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

DEQ'S PRE-HEARING MEMORANDUM

In accordance with the Environmental Quality Council's September 9, 2011 scheduling order, the Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ), through the Office of the Attorney General, hereby submits its pre-hearing memorandum.

I. CONTESTED ISSUES

1. Was the Petitioner denied a legally recognized opportunity to comment on the draft operating permit for the Sand Draw landfill?
2. Is the permit condition requiring that appendices to the Sand Draw landfill permit application be certified by a Wyoming professional engineer or geologist contrary to law?

3. Is the permit condition requiring the District to demonstrate vertical expansion will not alter groundwater contrary to law?

II. STATUTES & REGULATIONS

The applicable statutes and regulations are:

1. The Wyoming Environmental Quality Act, specifically Wyo. Stat. Ann. §§ 35-11-103, -301, -502, -801.
2. The Wyoming Administrative Procedure Act, Wyo. Stat. Ann. §§ 16-3-101 through -115.
3. The Wyoming Solid Waste Rules and Regulations (SWRR), specifically SWRR Ch. 2.

III. WITNESSES

DEQ will call the following witnesses to testify at the hearing:

A. Will-Call

Patrick Troxel
District #2 Supervisor
Solid Waste Permitting and Corrective Action
Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
510 Meadowview Drive
Lander, Wyoming 82520
(307) 335-6950

Mr. Troxel was responsible for the preliminary review of the Sand Draw permit application. He will testify regarding his review of the permit application, general technical and legal requirements of solid waste permit applications, and whether the

Sand Draw permit application complied with Wyoming law. Mr. Troxel will also testify to his past experiences in the regulation and permitting of the Sand Draw landfill.

Carl Anderson
Administrator
Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
122 West 25th Street
Herschler Building, 4W
Cheyenne, Wyoming 82002
(307) 777-7753

Mr. Anderson was responsible for the final approval of the Sand Draw permit application. He will testify regarding his review of the permit application, general technical and legal requirements of solid waste permit applications, and whether the Sand Draw permit application complied with Wyoming law. Mr. Anderson will also testify to his past experiences in the regulation and permitting of the Sand Draw landfill.

B. May-Call

DEQ may call the following witness to testify at the hearing:

Robert A. Doctor
Program Manager
Solid Waste Permitting and Corrective Action
Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
152 North Durbin Street, Suite 100
Cheyenne, Wyoming 82520
(307) 473-3468

Mr. Doctor is Mr. Troxel's supervisor and he participated in the review of the Sand Draw permit application. Mr. Doctor may testify to his review of the Sand Draw permit application, the general technical and legal requirements of solid waste

permitting, and his experience in the regulation and permitting of the Sand Draw landfill.

DEQ may also call any witnesses listed by the petitioners in this case and any witnesses needed for rebuttal testimony.

IV. EXHIBITS

DEQ intends to introduce, and requests that the Council admit, the following exhibits into evidence:

- DEQ 1. Sand Draw Landfill Draft Operating Permit, SHWD File #10.195 (Oct. 31, 1995).
- DEQ 2. Sand Draw Landfill Draft Operating Permit Public Notice, SHWD File #10.195.
- DEQ 3. Letter from Patrick J. Troxel, Sr. Env'tl. Analyst, DEQ, to Don Connell, Superintendent, FCSWDD (Apr. 12, 2000).
- DEQ 4. Sand Draw Landfill Permit Application Review, SHWD File #10.195 (June 28, 1995).
- DEQ 5. Letter from Patrick J. Troxel, Senior Env'tl. Analyst, DEQ/SHWD, to Don Connell, Superintendent, FCSWDD (Feb. 4, 2000).
- DEQ 6. Letter from Jerrod D. Wheeler, Staff Hydrogeologist, Inberg-Miller Engineers, to Patrick Troxel, DEQ/SHWD (July 5, 2000).
- DEQ 7. Letter from Don Connell, Superintendent, FCSWDD, to Patrick Troxel, Senior Env'tl. Analyst, DEQ/SHWD (Sept. 14, 2000).
- DEQ 8. Letter from Patrick J. Troxel, Senior Env'tl. Analyst, DEQ/SHWD (Sept. 26, 2000).
- DEQ 9. Letter from Don Connell, Superintendent, FCSWDD, to Patrick Troxel, Senior Env'tl. Analyst, DEQ/SHWD (Apr. 19, 2001).
- DEQ 10. Letter from Bryan Livingston, Chairman, FCSWDD, to Patrick Troxel, Sr. Env'tl. Analyst, DEQ/SHWD (May 7, 2001).

