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Attorneys for the State of Wyoming,
Department of Environmental Quality

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

**DEQ'S RESPONSE TO FREMONT COUNTY SOLID WASTE DISPOSAL
DISTRICT'S MOTION FOR RECONSIDERATION OF RULING**

The Wyoming Department of Environmental Quality (DEQ) hereby responds to the Fremont County Solid Waste Disposal District's (District) Motion for Reconsideration of Ruling.

The District objected to DEQ's issuance of a landfill operating permit, which included a condition that requires the District to demonstrate no later than October 1, 2013 that the landfill is not altering and will not alter groundwater, or cease disposal in the existing unit by December 31, 2018. The District's objection to the permit condition thus raises three issues: (i) whether the condition is based in law, (ii) whether October 1, 2013 is an arbitrary date, and (iii) whether December 31, 2018 is an arbitrary date. The only final determination DEQ made with respect to groundwater is that vertical expansion beyond 2018 depends on the District's ability to fulfill the permit condition.

In its pre-hearing memorandum, the District urged the Council to decide the following additional three issues:

- (i) What is the groundwater quality of the Sand Draw Landfill?
- (ii) Is the FCSWDD altering groundwater quality at the Sand Draw Landfill by disposal of waste in the original 80 acre area?
- (iii) What is the potential for altering the groundwater at the Sand Draw Landfill if vertical expansion in the original 80 acre area is allowed to continue until the permit application proposed date of 2037?

At the pre-hearing conference, DEQ objected to the presentation of these issues to the Council because DEQ has not rendered a final decision on any of these questions. In fact, these issues present precisely the same questions that will be answered when the District fulfills the permit condition. DEQ thus argued that the issues are not ripe for Council review. The hearing examiner, acting on behalf of the Council, agreed with DEQ and ruled that the issues were not ripe for review. The District now asks the Council to reconsider that decision.

The Administrative Procedure Act, which applies in proceedings before the Council, clearly states that only final agency decisions are subject to review. Wyo. Stat. Ann. § 16-3-114(a). The District is attempting to circumvent DEQ as the permitting authority of first resort, and to place before the Council questions on which DEQ has not rendered a final decision.

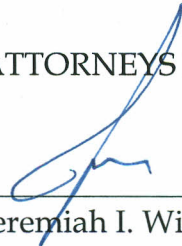
Had DEQ already made a decision on whether the landfill is altering or will alter groundwater, the disputed permit condition would be superfluous. Similarly, had DEQ already rendered a decision on the quality of the water beneath Sand Draw, the District

would not have asked DEQ to classify the Sand Draw groundwater and to establish groundwater protection standards. (See Ex. 1, at 2). The District's arguments thus belie logic.

Because DEQ has not issued a final decision on any of the three questions the District is asking the Council to decide, the hearing examiner was correct to exclude those questions from the Council's review. Therefore, the District's motion should be denied.

Dated this 14 day of November 2011.

ATTORNEYS FOR DEQ

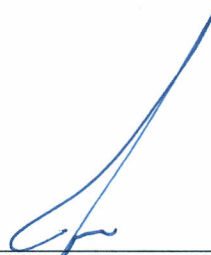


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of November, 2011, a true and correct copy of *DEQ's Response to Fremont County Solid Waste Disposal District's Motion for Reconsideration of Ruling* was served by placing the same in the United States mail, postage pre-paid, and via electronic mail to the following:

Rick L. Sollars
Western Law Associates, P.C.
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Wyoming Office of the Attorney General

JUN 09 2011

Superintendent
Donald Connell

FREMONT COUNTY SOLID WASTE DISPOSAL DISTRICT

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June 6, 2011

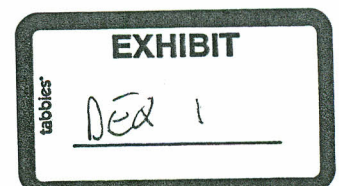
Dr. Carl Anderson, Administrator
Solid & Hazardous Waste Division
Wyoming Department of Environmental Quality
Herschler Building 4 West
122 West 25th Street
Cheyenne, WY 82002

RE: Response to May 23, 2011, Proposed Operating Permit and Major Amendment, Sand Draw
Landfill (SHWD File #10.195), Fremont County, Wyoming

Dear Dr. Anderson:

The Fremont County Solid Waste Disposal District (FCSWDD) is in receipt of your May 23, 2011 correspondence regarding the proposed operating permit and major amendment for the Sand Draw Landfill. Upon review of the documents attached to your correspondence, the FCSWDD has determined that it is unwilling to publish the public notice and accept the proposed permit provided by the Wyoming Department of Environmental Quality (WDEQ). Our decision is based on the following concerns:

- Permit Condition #1 requires removal of two appendices (V and Y) from the permit application prepared by our consultant. Our consultant has reviewed the referenced appendices and is making a final decision regarding inclusion of one or both of the referenced appendices, in whole or in part, as part of the application and under the professional geologist certification provided on the permit application form.
- Permit Condition #3 requires a demonstration that the facility is not altering and will not alter groundwater, or i) cease receipt of wastes in the Original Area by December 31, 2018 and begin closure, and ii) provide a performance based design or an engineered containment system design for all units of the expansion area(s) that will receive waste after December 31, 2018. Rather than delay the unresolved issues further, the FCSWDD is prepared to revise the application and request a final decision regarding the potential for the proposed vertical expansion of the existing facility to alter groundwater as part of the current permit application process. Resolution of these issues at this time is in the best interest of the FCSWDD so that responsible planning and budgeting decisions can be made for this facility, which is a critical component of Fremont County's waste management system.
- The public notice provided states: "The vertical expansion is intended to give the Fremont County Solid Waste Disposal District additional capacity and time to prepare a closure plan for the existing 80 acres and either prepare a performance based design or an engineered containment



system design for the expansion area(s) that will receive waste after December 31, 2018.” Because this statement is contrary to the intended purpose of the FCSWDD, as stated in the permit application, the FCSWDD is unwilling to publish the public notice.

The WDEQ’s May 16, 2011 review states that “groundwater monitoring data indicates that groundwater quality at the Sand Draw Landfill has been/is being altered,” and implies that the facility is in violation of Chapter 2, Section 5(x) of the Wyoming Solid Waste Rules and Regulations (WSWRR). It is not clear to the FCSWDD that such comments and conclusions are justified by existing data, regulations, and statutes. In order for the FCSWDD to respond to these permit application review comments, we respectfully request responses from the WDEQ regarding the following:

- The FCSWDD is requesting a classification for the uppermost groundwater system below the Sand Draw Landfill, as per the provisions of Chapter 8, Section 5 of the Water Quality Division Rules and Regulations (WQDRR).
- The FCSWDD is requesting the establishment of applicable, relevant, and appropriate groundwater protection standards for the Sand Draw Landfill, as per the provisions of Chapter 2, Section 6(b)(i)(E)(VIII) and (IX) of the WSWRR.

In responding to these requests, please provide detailed discussions of the data, analysis, and citations (regulatory and statutory) used to classify the groundwater and establish groundwater protection standards. Information regarding the geology and groundwater in the vicinity of the Sand Draw Landfill is provided in Chapter 4 of the December 23, 2010 permit application document for the facility. Additional data and information was provided in the report for the February 2011 monitoring event, which was submitted to the WDEQ on March 30, 2011. Historical analytical data for groundwater below the Sand Draw Landfill has also been previously submitted to the WDEQ. If additional data or information is necessary, please contact our consultant.

Our consultant has prepared a revised permit application document to respond to the three items determined to be deficient in the WDEQ’s March 28, 2011 review, and to address issues raised by other comments in the WDEQ’s reviews. The revised permit application also includes additional information to address various revisions to design, construction, operating, monitoring, and closure procedures recommended by our staff and consultant. Upon receipt of the WDEQ’s determinations regarding classification of groundwater and the associated groundwater protection standards, our consultant will determine if further permit application revisions are necessary to demonstrate that the facility does not pose a threat to groundwater, and then resubmit the document for review.

We are requesting that our proposed path forward be accepted by the WDEQ so that we can finally resolve outstanding differences and obtain a permit for the Sand Draw Landfill. As always, the FCSWDD is willing to meet with representatives of the WDEQ to discuss any of these matters in more detail.

Sincerely,

Handwritten signature of Mike McDonald in cursive.

Mike McDonald, Chairman
Fremont County Solid Waste Disposal District

Handwritten signature of Rick Sollars in cursive.

Rick Sollars, Esq.
Western Law Associates, P.C.

cc: Ken Schreuder, Trihydro