

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
REPLY TO DEQ'S ANNEX OF UNDISPUTED MATERIAL FACTS
AND STATEMENT OF ADDITIONAL FACTS

COME NOW Petitioner, Fremont County Solid Waste Disposal District (FCSWDD), by and through its undersigned counsel, and hereby responds to the DEQ's annex of undisputed material facts and further provides its statement of additional facts which create material issues of fact and preclude the issuance of Summary Judgment.

In response to the DEQ's listing of what it terms undisputed facts, FCSWDD alleges that all stated facts are not undisputed, and certain stated facts that are now in dispute are material to the present action. With regards to the DEQ Stated facts, FCSWDD responds to each as follows:

1. Admit
2. Admit
3. FCSWDD does not agree with this fact. In the analysis from the District's consultant further monitoring will be necessary in order to determine the significance of this fluctuation. It was further opined by the consultant that it appears that well R-8 is monitoring a perched zone. (Ex. 6, at 1).

4. This statement is irrelevant to the present action, as the current action and permit deals with the original 80 acre parcel of the landfill and vertical expansion thereof and not the expansion area. Permit condition #3, to which Petitioner objects only requires ceasing receiving waste in the original 80 acre area.

5. Admit

6. Admit. However it was determined that further monitoring will be necessary in order to determine the significance of this fluctuation. (Ex. 6)

7. The FCSWDD does not agree with this statement of fact as the cited legal sections are applied to it.

8. The FCSWDD does not agree with this statement of fact in that it is only partially factual. While various extensions of the permit were requested and granted, the reasons for the request were (1) that a culturally significant area had been located in the expansion area and had to be cleared, (2) the groundwater issue raised by monitor well R-8 and the significance of the change in groundwater level, and (3) the beginning of treatment of petroleum contaminated soils on the permitted area. (Ex.7)

9. Admit

10. FCSWDD does not agree with this statement of fact, as the significance of the groundwater in monitor well R-8 had to be evaluated. This statement is also irrelevant to the present action, as the current action and permit deals with the original 80 acre parcel of the landfill and vertical expansion thereof

and not the expansion area. Permit condition #3, to which Petitioner objects only requires ceasing receiving waste in the original 80 acre area.

11. Admit

12. Admit

13. While this fact is partially correct it was also the goal and objective of the DEQ to maximize vertical expansion as best we can now. (Ex. 24, at 6, and Ex. A at 2-3). The terms Short-term solution is nebulous and has continued to be altered by the DEQ in various settings. (Ex. A at 2-3; Ex. 45; and Ex. B at 2).

14. Admit

15. Admit

16. Admit

17. FCSWDD disputes this fact. Petitioner disputes that the purpose of hiring consultants was to allow it to use the Sand Draw Expansion area without engineered containment. Rather, consultants were hired to determine if this was possible.

18. FCSWDD does not agree with this statement. The first consultant utilized by the FCSWDD was the District Engineer, Inberg-Miller.

19. Admit. FCSWDD would add to the sentence that the Willowstick report was signed by Paul Rollins, the business manager and not by a Wyoming Professional Engineer or Geologist.

20. Admit

21. FCSWDD disputes this fact. The Willowstick report indicates that an AquaTrack geophysical investigation may not be warranted, “however, the AquaTrack technology may be of benefit in further characterizing the groundwater by delineating areas of greater saturation and/or preferential flow paths beneath the site. (Ex. 30, at 1)

22. FCSWDD disputes this fact Dr. Siegel was hired to evaluate the Sand Draw Landfill to determine if engineered containment was required. This statement is irrelevant to the present action, as the current action and permit deals with the original 80 acre parcel of the landfill and vertical expansion thereof and not the expansion area. Permit condition #3, to which Petitioner objects only requires ceasing receiving waste in the original 80 acre area.

23. Admit

24. Admit. FCSWDD would state that these were only estimated amounts as they were below the reporting standard. (Ex. 37)

25. Admit

26. Admit

27. FCSWDD admits that the stated facts were the reason for Permit Condition #1. However, FCSWDD disputes that this is the language of the cited regulatory section. Chapter 2, Section 2, (b)(ii) of the Solid Waste Rules and Regulations provides that “All permit applications shall be prepared under the supervision of a professional engineer registered in the State of Wyoming. All permit applications forms shall be stamped, signed and dated by a professional

engineer. In addition, all portions of the permit application which require geological series or work shall be stamped, signed and dated by a professional geologist. There is no requirement than any professional engineer or professional geologist, other than the one supervising the preparation of the permit, be registered in Wyoming and it does not preclude that professional engineer from relying upon material provided by a non-Wyoming registered engineer or geologist.

