ 35-11-501 through -522, the District received a four-year operating permit for Sand Draw. (Ex. 1). As a condition of the permit and in accordance with the SWRR, the District established a ground water monitoring system. *See* SWRR, ch. 2, § 6(b); Ex. 4, at

3. At the time, DEQ and the District believed that the ground water system beneath Sand Draw was non-recharging, and, therefore, the landfill presented no threat of ground water contamination. (Ex. 4, at 3-4). It was thus anticipated that the existing 80-acre disposal cell at Sand Draw would remain in use until 2005, at which point disposal would move laterally into a new 137-acre expansion area. (Exs. 1, 2).

A. Groundwater Detection

In late 1999, however, the R-8 monitoring well at Sand Draw showed that groundwater levels had increased approximately ten feet. (Ex. 3). This revelation cast considerable doubt on the previous understanding that the ground water system beneath Sand Draw was non-recharging and that the landfill did not threaten ground water contamination. (Ex. 4, at 3-4). Therefore, DEQ and the District modified the Sand Draw operating permit to include groundwater monitoring in the planned expansion area prior to expansion. (Ex. 5).

In mid-2000, in an attempt to better understand the nature of the groundwater underlying Sand Draw, the District's engineering consultants pumped the R-8 well dry. (Ex. 6). In less than two weeks, "the groundwater had recharged to within two feet of the original level." (*Id.*)

The presence of recharging groundwater beneath Sand Draw significantly impacted the District's long-term plans for the site, because disposal in the expansion could occur only if the District ensured protection of the groundwater. Wyo. Stat. Ann. § 35-11-503(a); SWRR, ch. 2, § 6(b)(i)(B). To ensure that disposal in the expansion area would not impact groundwater, the District was required to either demonstrate that

groundwater would not be impacted or line the new expansion cell to protect against leachate infiltration. SWRR, ch. 2, § 4(j). Because demonstrating that disposal in the expansion area would not impact groundwater required further study, including drilling additional monitoring wells, the District requested and received an operating permit extension to May 31, 2001. (Ex. 7 (requesting extension)); (Ex. 8 (granting extension)).

On April 19, 2001, the District again requested an extension of the Sand Draw operating permit to allow for more time to study groundwater conditions. (Ex. 9). The District's Superintendent explained in the request that the District had not been able to conduct further investigation because funds had not yet been appropriated to cover the costs of drilling additional monitoring wells. (*Id.* at 1). The Superintendent went on to say that the groundwater conditions at Sand Draw "could greatly impact the volumetric capacity of the landfill." (*Id.* at 2).

The following month, the District's Chairman reiterated these positions, explaining that

[r]egulations, groundwater, and cultural impacts have reduced the current landfill life/capacity at our existing landfills. The District is faced with not only finding a new solid waste disposal site, but also a new solid waste disposal system that is cost effective and will take the District well into the future.

(Ex. 10). The Chairman explained further that the District's current revenues would be insufficient to support future disposal. (*Id.*)

DEQ agreed that these issues required a re-evaluation of the plans for the Sand Draw expansion area, and accordingly granted an extension of the Sand Draw permit to

November 30, 2001. (Ex. 11). DEQ believed that the extension—the third the District had requested since the permit first expired in 1999—would allow the District “ample time to re-evaluate the current situation and submit a renewal permit which would address the necessary design changes to the expansion area[.]” (*Id.* at 2).

DEQ acknowledged “that the District [was] beginning to run out of disposal capacity and need[ed] to find a solution in a relatively short time.” (Ex. 12, at 1). DEQ repeated, however, that it could not permit disposal in the expansion area “without first determining that proposed facility designs will be protective of human health and the environment, groundwater in particular.” (*Id.*) Based upon the information available at the time, DEQ proposed allowing the District to vertically expand the original Sand Draw disposal area as a “*short term solution.*” (*Id.* (emphasis added)). DEQ estimated that the vertical expansion would add 10 to 14 years of life to the existing Sand Draw disposal cell. (Ex. 13, at 2).

To that end, DEQ advised the District to submit a permit renewal application including plans for vertical expansion of the original site and work plans for the construction of additional groundwater monitoring wells. (*Id.* at 2). DEQ believed this would “provide disposal space while options for future development ... are being investigated.” (*Id.*) The District never submitted the plans.

