

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

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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
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Rick L. Sollars