28. FCSWDD disputes this fact. The application was submitted in December 2010 and provided for vertical expansion until 2037, or 27 years. (Ex. K, at 5-7).

29. FCSWDD disputes this fact. This proposal sought to maximize the vertical expansion capacity as was the DEQ's stated objective in 2001. (Ex. A). It also does not contradict the DEQ's assertion as it has defined short term differently at different time. (Ex. A at 2-3; Ex. 45; and Ex. B at 2).

30. Admit

31. Admit. The subject of the response was that there were no statutory or regulatory provisions that vertical expansion over existing waste was a new cell.

32. FCSWDD does not know what action the DEQ took in response to the letter. All the FCSWDD is aware of is that the DEQ issued its final review on May 17, 2011 that omitted this assertion.

33. FCSWDD disputes this fact. While the DEQ changed the permit review to omit the provision that vertical expansion constituted a new cell, they did not agree with the FCSWDD analysis. (Ex. L, M & N).

34. Admit

35. Admit. However, DEQ indicated that it could not classify the groundwater until 2013.

36. Admit. However, DEQ indicated that it could not establish groundwater protection standards for the Sand Draw Landfill until January of 2013.

37. Admit.

The Petitioner would submit that the following facts are undisputed and germane to the current hearing and by their nature create material issues of fact in this matter.

1. On January 15, 2002 Patrick Troxel, as a representative of the DEQ and who is also the current person in the DEQ that provided the initial review of the application herein, appeared in front of the Fremont County Commissioners at a meeting to discuss the submission of a 1% sales tax to the voters of Fremont County to fund operations of the landfills and creation of a new landfill. (Ex. A at 3-4; Ex. 24).

2. At that hearing he reiterated the DEQ commitment to allowing vertical expansion and indicated that “it has been the department’s

recommendation to the board that we maximize that vertical expansion as best we can now.” (Ex. A at 3-4)

3. Mr. Troxel further testified that that with the vertical expansion there would be a 10-14 year gain. (Id). This would equate to a closure of the expansion area in 2012 to 2016.

4. On October 28, 2010 Carl Anderson, Ph.D, of the DEQ sent a letter to the District recapping a meeting held on October 19, 2010. (Ex. B)

5. In that October 28, 2010 letter Mr. Anderson indicated that closure of the original 80 acres would be greater than 6 years (the Department’s assumed timeframe for closure), but less than the 26 years (the District’s current capacity assessment for the existing cell). (id)

6. That by the above statement the closure could occur anywhere from 2016 to 2036. (id)

7. Mr. Anderson, in that letter, thereafter proposed that the closure of the existing 80 acre original cell occur on January 1, 2028.(id at 2).

8. The District replies to Mr. Anderson’s letter on December 23, 2010 and disagreed with the representations of what was agreed to by Mr. Anderson. (Ex. C).

9. The District sought to maximize the vertical expansion capacity (Ex. C) as was proposed by Mr. Troxel in testimony to the Fremont County Commissioners. (Ex. A).

10. On July 1, 2011 the DEQ mandated that the District publish the proposed permit for public comment by July 22, 2011. (Ex. D)

11. That as of this date the groundwater at the Sand Draw Landfill has not been classified and groundwater protection standards have not been established and may not be so classified or standards set for up to 15 months. (EX D.).

12. Chapter 2, Section 2, (b)(ii) of the Solid Waste Rules and Regulations provides that "All permit applications shall be prepared under the supervision of a professional engineer registered in the State of Wyoming. All permit applications forms shall be stamped, signed and dated by a professional engineer. In addition, all portions of the permit application which require geological series or work shall be stamped, signed and dated by a professional geologist.

13. Proposed Permit Condition #3 requires that the District cease receipt of waste in the original 80 acres by December 31, 2018, unless it can demonstrate by October 1, 2013 that the facility is not altering and will not alter groundwater. (Ex 45 at 2).

