## 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 TRAVERSE TO DEQ'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Petitioner, Fremont County Solid Waste Disposal District, by and through its undersigned attorney, and hereby files its traverse to the Motion of the DEQ for Summary Judgment. In furtherance hereof Petitioner would state to the Council that there are material issues of fact in dispute as to whether the DEQ has acted arbitrarily and capriciously in setting Permit Conditions #1 and #3, and has included in those Permit conditions requirements and conditions that are contrary to the Environmental Quality Act and the DEQ regulations.

There exist a material issue of fact in dispute as to how was the closure date set in Permit Condition #3 was arrived at and what scientific or technical data it is based upon. A further disputed material issue of fact that is presented to the council are differing dates that have been proposed by the parties and why did the DEQ selected a closure date for the original 80 are disposal area of December 31, 2018 without any technical or scientific data to establish that date, as opposed to other dates that have been presented by the DEQ of from 2012 to 2016, 2018 and. There is a material issue of fact in dispute pertaining to the

DEQ stated basis for the closure date and whether the circumstances under which that date was proposed are still present, and if not present, are they a valid basis for the DEQ to rely upon in setting the closure date. None of the dates proposed by the DEQ either in the permit condition or in other proposals will maximize the vertical expansion, which is what the DEQ committed to in 2002. Rather the date submitted in the permit application of 2037 will maximize the vertical expansion capacity. There is therefore a material issue of fact in dispute as to what closure date will maximize the capacity of the vertical expansion.

The DEQ attempt to limit the material in Permit Condition #1 that the licensed Professional Engineer/Geologist can rely upon in supervising and completing the application. A disputed material issue of fact exists as to whether the DEQ has such limiting powers and if such power exists, whether it was exercised in an arbitrary and capricious manner, given that information with the same alleged defects is relied upon by the DEQ.

Finally, there is a material issue of fact in dispute as to whether permit application #3 accurately reflect the standard set forth in the DEQ regulations when it requires the applicant to demonstrate that the facility is not altering and will not alter groundwater.

This Traverse is supported by the pleadings and documents on file herein, the sixteen documents submitted herewith, the documents submitted by the DEQ with the Motion, the DEQ regulations, the deposition of Patrick Troxel, an employee of the DEQ, and the memorandum in opposition to the Motion for

Summary Judgment filed contemporaneously herewith.

WHEREFORE, Petitioner, Fremont County Solid Waste Disposal District, requests that the Council deny the DEQ Motion for Summary Judgment, and for such other and further relief as the Council deems just and proper in the premises.

DATED this \_\_\_\_\_ day of October, 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 \_\_\_\_ day of October, 2011, a true and correct copy of the foregoing Traverse to DEQ's Motion for Summary Judgment was served upon Respondent and counsel by depositing the same in the United States mail, postage prepaid, addressed to:

Jeremiah I. Williams Luke I. Esch Wyoming Attorney General's Office 132 Capitol Building Cheyenne, WY 82002

Rick L. Sollars	