DEQ made clear that the purpose of allowing vertical expansion of the original Sand Draw disposal area was to provide “additional *emergency* disposal capacity[.]” (Ex. 13, at 2 (emphasis added)). DEQ restated that the discovery of shallow groundwater in the Sand Draw expansion area called into question the District’s plans for disposal

there, and that “[i]f that area cannot be used without liners, and the District cannot afford to construct liners, then disposal capacity at the Sand Draw landfill will be decreased from 28 years to 2.8 years.” (*Id.* at 1; *see also* (Ex. 14, at 2) (stating that Sand Draw landfill had 2.8 years of life remaining)). Accordingly, DEQ advised that “future operations of the District will entail, under any reasonable scenario, the need to locate and construct one or more new landfills.” (Ex. 13 at 2).

Two weeks before the deadline to submit a renewal permit application, the District again requested an extension of the Sand Draw operating permit, citing issues related to groundwater. (Ex. 15). Specifically, the District sought more time to gather information to show that vertical expansion of the existing cell would present a minimal potential to impact groundwater. (*Id.*) DEQ approved the permit extension request, and granted an extension of one year and 9 months, to August 1, 2003. (Ex. 17).

The permit extension was conditioned upon the District submitting a permit renewal application including a schedule “for addressing the orderly development and use of the facility throughout the life of the site.” (*Id.*) As DEQ had previously explained, “[t]he unexpected surprises and roadblocks encountered at the Sand Draw landfill are an excellent example of why detailed, long term planning is needed to ensure that the disposal needs of Fremont County citizens can be met.” (Ex. 18, at 2). Five months prior to the expiration of the third permit extension, the District requested and received an extension of the Sand Draw permit to May 31, 2004, explaining that previous application deadlines had not been met because of the District’s efforts to develop funding sources. (Ex. 16, at 3). The District failed to comply with the previous

permit extension condition requiring submission of a renewal application, and in September of 2003 DEQ issued the District a notice of violation for operating the Sand Draw landfill without a permit. (Ex. 19).

B. A Waste Disposal Capacity Crisis

In response to the notice of violation, the District sent DEQ a letter documenting its efforts to develop long-term plans that would allow for permitting. (Ex. 20). The letter revealed in detail that the District was working to develop long-term waste management plans in the face of a solid waste disposal capacity crisis. (*Id.*) The District recognized that locating and bringing into operation a new landfill would be costly. (Ex. 21, at 4 (citing Bryan Livingston, Chairman, District)).

At the same time the District was facing the costs of developing long-term waste disposal solutions, the District was experiencing shortfalls in its operating budget. (Ex. 22, at 1 (citing Don Connell, Superintendent, District)). The District's 2001 audit revealed that it was "short \$3.2 million dollars for closure/post closure costs," even though it "had quite a few years to gain revenue for these cost[s]." (Ex. 23, at 2 (citing Rick Fagnant, Macy & McKee, LLC)). The District's auditor reflected that "the District has a serious problem and is vulnerable," suggesting the possibility that "the District may be dissolved due to current landfill problems." (*Id.*)

To fund a long-term waste management solution, the District sought the approval of the Fremont County Commissioners to impose a one-percent capital facilities tax. (Ex. 14, at 3). The District knew that if its efforts to obtain financing failed, its options were dire: either operate in violation of the law and wait for DEQ to take

legal action, or dissolve the District. (Ex. 23, at 4 (citing Bryan Livingston, Chairman, and Bill Urbigkit, Board Member)). Unfortunately, the District failed to obtain approval to place the facilities tax question on the ballot. (Ex. 24, at 6). Although the District sought other sources to fund long-term disposal activities, those efforts also failed. (Ex. 25; Ex. 26, at 3; Ex. 27).

