

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

NOV 09 2011

Debra Ruby, Executive Secretary  
Environmental Quality Council

IN THE MATTER OF THE OBJECTION )  
TO THE PROPOSED RENEWAL PERMIT )  
SAND DRAW LANDFILL, SHWD FILE #10-195 )

Docket No. 11-5602

PETITIONER, FREMONT COUNTY SOLID WASTE DISPOSAL DISTRICT'S  
PRE-HEARING MEMORANDUM

COMES NOW Petitioner, Fremont County Solid Waste Disposal District (FCSWDD), by and through its undersigned counsel, and pursuant to the Council's Order of Schedule hereby files its Pre-Hearing Memorandum.

NATURE OF THE CASE

This case involves an objection by the Fremont County Solid Waste Disposal District (FCSWDD) to two conditions placed on a proposed renewal permit by the DEQ and to the procedure employed by the Wyoming Department of Environmental Quality (DEQ) in issuing a proposed permit for the District's Sand Draw Landfill.

The FCSWDD was formed in 1979 pursuant to W.S. 18-11-101 et. seq. It currently operates 3 landfills and 11 transfer stations and serves all of Fremont County, Wyoming, including the Wind River Indian Reservation. The subject matter proposed permit involves the Sand Draw Landfill located approximately 9 miles southeast of Riverton, Wyoming. The Sand Draw Landfill was originally established in about 1980 and began receiving waste in 1982. The Sand Draw Landfill is operated under a single permit, but is divided into 2 areas, one is designated as the original 80 acre area where waste is currently disposed of, and the other area is a 137 acre area that has not received waste and is designated as the expansion area. It was the general plan of the FCSWDD to dispose of waste in the original 80 acre area and then proceed to

dispose of waste in the expansion area.

The last permit issued to the FCSWDD was in 1995. A groundwater monitor system was thereafter set up. In 1999 a monitor well designated as Well R-8 had an unexpected and unexplained rise in the groundwater level. The DEQ felt that the groundwater was recharging and the FCSWDD felt that the groundwater, except for a very deep aquifer, was a perched pocket of water. Thereafter, the FCSWDD proceeded to conduct an investigation of the groundwater to determine its nature and extent. I also sought funding to move into the expansion area or to fund a new landfill location. In the course of doing so several events arose. First, a potential source of funding was not allowed to be placed on the ballot by the Fremont County Commissioners. Secondly, there was a cultural site discovered in the expansion area, that was deemed to be significant and had to be cleared. Due to these facts the DEQ and FCSWDD agreed to use vertical expansion in the original 80 acre area as a means to increase the site capacity of the original 80 acres in the landfill. It was stated by the DEQ that it was the desire to use vertical expansion to the maximum capacity at the time. The DEQ has granted various extensions to the 1995 permit.

At the time that vertical expansion was approved the FCSWDD was disposing of waste in a loose fill method whereby waste was placed loose in the landfill and then compacted. Subsequently, in approximately 2007 the FCSWDD invested in balers and converted to a bale filled landfill. This resulted in several advantages to the FCSWDD. First, with waste being compacted into bales it saves the FCSWDD about 50% in landfill space. Secondly, the bales were permeable than loose filled waste, and finally the bales created a more stable base and lifts for the vertical expansion.

On December 28, 2010 the FCSWDD submitted a proposed permit application for the

landfill site. The application proposed to continue with the disposal of waste in the original 80 acre area through vertical expansion until the year 2037. On March 25, 2011 the DEQ completed its first review of the application and submitted its review comments. Included in the comment was a provision that vertical expansion constituted a new cell and either the District had to submit a performance based design or construct an engineered containment system over the existing waste in the original 80 acre area. If it did not do so, then it had to cease receiving waste in the original 80 acre area by December 31, 2018.

