



renewal operating permit for its Sand Draw Landfill to the DEQ.

2. On March 25, 2011 the DEQ issued its first review of the Permit

Renewal Application.

3. On April 11, 2011 the FCSWDD submitted an objection to the Permit

review on the basis that there is no regulatory or statutory authority to make the

determination that vertical expansion above existing waste constitutes a new cell.

4. No formal response was received by the FCSWDD prior to what it perceived as an appeal deadline and the FCSWDD filed a Petition for review with the EQC.

5. On May 17, 2011 the DEQ issued a final permit review that removed the determination that the vertical expansion would constitute a new cell/unit.

6. On the basis of the final permit review the EQC Petition was dismissed without prejudice as moot.

7. In order to comply with the DEQ rules and regulations and the statutes the FCSWDD published notice of the permit.

8. On August 25, 2011 the FCSWDD filed a written objection to the proposed permit and requested a hearing before the EQC.

9. The basis of the objection was that proper procedure for comment by the FCSWDD was not followed after issuance of the final permit review, that permit condition #1 is not in accordance with the law, and that permit condition #3 is

arbitrary and capricious, an abuse of discretion and not in accordance with the law.

10. A hearing was thereafter held pertaining to the objection of the FCSWDD on November 16 and 17, 2011.

11. At the conclusion of the hearing the Environmental Quality Council ruled that permit condition #1 should be modified to redact out all information except the data relied upon and certified to by the FCSWDD's engineer and that permit condition #3 should be deleted in its entirety as being arbitrary and capricious and not in accordance with the law.

12. That the first permit review and the final permit review were not done in good faith and done in a manner that harassed the permittee, FCSWDD, as is more fully set forth herein.

13. That the first review made a conclusion that vertical expansion of an existing cell constituted a new cell and thus there had to be an engineered containment system between the existing waste and the vertical expansion.

14. The DEQ was aware that this determination, that vertical expansion did not constitute a new cell requiring an engineered containment system, did not comport with nor have any support in the DEQ Rules and Regulations. (See Exhibit SD 10, P. 29, Lines 11-14, wherein Patrick Troxel was asked "So it's your testimony, then, that the engineered containment system liner is not applicable to a vertical expansion" and Mr. Troxel responded "Yes". See also Hr,g Tr. P. 82-84).

15. Despite this knowledge the DEQ issued the first permit review classifying vertical expansion as a new cell, which required the FCSWDD to submit a response disputing the same and to file an action with the EQC, which was later dismissed due to mootness when the DEQ removed that determination in its final review.

16. The final review of the permit application was issued by the DEQ on May 17, 2011.

17. Section 1.1 of the final permit review indicated that all material not signed and stamped by a Wyoming Professional Engineer or Geologist, including

Appendices V and Y, had to be removed from the permit application

18. Section 3.7 of the final permit review made the determination that the groundwater quality at the landfill has been/is being altered.

19. Section 4.4 of the final permit review determined that based upon the letter from the FCSWDD dated March 17, 2003, that the FCSWDD must demonstrate that the facility is not altering and will not alter the groundwater by October 1, 2013 or cease receiving waste by December 31, 2018.

20. The FCSWDD requested an opportunity to submit additional information or an amended permit application to the DEQ.

21. The DEQ, on July 1, 2011, disallowed the request of the FCSWDD and ordered that the FCSWDD publish the proposed permit that it had submitted to the FCSWDD.

22. In order to comply with the DEQ rules and regulations and the statutes the FCSWDD published notice of the permit.

23. On August 25, 2011 the FCSWDD filed a written objection to the proposed permit and requested a hearing before the EQC.

24. The hearing on November 16 and 17, 2011 was then held.

25. The basis of the objection was that proper procedure for comment by the FCSWDD was not followed after issuance of the final permit review, that permit condition #1 is not in accordance with the law, and that permit condition #3 is arbitrary and capricious, an abuse of discretion and not in accordance with the law.

26. 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 by Chapter 2, Section 2(b)(ii) of the Solid Waste Rules and Regulations.

27. The application was stamped, signed and dated by Ken Schreuder, a Wyoming registered professional engineer and professional geologist.

28. W.S. 33-41-117(a)(vi) exempts from the State of Wyoming Geology licensing requirement persons engaged in teaching or research in the physical or natural sciences.

29. W.S. 33-41-117(a)(xi) exempts from the State of Wyoming Geology licensing requirement individuals engaged in drafting, sampling, sample preparation, and routine laboratory work in which the elements of initiative, scientific judgment and decision making are either lacking or not required, including the other activities which do not use scientific methods to process and interpret geologic data.

30. The EQC ruled that the FCSWDD engineer and geologist, Ken Schreuder, could use the data, laboratory work and sampling results contained in Appendices V and Y, but must redact the remainder thereof.

31. Permit condition #3 provides that no later than October 13, 2013, the operator of this facility shall demonstrate that the facility is not altering and will not alter groundwater. If the operator fails to timely 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 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.