C. Characterizing Groundwater

Lacking any means for financing long-term waste disposal activities, the District challenged DEQ's regulatory bases for prohibiting landfill impacts to groundwater in a letter to the administrator of the Solid and Hazardous Waste Division. (Ex. 28). The District advanced three separate factual hypotheses challenging DEQ's concern for groundwater beneath Sand Draw: (1) that the groundwater was confined to an isolated pocket; (2) that the water table rise observed in 1999 was unexplained; and (3) that the groundwater at Sand Draw was seasonal or perched. (*Id.*)

In response to the first theory, DEQ explained in a letter that based upon the elevational fluctuations in water levels in monitoring wells at Sand Draw, the groundwater detected in well R-8 "is certainly not confined." (Ex. 29, at 2). Rather, it "is part of the local groundwater system that underlies much or all of the expansion area at the Sand Draw landfill." (*Id.*) More generally, DEQ explained, whether the Sand Draw groundwater is isolated is irrelevant, because "the statute protecting Wyoming's groundwater does not have any provision to allow pollution of groundwater that is believed to be limited to some predetermined lateral extent or depth." (*Id.*)

To the District's second challenge, DEQ explained that the water table rise in R-8 was not "unexplained" as the District claimed. (*Id.*) Rather, the change in water level was consistent with similar but less pronounced fluctuations in other monitoring wells at Sand Draw. (*Id.* at 1-2). Moreover, DEQ "note[d] that the additional wells installed encountered groundwater, resulting in a considerable expansion of the area known to be underlain by groundwater." (*Id.* at 2).

Finally, DEQ responded to the District's third theory by explaining that under the Solid Waste Rules and Regulations, "seasonal or perched groundwater is considered groundwater requiring protection from contamination[.]" (*Id.* at 3).

The District then sought the advice of Willowstick Technologies, an outside consultant specializing in geophysical groundwater characterization investigations. (Ex. 30). The District's stated purpose in consulting Willowstick was to regain use of the Sand Draw expansion area as "unlined" landfill capacity. (Ex. 31).

Based upon information the District provided, Willowstick agreed with DEQ, explaining its belief that "the historic and recorded groundwater measurements [at Sand Draw] are most likely accurate and consistent with what one would expect to find[.]" (Ex. 30, at 1). Succinctly, Willowstick stated "we don't believe that there are inconsistencies or abnormalities with the data." (*Id.*) Willowstick noted that monitoring well R-8 has fluctuated as much as 35 feet, and that "high and low water levels in the [adjacent] wells correspond very closely with the high and low levels of well R-8." (*Id.*)

Willowstick explained further that well R-8 has the highest water levels among the monitoring wells because it "is located at the highest point on the plateau and

centered over the groundwater dome[.]” (*Id.* at 2). The reason that other wells have not produced groundwater, which caused the District’s belief in anomalous monitoring results, is that they are located at the edge of the groundwater dome and are not drilled deep enough to encounter groundwater. (*Id.*)

Failing to obtain a favorable opinion, the District abandoned its efforts with Willowstick. (Ex. 32). The District then hired Donald Siegel, a hydrogeologist, to prepare a report asserting that “there is no continuous water table” beneath Sand Draw, and that “[t]here is no scientific need to construct” a liner to control groundwater contamination. (Ex. 33, at 4, 9-10). The undated report, submitted to DEQ in December of 2005, more than two years after DEQ had issued its notice of violation, did not provide the data upon which it relied, nor was it submitted to DEQ in accordance with the rule requiring certification by a professional Wyoming engineer or geologist. It therefore was not considered by DEQ for the purpose of demonstrating that engineered containment would not be necessary to protect groundwater in the expansion area.

D. Permitting Attempts

In September of 2007, three years after the District’s last permit extension expired, DEQ issued the District a draft operating permit in an attempt to bring the landfill into compliance with the law. (Ex. 34). The permit required that “the next renewal application for this facility must contain plot plans showing the orderly development and use of the facility through the life of the site,” including “detailed information regarding the use of the expansion area.” (*Id.* at 2-3). This is the same

information DEQ requested in 2003. (Ex. 17). The District refused to accept the permit condition schedules. (Ex. 35).

A year later, after no progress had been made in the permitting of Sand Draw, DEQ issued a new notice of violation and order to the District. (Ex. 36). This NOV and order cited the District for operating the Sand Draw landfill without a permit since May 1, 2004. (*Id.* at 2, ¶ 17). The order required the District to, among other things, submit a permit renewal application no later than May 31, 2009. (*Id.* at 3). The order became final on September 16, 2009, after the District failed to appeal it to the Environmental Quality Council. Wyo. Stat. Ann. § 35-11-701(c)(ii).