The FCSWDD objected to this permit condition, as well as others. The DEQ thereafter submitted a final review on May 17, 2011 and on July 1, 2011 directed the FCSWDD to publish the proposed permit. No opportunity was allowed for the FCSWDD to comment on the final review prior to publication nor was it allowed to file an amended application. The FCSWDD complied with the directive to publish the proposed permit, although they had expressed concerns over two of the conditions imposed in the permit. Thereafter the FCSWDD submitted objections to two proposed permit during the public comment period and requested this hearing.

The permit conditions at issue herein are permit conditions #1 and #3. Permit condition #1 states that "The operator of this facility shall remove all documents from the permit application, including but not limited to appendices V and Y, which have not been signed and stamped by a Wyoming Professional Engineer (P.E.) or Professional Geologist (P.G.) as required in Chapter 2, Section 2(b)(ii) of the Solid Waste Rules and Regulations." Permit conditions #3 states that "No later than October 1, 2013, the operator of this facility shall demonstrate that the facility is not altering and will not alter groundwater. If the operator fails timely to make such a demonstration, then (i) the original eighty (80) acres shall cease receipt of waste no later than December 31, 2018 and promptly begin closure activities, and (ii) the lifetime renewal permit

2013 that the facility is not altering and will not alter groundwater in accordance with the law and

shall include either 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".

The FCSWDD believes that these two permit conditions are arbitrary, capricious, an abuse of discretion and not in accordance with the law. W.S. 16-3-114 (c)(ii)(A). The FCSWDD additionally believes that the standard procedures that are utilized by the DEQ in permit application reviews was not followed in the present matter after the final permit review was issued.

#### AMENDMENT TO PLEADINGS

Petitioner, FCSWDD, does not anticipate any amendments to the pleadings.

#### STIPULATIONS

No Stipulations have been entered into.

#### PENDING MOTIONS

All Motions filed have been ruled upon by the Council.

#### CONTESTED ISSUES

Petitioner, FCSWDD, believes that the following issues are contested in this mater:

1. Does the DEQ have the statutory or regulatory authority to mandate that the FCSWDD remove certain material from the permit application that was not signed or stamped by a Wyoming Professional Engineer or Professional Geologist, but that was relied upon by the Wyoming Professional Engineer/Professional Geologist that prepared, supervised, signed and stamped the permit application and incorporated the material sought to be removed into the permit application?
2. Is the permit requirement that the operator of the facility demonstrate by October 1, 2013 that the facility is not altering and will not alter groundwater in accordance with the law and

regulatory provisions?

3. Is the date for such a demonstration, October 1, 2013, an arbitrary and capricious date that is not supported by any legal, scientific or technical data?

4. Is the permit condition that requires that, failing such a demonstration, the FCSWDD cease receiving waste in the original 80 acre area by December 31, 2018 in accordance with the law?

5. Is the permit condition that requires that, failing such a demonstration, the FCSWDD cease receiving waste in the original 80 acre area by December 31, 2018, arbitrary and capricious?

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?

9. What date of closure of the original 80 acre area will maximize the disposal capacity of that area?

10. Did the DEQ follow its standard procedure when it issued a first permit review, allowed comment by the FCSWDD, and then issued a final review that materially altered the basis for a permit condition, but failed to allow the FCSWDD an informal opportunity to comment or file an amended application, but rather required publication of the proposed permit.

#### UNCONTESTED ISSUES

Petitioner, FCSWDD, believes that the following issues are uncontested in this matter.

1. Permit Conditions #2 and #4 are not in dispute in this matter.

WITNESSES

Petitioner, FCSWDD will call the following witnesses:

1. Ken Schreuder, P.E., P.G  
Trihydro Corporation  
350 Garfield Street  
Lander, WY 82520  
(307) 332-5280.

Mr. Schreuder was the person who supervised, signed, dated and stamped the permit application. He has been designated as an expert witness and will testify as to all matters set forth in his designation. He will also testify as to all aspects of the preparation of the permit application and the permit application itself. As a former DEQ employee, Mr. Schreuder will also testify as to the various regulations and statutes pertaining to solid waste, the permit application and the procedure employed by the DEQ following the final review.

