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FILED

MAR 23 2012

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,)
SAND DRAW LANDFILL,)
SHWD FILE #10.195)** **Docket No. 11-5602**

**DEQ'S OPPOSITION TO PETITION FOR AWARD OF
COSTS AND EXPENSES**

The Wyoming Department of Environmental Quality (DEQ), through its undersigned attorney, hereby opposes the Fremont County Solid Waste Disposal District's Petition for Award of Costs and Expenses, because no statutory or other authority creates a right to recover costs or attorney's fees in this case.

Wyoming Rule of Civil Procedure 54 governs awards of costs and attorney's fees. The Rule provides that "costs against the State of Wyoming, its officers or agencies, shall be imposed only to the extent permitted by law," and that attorney's fees may be awarded "[w]hen allowed by law[.]" Wyo. R. Civ. P. 54(d). Wyoming law allows awards of attorney's fees only where expressly provided by contract or statute. *See, e.g., Thorkildsen v. Belden*, 269 P.3d 421, 424, 2012 WY 8, ¶ 10 (Wyo. 2012).

The District cites no law that permits the imposition of costs on DEQ in this case. Nor does the District cite any statute or contract allowing the award of attorney's fees. The District fails to cite any authority supporting its requests because no such law exists.

The District implies that its Petition is warranted under Chapter V of the DEQ Rules of Practice and Procedure. *See* Pet. at *1 (introductory paragraph). Chapter V derives from Wyo. Stat. Ann. § 35-11-437(f), which provides for the award of costs and attorney’s fees in surface coal mining enforcement actions. Because this case involved landfill permitting under Wyo. Stat. Ann. § 35-11-502, and not a surface coal mine enforcement action under Wyo. Stat. Ann. § 35-11-437(f), neither Chapter V nor Wyo. Stat. Ann. § 35-11-437(f) provides a legal basis for awarding the District costs or attorney’s fees.

The District also suggests that it should be awarded costs and attorney’s fees because DEQ allegedly acted in “bad faith.” Pet. at *3, ¶ 12; *9, ¶ 54. The District cites no statutory or other authority supporting the proposition that, in the absence of a statute or contract providing for cost or fee awards, “bad faith” alone justifies such awards.¹ Moreover, in support of its “bad faith” allegation, the District claims the Environmental Quality Council ruled “[t]hat the first permit review and the final permit review were not done in good faith and done in a manner that harassed the permittee[.]” Pet. at *3, ¶ 12. Such a ruling appears nowhere in the Council’s *Findings of Fact and Conclusions of Law*. Because the District’s “bad faith” claim is not based in law or fact, it does not provide a basis for imposing costs or attorney’s fees on DEQ.

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¹ The District appears to be implying it is entitled to an award of costs and attorney’s fees under Wyo. R. Civ. P. 11. However, Rule 11 does not apply to the conduct of which the District complains—DEQ’s interpretation and application of its regulations. Even if Rule 11 did apply, the District has not followed the Rule 11 procedures for seeking cost and fee awards. *See* Wyo. R. Civ. P. 11(c)(1)(A); *see also* *Horn v. Welch*, 54 P.3d 754, 761, 2002 WY 138, ¶ 22 (Wyo. 2002) (requiring strict compliance with Rule 11 procedures).

For the aforementioned reasons, the Wyoming Department of Environmental Quality requests that the District's Petition for Awards of Costs and Expenses be denied.

Dated this 23rd day of March, 2012.

WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of March, 2012, a true and correct copy of *DEQ's Opposition to Petition for Award of Costs and Expenses* was served by placing the same in the United States mail, postage pre-paid, and via electronic mail to the following:

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