32. Chapter 2, Section 5(x) of the Solid Waste Rules and Regulations provides that Solid Waste disposal facilities shall not be allowed to alter groundwater quality, as determined by groundwater monitoring.

33. The EQC ruled that permit condition #3 was not in accordance with the law and Chapter 2, Section 5(x), as there is a material difference between altering groundwater and altering groundwater quality.

34. The DEQ permit reviewer was aware of their Rules and Regulations and did not place the Rules and Regulations criteria in the permit condition #3 (Hr'g Tr. P. 80-81).

35. Chapter 2, Section 2(b)(x)(3) of the Solid Waste Rules and Regulations requires that the application for a permit renewal contain an evaluation of the facility's potential to impact surface and groundwater quality based on the design and the hydrogeologic information.

36. The DEQ has not classified the groundwater nor determined the groundwater quality, yet determined in the permit review that the groundwater quality at the sand draw landfill has been/is being altered. (See Exhibit SD 4, Section 3.7, P. 7 of 30, and Hr,g Tr. P. 78-80).

37. The permit condition #3 also requires demonstration that the facility will not alter the groundwater.

38. The DEQ Rules and Regulations require in Chapter 2, Section 2(b)(x)(3) that there be an evaluation of the potential to impact groundwater quality.

39. The permit condition #3 is not in accordance with the law and this was

acknowledged by Patrick Troxel of the DEQ. Mr. Troxel further acknowledged that such a showing could never be made as there is a possibility that even with an engineered containment system there could be leakage. (See Hr,g Tr. P. 81-82)

40. The DEQ through the years has also suggested various, inconsitent dates for closure of the original eighty (80) area.

41. In 2002 the DEQ suggested a date of 2012-2016. (Hr,g Tr. P. 66-67)

42. In 2007 the DEQ suggested a date of 2027.(Exhibit SD 39, Hr,g Tr. P. 69-70)

43. In 2010 the DEQ suggested a date of 2028. (Exhibit SD 21, Hr,g Tr. P. 72-73).

44. The final permit review of May 17, 2011 and Permit condition #3 issued on July 1, 2011 contains a closure date of December 31, 2018 for the original 80 acres.

45. The date of December 31, 2018 is based upon a letter submitted by the

FCSWDD on March 17, 2003, when it operated a loose fill landfill rather than the current bale fill system.

46. The date of December 31, 2018 was not based upon any technical considerations. (Hr,g Tr. P.121)

47. At the time that the date of 2028 was proposed by the DEQ they were aware of the current conditions at the sand draw landfill. (Hr,g Tr. P.130-133).

48. The EQC rules that the date of December 31, 2018 was arbitrary and capricious. (Hr,g Tr. P. 405).

49. From the evidence and testimony presented at the hearing it is clear that the DEQ initially made a determination that was not supported by their own Rules and Regulations (that vertical expansion constituted a new cell) which required the FCSWDD to expend fees and costs to dispute.

50. The DEQ then changed the basis for the permit condition (#3) in such a manner that it did not comply with its own Rules and Regulations and used dates

that were arbitrary and capricious.

51. The DEQ issued these determinations with full knowledge of their own Rules and Regulations and admitted at the hearing that the permit condition was not in accordance with those Rules and Regulations and in one instance the required demonstration could never be made (That the vertical expansion would not alter the groundwater).

52. After issuance of the final review the FCSWDD attempted to submit comments, but were rejected in that attempt and directed to publish the proposed permit.

53. Upon publication of the proposed permit, the FCSWDD had no alternative than to submit comments and request a hearing.

54. In undertaking the above actions that were contrary to their own Rules and Regulations and refusing further comments on the final permit review the DEQ acted in bad faith.

55. That the FCSWDD has incurred costs and expenses, including

attorney's fees, as follows:

Attorney fees of Western Law Associates (Exhibit A)	\$15,656.00
Costs of Western Law Associates	\$ 3,508.43
Tri-Hydro, (Ken Scheuder) costs and fees in responding to Discovery and expert witness fees. (Exhibit B)	\$21,249.00
HGI (Jim Fink) costs in responding to discovery (Exhibit C)	\$11,451.26
IME (Howard Johnson) cost in responding to Discovery and testifying at hearing (Exhibit D)	\$ 8,248.04
Don Siegel, costs in responding to discovery And testifying as an expert witness. (Exhibit E)	\$ 7,581.91
Out of pocket costs incurred by the FCSWDD (Exhibit F)	<u>\$ 1,226.72</u>

Total amount \$68,921.36

WHEREFORE, the FCSWDD requests that the Environmental Quality Council award fees and expenses in their favor and against the DEQ in the amount of \$68,921.36.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Fremont County Solid Waste  
Disposal District, Petitioner

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CERTIFICATE OF SERVICE

I certify that on the \_\_\_\_ day of \_\_\_\_\_, 2012, a true and correct copy of the foregoing Petition for Award of Costs and Expenses 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

132 Capitol Building

Cheyenne, WY 82002

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Rick L. Sollars