The District did not comply with the order, but DEQ did not act to enforce the order until late 2009, when the District submitted a groundwater monitoring report from July 2009 that detected the presence of low levels of volatile organic compounds in the water beneath Sand Draw. (Ex. 37 (“Volatile organic compounds (VOCs) were detected in monitoring wells R-9D and R-20.”)). DEQ then referred the matter to the Wyoming Attorney General’s Office, which filed suit to enforce the order in district court. (Ex. 38).

II. THE INSTANT PERMIT

DEQ and the District resolved the enforcement suit through a consent decree. (Ex. 39). The decree required the District to pay civil penalties for violations of the Environmental Quality Act and the Solid Waste Rules and Regulations and to submit a permit renewal application. (*Id.* at 2-3). The District submitted a permit application, which led to the case before the Council today.

DEQ found the District's first application to be incomplete and technically inadequate, in part because it proposed adding thirty years of disposal capacity through vertical expansion of the existing cell, which greatly exceeded the capacity DEQ previously committed to allow as a short-term, emergency fix. (Ex. 40). Because of recent groundwater monitoring reports showing the presence of low levels of volatile organic compounds in the water beneath Sand Draw, DEQ refused to deviate from its previous requirements to allow only limited, short-term vertical expansion. (*Id.*)

The District submitted an amended permit application on December 27, 2010. DEQ reviewed the application, and concluded that the District's proposal to vertically expand the existing cell beyond 2018 constituted a new cell subject to engineered containment requirements. (Ex. 41). The District objected to DEQ's determination via written correspondence. (Ex. 42). DEQ took that information under advisement pursuant to Wyo. Stat. Ann. § 35-11-502(h) (providing DEQ with 30 days to review additional information submitted by applicant). Before DEQ had an opportunity to review the objections, the District filed a Petition for Review with the Council. (Ex. 43). That petition was ultimately dismissed as moot, because DEQ revised its review of the application in accordance with the District's objections, removing the determination that vertical expansion beyond 2018 constituted a new cell. (Ex. 44).

In May of 2011, DEQ issued the District a draft operating permit for Sand Draw. (Ex. 45). The permit was subject to two conditions that are in dispute. First, the permit conditioned disposal in the unlined original 80 acre unit beyond 2018 upon the District demonstrating that the facility was not altering and will not alter groundwater. (*Id.* at

2). Second, the permit required the District to remove from the application all documents not signed and stamped by a professional Wyoming engineer or geologist in accordance with SWRR, ch. 2, § 2(b)(ii).

III. THE DISTRICT'S OBJECTIONS

The District objected to DEQ's draft permit and requested a hearing before the Council. (*See* Objections to Permit and Request for Hearing, docket no. 11-5602 (Aug. 25, 2011)). The District set forth the following objections to the permit and DEQ's permitting process:

1. The DEQ's objections to the proposed vertical expansion over existing wastes are unsupported by the scientific data and analysis provided in the permit application, and inconsistent with solid waste statutes, rules and regulations.
2. The DEQ has issued multiple reviews with inconsistent comments and regulatory interpretations, without providing the [District] with a reasonable opportunity to respond.
3. The DEQ has proposed omitting scientific data that has been used by the [District's] professional geologist to support the characterization and interpretation of site hydrogeology.

(*Id.* at 1).

SUMMARY OF ARGUMENT

Each of the District's objections fails. First, the Environmental Quality Act, the Solid Waste Rules and Regulations, and the evidence that the Sand Draw landfill is altering groundwater thoroughly support DEQ's objection to the District's proposal to increase vertical storage capacity, which took the form of a condition aimed at protecting groundwater from contamination. Second, DEQ followed the statutory

process in its review of the Sand Draw permit application, and provided the District with every statutorily available opportunity to respond. The District took full advantage of those opportunities. Finally, the District's allegation that DEQ proposed to omit scientific data mischaracterizes by omission DEQ's enforcement of the plain language of the Solid Waste Rules and Regulations, which require that application materials be certified by a professional Wyoming engineer or geologist. The District failed to have application materials certified, and thus DEQ refused to accept those materials until they had been certified.