2. Donald I. Siegel, Ph.D  
Department of Earth Science  
317 Heroy Geology Laboratory  
Syracuse University  
Syracuse, NY 13244  
(315) 443-3607

Dr. Siegel has been designated as an expert witness in this case and will testify in accordance with the designation filed herein, including the opinions stated therein and the facts and basis that were used to form the opinions.

3. Howard Johnson, P.E.  
Inberg-Miller Engineers  
124 E. Main Street  
Riverton, WY 82501  
(307) 856-8136

Mr. Johnson was the FCSWDD consulting engineer from its inception in 1979 until 2010. He will testify as to the history of the Sand Draw Landfill, issues that developed with groundwater, when vertical expansion was allowed by the DEQ, the method of waste disposal at the Sand Draw Landfill when vertical expansion was, the conversion to a baler system of waste disposal for the Sand Draw Landfill and effects that it had on capacity at the facility, the capacity audits that he conducted at the Sand Draw Landfill, and all other matters within his knowledge during times that he acted as the FCSWDD consulting engineer for the Sand Draw Landfill.

4. James Fink  
Hydrogeophysics, Inc.  
2302 North Forbes Boulevard  
Tuscon, AZ 85745  
(520) 647-3315

Mr. Fink is a principal in Hydrogeophysics, Inc. and was involved in a High Resolution Resistivity Survey on the Sand Draw Landfill. He has been designated as an expert witness and will testify in accordance with that designation.

Petitioner, FCSWDD may call the following witnesses:

1. Patrick Troxel

Mr. Troxel is an employee of the DEQ, was the permit reviewer for the current permit application, and if called, will be called as a hostile witness to testify as to the Sand Draw Landfill, the permit applications, the permit review, the permit conditions at issue in this matter and groundwater and vertical expansion issues. Mr. Troxel's deposition was taken in this matter and it is anticipated that he will testify in accordance with his deposition testimony.

2. John Corra

Mr. Corra is the director of the DEQ, and if called will be called as a hostile witness as to the issues of the permit application, the permit review, the permit conditions at issue in this matter and the policies and procedures of the DEQ.

3. Carl Anderson

Mr. Anderson is the Administrator of the DEQ, Solid and Hazardous Waste Division, and if called will be called as a hostile witness as to the issues of the permit application, the permit review, past actions involving the Sand Draw Landfill, the permit conditions at issue in this matter and the policies and procedures of the DEQ.

4. FCSWDD reserves the right to call any witness named by the DEQ.

5. FCSWDD reserves the right to name additional witness upon prior notice to the DEQ and with the permission of the Environmental Quality Council.

### EXHIBITS

Petitioner, FCSWDD hereby designates the following Exhibit for use at the hearing in this matter:

1. December 28, 2010 operating Permit Application, with Appendices, Sand Draw Landfill.

2. First permit review comments dated March 25, 2011.

3. District's response and objection to first review comments.

4. Final permit review comments dated May 17, 2011.

5. Letter dated July 1, 2011 from Carl Anderson to Mike McDonald.

6. Proposed permit.



7. District's comments and objections to proposed permit conditions.
8. Letter from Inberg-Miller to Dave Finley dated March 17, 2002.
9. Copy of Transcript of hearing in front of Fremont County Commission of January 15, 2002.
10. Deposition of Patrick Troxel taken on October 13, 2011.
11. Inberg Miller Sand Draw capacity audit through December 31, 1999
12. Inberg Miller Sand Draw capacity audit January 1, 2000 to June 30, 2001
13. Inberg Miller Sand Draw capacity audit July 1, 2002 to June 30, 2003
14. Inberg Miller Sand Draw capacity audit July 1, 2003 to June 30, 2004
15. Inberg Miller Sand Draw capacity audit July 1, 2004 to June 30, 2005
16. Inberg Miller Sand Draw capacity audit July 1, 2006 to June 30, 2007
17. Inberg Miller Sand Draw capacity audit July 1, 2007 to June 30, 2008
18. Inberg Miller Sand Draw capacity audit July 1, 2008 to June 30, 2009
19. Trihydro Corporation Sand Draw capacity audit dated September 28, 2010
20. Trihydro Corporation Sand Draw capacity audit dated October 10, 2011
21. Letter from Carl Anderson to Jim Hedges dated October 28, 2010.
22. Letter from Mike McDonald to Carl Anderson dated December 23, 2010
23. Resume of Ken Schreuder
24. Resume of Donald I. Siegel, Ph.D.
25. Dr. Don Siegel's report dated September 8, 2009 entitled "Compartmentalization of Ground Water at the Sand Draw #2 Landfill site: Assessing Independent and Multidisciplinary Approaches". Including all documents attached thereto as appendices or otherwise. (appendices V to permit application)

26. March 24, 2010 Addendum to Dr. Don Siegel's report dated September 8, 2009 entitled "Compartmentalization of Ground Water at the Sand Draw #2 Landfill site: Assessing Independent and Multidisciplinary Approaches". Including all documents attached thereto as appendices or otherwise. (appendices Y to permit application).

27. Paper by Dr. Donald I. Siegel and Dr. Dale Groutage entitled "Compartmentalization fo Ground Water In An Intermountain Basin: Implicaitons on Performance Based Landfill Design and Monitoring in the Arid American West."

28. Appendix I, statistical analysis of groundwater by Dale Groutage.

29. Potentiometric Surface map dated April 27, 2011

30. Energy Laboratory groundwater sampling analysis results.

31. Precision Laboratory groundwater sampling analysis results.

32. BETA Analytic Inc., Carbon 14 and radiocarbon aging data.

33. Sand Draw Well sampling data results.

34. Sand Draw well sampling data for Iron, nitrogen, chloride, and bicarbonate.

35. Resume of James B. Fink, Ph.D.

36. Hydrogeophysics High Resolution Resistivity Characterization, Sand Draw Landfill, Fremont County, Wyoming dated February 1, 2008, including all charts, graphs and data contained therein.

37. Letter from Ingerb-Miller to James Hedges dated September 30, 2009.

38. Letter from Carl Anderson to Jim Hedges dated June 21, 2010.

39. Letter from Leroy Feusner to Jim Hedges dated September 18, 2007.

40. Blackboard notation from 2011 meeting between DEQ and FCSWDD..

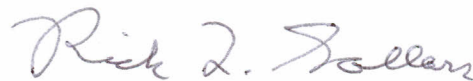
41. Engineered final contour drawing of 80 acre area contained as figure 5-4 of permit

application.

42. Final contour and cross section maps of 80 acre area if closure occurs in 2018.
43. Table of detection of Volatile Organic Compounds at the Sand Draw Landfill.
44. Summary and comments by Dr. J.B. Fink, regarding water conditions and precipitation at the Sand Draw Landfill.
45. Age Dating Groundwater, by William E. Motzer.
46. Tritium, a tool in evaluating ground water systems.
47. FCSWDD reserves the right to use any Exhibits listed by the DEQ.
48. FCSWDD reserves the right to add additional Exhibits upon prior notice to the DEQ and with the permission of the Environmental Quality Council.

DATED this 8<sup>th</sup> day of November, 2011.

Fremont County Solid Waste  
Disposal District, Petitioner



Rick L. Sollars, WSB # 5-2394  
Attorney for Petitioner  
Western Law Associates, P.C.  
277 Lincoln Street  
Lander, WY 82520  
(307) 332-4331

**CERTIFICATE OF SERVICE**

I certify that on the 8<sup>th</sup> day of November, 2011, a true and correct copy of the foregoing Petitioner's Pre-Hearing Memorandum 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

*Rick L. Sollars*

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Rick L. Sollars