- DEQ 11. Letter from David A. Finley, Administrator, DEQ/SHWD, and Dennis Hemmer, Director, DEQ, to Don Connell, Superintendent, FCSWDD (May 17, 2001).
- DEQ 12. Letter from Robert A. Doctor, Program Manager, DEQ/SHWD, to Bryan Livingston, Chairman, FCSWDD at *1 (Nov. 27, 2001).
- DEQ 13. Letter from Dave Finley, Administrator, DEQ/SHWD, to Bryan Livingston, Chairman, FCSWDD at *2 (Jan. 18, 2002).
- DEQ 14. Meeting Minutes of the FCSWDD, at 2 (Nov. 12, 2001).
- DEQ 15. Letter from Don Connell, Superintendent, FCSWDD, to Patrick Troxel, Sr. Env'tl. Analyst, DEQ/SHWD (May 16, 2002).
- DEQ 16. Letter from Jim Hedges, Chairman, FCSWDD, to Dave Finley, Administrator, DEQ/SHWD, at 3 (March 17, 2003).
- DEQ 17. Letter from David A. Finley, Administrator, DEQ/SHWD, and John V. Corra, Director, DEQ, to Jim Hedges, Chairman, FCSWDD (June 10, 2003).
- DEQ 18. Letter from Patrick J. Troxel, Env'tl. Program Principal, DEQ/SHWD, to Jim Hedges, Chairman, FCSWDD, at *2 (May 12, 2003).
- DEQ 19. Notice of Violation, docket no. 3511-03.
- DEQ 20. Letter from Don Connell, Superintendent, FCSWDD, to Patrick Troxel, Sr. Env'tl. Analyst, DEQ/SHWD (Nov. 28, 2003).
- DEQ 21. Meeting Minutes of the FCSWDD, at 4 (March 12, 2001).
- DEQ 22. Meeting Minutes of the FCSWDD, at 1 (July 16, 2001).
- DEQ 23. Meeting Minutes of the FCSWDD, at 2 (Dec. 10, 2001).
- DEQ 24. Meeting Minutes of the Fremont County Commissioners, at 6 (Jan. 15, 2002).
- DEQ 25. Meeting Minutes of the FCSWDD, at 3 (Feb. 10, 2003).

- DEQ 26. Meeting Minutes of the FCSWDD, at 3 (April 14, 2003).
- DEQ 27. Letter from Brad Miskimins, Grant & Loan Program Manager, Wyo. Office of State Lands and Investments, to FCSWDD (Jan. 9, 2003).
- DEQ 28. Letter from Jim Hedges, Chairman, FCSWDD, and Dale Groutage, Board Member, FCSWDD, to David Finley, Administrator, DEQ/SHWD (Sept. 13, 2004).
- DEQ 29. Letter from David A. Finley, Administrator, DEQ/SHWD, to Jim Hedges, Chairman, FCSWDD, at *2 (Feb. 2, 2005).
- DEQ 30. Letter from Paul Rollins, Business Development Manager, Willowstick Technologies, LLC, to Don Connell, FCSWDD (April 15, 2005).
- DEQ 31. Letter from James Hedges, Chairman, FCSWDD, to Patrick Troxel, Sr. Env'tl. Analyst, DEQ/SHWD (May 11, 2005).
- DEQ 32. Letter from Patrick Troxel, Program Principal, DEQ/SHWD, to Jim Hedges, Chairman, FCSWDD (Oct. 7, 2005).
- DEQ 33. Donald I. Siegel, The Hydrogeologic Integrity of the Sand Draw San#1 Landfill, Fremont County, Wyoming 4, 9-10 (2005).
- DEQ 34. Letter from LeRoy C. Feusner, Administrator, DEQ/SHWD, to James Hedges, Chairman, FCSWDD (Sept. 18, 2007).
- DEQ 35. Letter from James Hedges, Chairman, FCSWDD, to LeRoy Feusner, Administrator, DEQ/SHWD (Oct. 8, 2007).
- DEQ 36. NOV and Order docket no. 4384-08 (Oct. 28, 2008).
- DEQ 37. Letter from Kurt Nielsen, Env'tl. Engineer, Inberg-Miller Engineers, to James Hedges, Chairman, FCSWDD (Sept. 30, 2009).
- DEQ 38. *Wyoming v. Fremont County Solid Waste Disposal Dist.*, civil no. 175-570 (1st Jud. Dist. Ct. Feb. 26, 2010).
- DEQ 39. *Wyoming v. Fremont County Solid Waste Disposal Dist.*, civil no. 175-570 (1st Jud. Dist. Ct.) (Consent decree).

