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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)

PETITIONER, FREMONT COUNTY SOLID WASTE DISPOSAL DISTRICT'S
MOTION FOR RECONSIDERATION OF RULING

COMES NOW Petitioner, Fremont County Solid Waste Disposal District (FCSWDD), by and through its undersigned counsel, and hereby moves the Environmental Quality Council (EQC) to reconsider its ruling rendered at the Pre-Hearing conference that Petitioner's contested issues 6, 7 and 8 were premature for consideration at the hearing prior to the FCSWDD making the required demonstration and the DEQ ruling on the demonstration. As grounds for this Motion the FCSWDD would state to the EQC that it is the position of the FCSWDD that the demonstration has been made in the permit application and the regulatory showings have been made. It would further state to the EQC that by issuance of the draft permit the DEQ has rendered a decision on the matter, which the FCSWDD disagrees with, and this showing was outlined in the objection to the proposed permit filed herein. In support hereof, the FCSWDD would show the EQC the following:

Pursuant to the EQC Order of Scheduling the FCSWDD submitted its Pre-Hearing memorandum herein on November 9, 2011. Contained in the Pre-Hearing Memorandum was a section entitled Contested Issues. Contested

Issues 6, 7 and 8 stated the following as contested issues to be determined in this matter:

6. What is the groundwater quality of the Sand Draw Landfill?
7. Is the FCSWDD altering the groundwater quality at the Sand Draw Landfill by disposal of waste in the original 80 acre area?
8. What is the potential for altering the groundwater at the Sand Draw Landfill if vertical expansion in the original 80 acres is allowed to continue until the permit application proposed date of 2037?

At the Pre-Hearing conference held on November 10, 2011 the DEQ objected to the inclusion of these items as contested issues. The basis of the objection was that permit condition #3, which is at issue in this matter, provides that the FCSWDD must make a demonstration by October 1, 2013 that the facility is not altering and will not alter groundwater and absent such a demonstration the 80 acre area must cease receiving waste by December 31, 2018. It was the position of the DEQ at the Pre-hearing Conference that the demonstration had not been submitted to them and they had not tendered a ruling on a demonstration and thus the matter was not ripe. The EQC ruled that those 3 issues were pre-mature for this hearing.

It is the position of the FCSWDD that the demonstration stated in permit condition #3 has been made in the permit application, that the DEQ has rejected the demonstration made, that the basis of the objection to the proposed permit included a recitation of the demonstration, and that it is a material issue, ripe for

determination in this matter.

The FCSWDD filed a renewal permit application dated December 23, 2010 with the DEQ. (Ex. Sand Draw 1). In section 5.4.1 of the application the FCSWDD has proposed that capacity of the original 80 acre area will be attained in the year 2037. This conclusion reached by the consulting engineer, Ken Scheuder, was supported and evidenced by various sections of the application and data submitted in support of those sections. These conclusions and the DEQ review comments thereto place the 3 contested issues at issue in this matter.

Contested issue 6 states a contested issue as "What is the groundwater quality of the Sand Draw Landfill?" Section 4.8 of the permit application addresses the groundwater quality. In that section it is concluded that the only use for the groundwater would be for industrial uses. (Ex. Sand Draw 1, Page 4-12. That determination was made based upon an analysis of the data produced at the Sand Draw Landfill. In response to this section of the permit application the DEQ comments found that it was complete and technically adequate, but added a comment that the renewal application did not include statistical data utilized in the analysis. As part of the next renewal (lifetime) permit application, the Department will request the submittal of electronic and hard copies of all data utilized in the groundwater analysis. (Ex. Sand Draw 4, p. 7 of 30). On August 25, 2011 the FCSWDD filed its comments and objections to the proposed permit. (Ex. Sand Draw 7). Included in the objection was a discussion on the permit

application determination on groundwater, its quality and any effects that the 80 acre area are having on the groundwater. (p.9-13). It is clear that the permit application provided for the groundwater quality analysis and this was not accepted by the DEQ and by the objection filed by the FCSWDD to the permit application this is clearly a contested issue in this matter.