The District has operated the Sand Draw landfill without a valid operating permit since 2004. The District now objects to DEQ's permit conditions on three bases, all of which create no genuine issue of material fact and which should be decided as a matter of law in DEQ's favor. Because each of the District's claims fails, the Council should grant DEQ summary judgment with respect to all of the District's objections.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Wyo. R. Civ. P. 56(c). When deciding a motion for summary judgment, the court considers the facts in the light most favorable to the non-moving party. *See, e.g., Cathcart v. State Farm Mut. Auto. Ins. Co.*, 2005 WY 154, ¶ 11, 123 P.3d 579, 586 (Wyo. 2005) (quoting *Baker v. Ayres & Baker Pole & Post, Inc.*, 2005 WY 97, ¶ 14, 117 P.3d 1234, 1239 (Wyo. 2005)).

ARGUMENT

I. THE GROUNDWATER PROTECTION PERMIT CONDITION IS BASED IN LAW AND FACT.

For more than a decade DEQ has permitted the District to vertically expand the existing disposal unit at Sand Draw to provide short-term capacity while the District sought out long-term solutions to its solid waste disposal capacity problems. The District has not devised a long-term solid waste management plan. Instead, in its first objection, the District asks the Council to set aside DEQ's condition that imposes Wyoming's water protection laws by limiting the district's continued vertical expansion of the existing cell unless it can show that such expansion will not harm groundwater resources. Based upon the undisputed material facts, DEQ's condition is valid as a matter of law, so DEQ is entitled to summary judgment in its favor on this objection to that condition.

A. The Law Requires DEQ to Protect Groundwater from Landfill Contamination.

In the arid West, water is an invaluable resource. Accordingly, Wyoming law affords great protection for the state's water resources. The Wyoming Environmental Quality Act prohibits any person from causing, threatening, or allowing the discharge of any pollution or wastes into the waters of the state without a permit. Wyo. Stat. Ann. § 35-11-301(a)(i). The Act further prohibits any person from altering the physical, chemical, radiological, biological or bacteriological properties of any waters of the state without a permit. *Id.* at (ii). These sweeping protections apply to all groundwater within Wyoming. Wyo. Stat. Ann. § 35-11-103(c)(vi).

The Solid Waste Rules and Regulations thus provide that “[s]olid waste disposal facilities shall not be allowed to alter groundwater quality, as determined by groundwater monitoring.” SWRR, ch. 2, § 5(x). The Act makes clear that alteration is synonymous with pollution and contamination, providing that “[p]ollution’ means contamination or other alteration of the physical, chemical or biological properties of any waters of the state[.]” Wyo. Stat. Ann. § 35-11-103(c)(i). Moreover, alteration broadly includes even a “change in temperature, taste, color, turbidity or odor[.]” *Id.*

In order to fulfill these objectives, DEQ “may impose such conditions as may be necessary to accomplish” the legislature’s stated purpose of protecting water from contamination. Wyo. Stat. Ann. § 35-11-801(a). Moreover, the burden of demonstrating compliance with regulations is upon the permit applicant. *Id.* Pursuant to these permitting authorities, and in accordance with the legislative purpose of protecting groundwater, DEQ conditioned the Sand Draw permit on the District’s ability to demonstrate that continued vertical expansion will not alter groundwater.

B. The Evidence Supports the Groundwater Protection Permit Condition.

The existing disposal cell at Sand Draw is not lined to protect groundwater from infiltration of contaminated water leaching through the wastes. (Ex. 13, at 1). Thus, it is not surprising that, given the presence of shallow, recharging groundwater beneath Sand Draw, after ten years of vertical expansion, groundwater monitoring wells now show the presence of low levels of volatile organic compounds in the groundwater. (See Ex. 37). Prior to the vertical expansion, which DEQ permitted as a short-term remedy to

Fremont County's solid waste disposal capacity crisis, groundwater monitoring at Sand Draw did not detect the presence of volatile organic compounds. (Ex. 4, at 3).