- DEQ 40. Letter from Carl Anderson, Administrator, DEQ/SHWD, to Jim Hedges, Chairman, FCSWDD (June 21, 2010).
- DEQ 41. Letter from Carl Anderson, Administrator, DEQ/SHWD, to Mike McDonald, Chairman, FCSWDD (March 28, 2011).
- DEQ 42. Letter from Mike McDonald, Chairman, and Rick L. Sollars, Attorney, to John Corra, Director, DEQ (April 11, 2011).
- DEQ 43. *In re: Sand Draw Landfill Permit Review*, Pet. for Review, docket no. 11-5601 (Apr. 28, 2011).
- DEQ 44. *In re: Sand Draw Landfill Permit Review*, Order of Dismissal for Mootness, docket no. 11-5601 (Jul. 6, 2011).
- DEQ 45. Sand Draw Landfill Draft Operating Permit, SHWD File #10.195.
- DEQ 46. Sand Draw Landfill Permit Application, Appendix Y, Groundwater Report (Siegel 2010).
- DEQ 47. Letter from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Jim Hedges, Chairman, FCSWDD (May 27, 2010).
- DEQ 48. E-mail from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Donald Siegel, Professor, Syracuse University (March 31, 2011, 18:58 MST).
- DEQ 49. E-mail from Donald Siegel, Professor, Syracuse University, to Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation (March 31, 2011, 20:48 MST).
- DEQ 50. Memorandum from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Don Connell, FCSWDD (Nov. 7, 2010).
- DEQ 51. Memorandum from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Don Connell, FCSWDD (Jan. 10, 2011).
- DEQ 52. Memorandum from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Don Connell, FCSWDD (April 6, 2011).
- DEQ 53. Memorandum from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Don Connell, FCSWDD (July 6, 2011).

- DEQ 54. Memorandum from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Don Connell, FCSWDD (Aug. 4, 2011).
- DEQ 55. Memorandum from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Don Connell, FCSWDD (Sept. 7, 2011).
- DEQ 56. E-mail from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Don Connell, Dale Groutage, and Mike McDonald, FCSWDD (June 14, 2011, 8:58 MST).
- DEQ 57. E-mail from Ken Schreuder, Senior Engineer/Geologist, Trihydro Corporation, to Don Connell and Mike McDonald, FCSWDD (July 20, 2011, 9:11 MST).
- DEQ 58. Letter from Ken Schreuder, Senior Engineer/Geologist, and Christina Hiegel, Civil/Environmental Engineer, Trihydro Corporation, to Jim Hedges, Chairman, FCSWDD (Nov. 24, 2010).
- DEQ 59. Letter from Donald Siegel, Professor, Syracuse University, to the Editor of Journal of Environmental Management (July 22, 2010).
- DEQ 60. E-mail from Alison Gill, Editor, Journal of Environmental Management, to Donald Siegel, Professor, Syracuse University (Jan. 9, 2011, 21:31 EST).
- DEQ 61. Donald I. Siegel, PhD., Hydrogeologist, Review of HRR Characterization of Sand Draw Landfill, Fremond County, Wyoming (Dec. 7, 2007).
- DEQ 62. E-mail from Donald Siegel, Professor, Syracuse University, to Dale Groutage & Don Connell, FCSWDD (Aug. 6, 2009, 13:00 EST).
- DEQ 63. E-mail from Donald Siegel, Professor, Syracuse University, to Don Connell, FCSWDD (Sept. 8, 2009, 20:05 EST).
- DEQ 64. Sand Draw Landfill Draft Operating Permit, SWHD file 10.195.

DEQ also reserves the right to use exhibits identified by other parties as well as exhibits not named for rebuttal and impeachment purposes.

V. UNCONTESTED FACTS

1. The Fremont County Solid Waste Disposal District received its last renewal operating permit for Sand Draw in 1995.
2. In 1999, the R-8 groundwater monitoring well at the Sand Draw landfill showed a ten-foot fluctuation in the water table.
3. In 2000, the District's consultants pumped the R-8 groundwater monitoring well dry.
4. In less than two weeks, the groundwater in the R-8 well had recharged to within two feet of its original level.
5. Since 2004, the District has operated the Sand Draw landfill without a permit.
6. 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.
7. The District failed to obtain funding for long-term waste disposal.
8. 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.
9. DEQ made it clear to the District from the outset that vertical expansion was not a long-term fix.
10. DEQ informed the District that the District would more than likely need to construct one or more new landfills.
11. The District did not construct any new landfills.

12. On the District's behalf, Donald Siegel prepared report concluding that engineered containment would not be necessary in the Sand Draw expansion area.

13. The Siegel report was submitted to DEQ in draft form, without the underlying data upon which it relied.

14. 2009 groundwater monitoring detected the presence of volatile organic compounds beneath the Sand Draw landfill.

15. Pursuant to a court order, the District submitted a permit renewal application in December of 2010.

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

17. 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.

18. 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.

19. 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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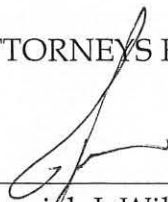
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Dated this 9th day of November, 2011.

ATTORNEYS FOR DEQ

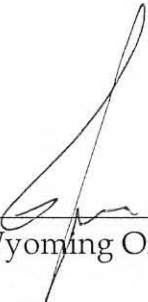


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of November, 2011, a true and correct copy of *DEQ's Pre-Hearing Memorandum* was served by placing the same in the United States mail, postage pre-paid, to the following:

Rick L. Sollars
Western Law Associates, P.C.
277 Lincoln Street
Lander, Wyoming 82520



Wyoming Office of the Attorney General