14. Chapter 2, Section 5 (x) of the Department rules and regulations provides that Solid waste disposal facilities shall not be allowed to alter groundwater quality, as determined by groundwater monitoring.

15. Chapter 2, Section 2, (b)(iii)(A)(X) (2) and (3) of the department's rules and regulations provides as follows with regards to requirements of information to be included in the permit application, to-wit:

(2) Estimated site capacity and site life, including the calculations on which these estimates are based;

(3) An evaluation of the facility's potential to impact surface and groundwater quality, based on the facility design and the hydrogeologic information required in subsection (b)(iii)(A)(x) of this section.

16. The definition of pollution as contained in W.S.35-11-103 (c) is "contamination or other alterations of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity or odor of the waters or any discharge of any acid or toxic materials, chemical or chemical compound, whether it be liquid, gaseous, solid, radioactive or other substance, including wastes, into any waters of the state which creates a nuisance or renders any waters harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wildlife or aquatic life, or which degrades the water for its intended use, or adversely affects the environment.

17. Section 5.4.1 of the permit application estimates that the site is expected to reach capacity in the year 2037. (Ex. E at 3)

18. The final closure plan and grade of the permit application are based upon that 2037 closure date. (Ex. F)

19. Section 5.5 of the permit application concludes that “In summary, the body of evidence summarized above indicates that the historical operations the Sand Draw Landfill has not adversely affected the groundwater below the facility, and that the design, operating and closure procedure described in this document will limit the potential for future adverse impact to develop.” (Ex. G at 5).

20. Section 4.8 of the Permit Application addressed groundwater quality and set forth the low level VOCs that had been detected, found no statistically significant differences between the concentrations of VOCs in up-gradient wells and down-gradient wells, found no statistically significant increasing trend in the concentrations of VOCs, and determined that the water quality did not exceed the standards for parameters in Class III and Class IV waters. (Ex. H).

21. The review comments to the application found that each section was complete and technically adequate, with comments on some of the sections (Ex. I).

22. The comments to section 5.4.1, as contained in section 4.4 of the final review, referred to previous correspondence between the DEQ and FCSWDD and stated that the proposed closure date of the original 80 acres was based upon what the DEQ perceived as a commitment to closure, but did not dispute any of the data presented and did not set forth any data, other than previous letters to base its decision on. (Ex. I at 8 and 9 of 30).

23. The comments to section 5.5, as contained in section 4.5 of the final review, notes the Districts analysis of the claim that the upper most groundwater is perched, and requires a showing that the facility is not and will not alter the groundwater. (Ex I at 10 of 30)

24. Section 11.0 of the permit application sets forth the references that were relied upon in developing the permit application, which include appendices V and Y by Dr. Donald Siegel. (Ex. J at 11-4)

25. The comments to section 11.0, as contained in section 10.0 of the final review, finds that this section is complete and technically adequate without question of the references or reference to chapter 2, Section 2, (b)(ii) of the Department rules and regulations. (Ex. I at 30 of 30).

26. The FCSWDD's consultant, Ken Schreuder, is a Wyoming licensed Professional Engineer and Geologist. (Ex. K).

27. Donald Siegel, Ph.D. is a professor at Syracuse University and has been an expert witness to the United States Senate in June of 1997. (Ex. L).

28. Following the first review of the FCSWDD permit application for the Sand Draw Landfill and the filing of an appeal by FCSWDD to this body, the DEQ removed the determination that vertical expansion constituted a new cell, but rather "DEQ set aside that issue and did not posit any decisions in relations thereto." (Ex. M, N, O).

29. That the December 31, 2018 date to cease receiving waste in the original 80 acres was based upon a proposal to continue with loose waste in the area. (Ex. 16)

30. Since the proposal in Exhibit 16, FCSWDD has purchased and implemented a system to bail its waste prior to placing the same in the original 80 acre area.

31. That the final cover for the original 80 acre area is intended to take place in phases, with various closure dates for different phases or areas of the original 80 acres. (Ex. S).

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 Petitioner, Fremont County Solid Waste Disposal District Reply to DEQ's Annex of Undisputed Material Facts and Statement of Additional Facts 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
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132 Capitol Building
Cheyenne, WY 82002

Rick L. Sollars