Even in light of the recent detection of groundwater contamination, the District proposed in its permit application to continue vertically expanding the existing unit for another thirty years. (Ex. 41, at 9). Given the plain protections of the state's water resources required by Wyoming law and the evidence that the Sand Draw landfill is altering groundwater, DEQ could not approve the District's proposal. Instead, DEQ provided the District a choice: either demonstrate that continued vertical expansion beyond 2018 will not alter groundwater, or move disposal into the expansion area subject to engineered containment requirements, most likely some sort of lining.

The requirement that the District demonstrate that continued vertical expansion will not alter groundwater is thoroughly supported in the law. The Environmental Quality Act prohibits the alteration of groundwater. Wyo. Stat. Ann. § 35-11-301(a). The Solid Waste Rules and Regulations prohibit landfills from altering groundwater. SWRR, ch. 2 § 5(x). Moreover, the District "does not contest that laboratory data reports indicate the detection of volatile organic compounds." Pet. at 10. Because the undisputed facts and law support the groundwater protection permit condition, the Council should deny the District's objection to the condition and grant summary judgment in favor of DEQ on this claim.

II. DEQ FOLLOWED THE STATUTORY PERMITTING PROCESS.

The District asserts in its petition that "DEQ has issued multiple reviews with inconsistent comments and regulatory interpretations, without providing the [District]

with a reasonable opportunity to respond.” Pet. at 1. Ironically, the District objects to the fact that DEQ revised its permit application review to agree with the District’s assertion that vertical expansion does not constitute a new cell. The District objected to DEQ’s comments and regulatory interpretations concluding that vertical expansion constitutes a new unit. DEQ took that objection under advisement, agreed with its merits, and revised its application review accordingly. The District now objects to DEQ doing so.

The District has also taken advantage of both of the statutorily provided opportunities to respond to DEQ’s permit application review. The opportunities for solid waste permit applicants to respond to DEQ’s permit application reviews are clearly set forth in Wyo. Stat. Ann. § 35-11-502(h) and (k). After DEQ completes its preliminary review of an application, the applicant has an opportunity to submit additional information in response. *Id.* If the applicant submits additional information, DEQ has thirty days to review that information. Then, after DEQ issues a draft permit for publication, any interested party may respond to the permit by filing written objections and requesting a hearing before the Council. *Id.* at § 502(k).

The District has taken advantage of both of the statutorily provided opportunities to respond to DEQ’s permit application review. First, the District responded under § 502(h) by objecting in detail to DEQ’s determination that vertical expansion constitutes a new cell. Second, the District responded under § 502(k) by filing the instant petition for a hearing. Yet the District argues that it has not had “a reasonable opportunity” to respond.

The District cites no legal authority that supports its claim. DEQ provided, and the District took advantage of, every opportunity to respond afforded under the law. Accordingly, DEQ is entitled to judgment as a matter of law on this objection.

III. PERMIT APPLICATION MATERIALS MUST BE CERTIFIED BY A PROFESSIONAL ENGINEER OR GEOLOGIST.

Along with its permit application, the District again submitted the Siegel report, along with a summary addendum to the report. (Exs. 33, 46). Neither the report nor the appendix was certified in accordance with SWRR, ch. 2, § 2(b)(ii). As a condition of the permit, DEQ required that all application materials not properly certified be omitted from the application. The law requires that all permit application materials be signed, stamped, and dated by a registered Wyoming professional engineer, and that all portions of applications requiring geological services be similarly certified by a professional Wyoming geologist. SWRR, ch. 2, § 2(b)(ii). Yet, the District objects to the permit condition requiring application materials to be certified by a professional engineer or geologist, claiming that DEQ has proposed to omit scientific data used in the permit application to characterize and interpret site hydrogeology.

The District has not challenged the validity of the certification regulation, or articulated any reason why its application to the District is unlawful. Therefore, DEQ is entitled to judgment as a matter of law on this objection.

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CONCLUSION

Because there are no genuine issues of material fact for trial and DEQ is entitled to judgment as a matter of law, the Council should grant summary judgment in DEQ's favor on all of the District's objections.

Dated this 21 day of October, 2011.

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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 Memorandum in Support of Motion for Summary Judgment* was served by placing the same in the United States mail, postage pre-paid, return-receipt requested to the following:

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