Contested issue 7 states a contested issue as “ Is the FCSWDD altering the groundwater quality at the Sand Draw Landfill by disposal of waste in the original 80 acre area?” Sections 4.1, 4.7 and 4.8 of the permit application (Ex. Sand Draw 1) address the groundwater in the area and under the Sand Draw Landfill. Section 4.7 describes the groundwater occurrence and reaches the conclusion, based in part by analysis by Donald I. Siegel, that the groundwater lies in perched zones. The consulting engineer reached the conclusions that there was no statistically significant differences between up-gradient and down-gradient wells and no significantly increasing trends in concentrations of VOC's. (Ex. Sand Draw 1). In the review the DEQ responded finding that the section was complete and technically adequate. However, in their review comments (Ex. Sand Draw 4, p. 8 and 9 of 30) the DEQ provided a lengthy analysis of the data provided by the FCSWDD and rejected the finding that the 80 acre area of the facility was not altering the groundwater and then referred to the proposed permit condition #3 language. In its objection to the proposed permit (Ex. Sand Draw 4) the FCSWDD provided an extensive review and analysis of the permit application and objected to the findings in the review

stating “However, the FCSWDD takes issue with the DEQ’s assertion that the data constitutes “alteration” of groundwater...” (Ex. Sand Draw 4, p. 10 -11). The permit application concludes that there is no alteration of the groundwater quality, the DEQ review comments rejects this conclusion through its discussion and the requirement that a demonstration be made by October 13, 2013 (the FCSWDD believes that the demonstration has been made), and the proposed permit objection filed by the FCSWDD clearly put contested issue 7 as an issue to be determined in this matter. The permit application, the review comments and the FCSWDD objection to the proposed permit clearly placed contested issue of fact 7 as a relevant and current issue in the present matter.

Contested issue 8 states a contested issue as “What is the potential for altering the groundwater at the Sand Draw Landfill if vertical expansion in the original 80 acres is allowed to continue until the permit application proposed date of 2037?” Section 5.5 of the Permit Application is titled “Potential Impacts to surface water and groundwater”. (Ex. Sand Draw 1). That section analyzes the Sand Draw Landfill 80 acre area and the various data presented in the Permit Application and concludes that “In summary, the body of evidence summarized above indicates that the historical operations of the Sand Draw Landfill has not adversely affected the groundwater below the facility, and that the design, operating, and closure procedures described in this document will limit the potential for future adverse impacts to develop.” (Ex. Sand Draw 1, P. 5-14). It is clear that the FCSWDD concluded and supported its conclusion that there was

limited potential to impact groundwater in the future and through the proposed closure date of 2037. The DEQ review comments found the section complete and technically adequate and added comments that they disagreed with the analysis and referred back to section 3.7 of the permit review. (Ex. Sand Draw 4, P 6 and 7 of 30). In the review comments the DEQ disagreed with the analysis provided by the FCSWDD and the conclusions reached as to this contested issue. In its objection to the proposed permit the FCSWDD took issue with this review comment that a demonstration of the potential to impact groundwater quality had not been made. (Ex. Sand Draw 7, p. 9-10). The permit application concludes that the facility design, operations and closure procedures will limit the potential for future adverse impacts to develop, the DEQ review comments rejects this conclusion through its discussion and the requirement that a demonstration be made by October 13, 2013 (the FCSWDD believes that the demonstration has been made), and the proposed permit objection filed by the FCSWDD clearly put contested issue 8 as an issue to be determined in this matter. The permit application, the review comments and the FCSWDD objection clearly placed contested issue of fact 8 as a relevant and current issue in the present matter. The DEQ in its argument to the EQC indicated that permit condition #3 stated that a demonstration that the facility is not and will not alter groundwater was required by October 13, 2013. That the demonstration had not been submitted nor reviewed and therefore that the issue was not ripe for this hearing. In fact the demonstration as to the 3 contested issues (6, 7 and 8) were

made in the Renewal Permit Application and were rejected by the DEQ. In its objection filed herein by the FCSWDD set forth and justified the demonstration and conclusions made and placed these 3 issues squarely within the issues to be determined at this hearing. The DEQ should not be allowed to simply avoid the issues in this matter by stating that a future demonstration has to be made (when such a demonstration was made by the FCSWDD and rejected by the DEQ) and put off the issue to a later date.

Wherefore, the FCSWDD respectfully requests that the EQC reconsider its ruling that contested issues 6, 7 and 8 as stated in the FCSWDD Pre-Hearing memorandum were premature, and determine that they are issues to be determined by the EQC at the hearing of this matter.

DATED this 11th day of November, 2011.

Fremont County Solid Waste
Disposal District, Petitioner



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CERTIFICATE OF SERVICE

I certify that on the 11th day of November, 2011, a true and correct copy of the foregoing Petitioner's Motion for Reconsideration of Ruling was served upon Respondent and counsel by depositing the same in the United States mail, postage prepaid, addressed to:

Jeremiah I. Williamson
Luke J. Esch
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002



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