

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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
RESPONSE TO DEQ'S FIRST MOTION IN LIMINE

COMES NOW, Petitioner, Fremont County Solid Waste Disposal District, by and through its undersigned attorney, and hereby files its response to the First Motion In Limine of the DEQ. In doing so, FCSWDD would state to the Council that it believes it has complied with the Rule on disclosure of experts and the Motion should be denied.

On September 9, 2011 the Council issued a Scheduling Order in the above matter. As part of that Order the Council Ordered that Expert designations and reports shall be filed by 12:00 noon September 23, 2011. On September 23, 2011 FCSWDD filed its Designation of Expert Witnesses, naming Ken Schreuder, Donald L. Siegel, James Fink and Howard Johnson as its anticipated Expert Witnesses. For each such designated expert the FCSWDD submitted various documents, including resumes for each and report that each had prepared, with the exception of Howard Johnson, who had not prepared a report. This complied with the exact wording of the Order of the Council. In contrast the DEQ made no such designations and are precluded from offering any Expert Witness to render opinions, even as rebuttal witnesses. Wilson v Tyrell, 246 P.3d

265 (Wyo. 2011).

For each designated expert witness FCSWDD would respond to the Motion as follows:

1. Ken Schreuder, P.E., P.G.

Mr. Schreuder was the person who supervised, prepared, signed, dated and stamped the permit application as issue in this matter. It was noted in his disclosure that it was anticipated that he would testify as to the application for the permit renewal that he prepared, the data that he relied upon, ... It was also noted that he would testify as to the effect that the proposed vertical expansion (as stated in the permit) would have on the groundwater quality. It was then noted that a copy of the application has been submitted to the Wyoming Department of Environmental Quality. This is a two volume document that constituted his report and that did not need to be re-produced and supplied to the DEQ, as they already had it in their possession. Contained in Section 5.5 fo the permit is Mr. Schreuder's analysis of the potential impacts to surface and groundwater and his opinion as to those impacts. (Ex. G, page 5-14 of the section). The permit application also contained an analysis and opinion on the groundwater quality. (Ex. H). Finally, the permit application contained an extensive list of references that he relied upon in preparing his report and forming his opinion. (Ex. J). The DEQ has had this permit application since December 28, 2010 and it is disingenuous to now claim they do not have sufficient time to have their experts analyze Mr. Schreuder's opinions and the data he has relied

upon. The DEQ was therefore made aware of Mr. Schreuder's opinions and the data that he relied upon.

2. Donald Siegel, Ph.D.

Mr. Siegel was a person who was consulted by the FCSWDD to investigate the groundwater conditions that exist at the Sand Draw Landfill. As a result of his work he produced a paper that is entitled "Compartmentalization of Ground Water In An Intermountain Basin: Implications on Performance-Based Landfill Design and Monitoring in the Arid American West." He also submitted a supplemental report on April 24, 2010. (Ex. R and T). Both of these reports deal with the Sand Draw Landfill. The DEQ was supplied these reports, both with the Expert Witness Designation and also with the Permit Application. These two reports are Appendices V and Y of the Permit Application that the DEQ has sought to exclude in Permit Condition #1. Therefore they have had since December 28, 2010 to study and evaluate them and consult with their own experts. Additionally, Exhibit R contains a list of references relied upon in producing the report and also has a chart of data that was relied upon. Finally, starting on page 15 of the report Dr. Siegel states his Summary and Conclusions, which include his opinions. Also, on Exhibit T Dr. Siegel discusses the effect of the report of low level VOCs, and on page 3 he states his conclusions. Therefore, The DEQ was therefore made aware of Dr. Siegel's opinions and the data that he relied upon.

3. James Fink

Mr. Fink is a principal with Hydrogeophysics, Inc. His company prepared a detailed analysis of the groundwater at the Sand Draw Landfill.(Ex. Q). This report was also filed with the DEQ as appendix u of the permit application. Contained in the report are a list of references relied upon and data and graphs of data used in the report. On page 34 of the report are the conclusions that were reached from the study and the opinions that Mr. Fink will testify to.

4. Howard Johnson, P.E.

Mr. Johnson was listed as an expert witness but did not prepare a report on the current conditions and will not be called to testify as an expert witness in this matter. However, Mr. Johnson was the consulting engineer for the FCSWDD from its inception in 1979 to 2009 and may be called to testify as to factual matters in this case.

CONCLUSION

The DEQ has had in its possession all of the reports and opinions of the designated experts since December 28, 2011. Additionally, they have had the names of these experts, with copies of their report provided again (except for Mr. Schreuder's due to the volume of the permit application) since the expert witness designation deadline of September 23, 2011. They have had more than sufficient time to consult expert witnesses of their own on the opinions of these individuals, and could have (but failed) to list any such expert witnesses by the deadline. Additionally, the discovery deadline was set for October 17, 2011.

Therefore, the DEQ had 24 days to conduct further discovery and depose the designated expert witnesses had they desired to do so. The FCSWDD has complied with the Council's Scheduling Order by designating its expert witnesses in a timely manner and providing the reports of those experts. The DEQ has also had the references and data relied upon by the designated expert witnesses since December 28, 2010.

WHEREFORE, the FCSWDD prays that the Council enter Its Order denying the DEQ's First Motion In Limine.

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 Response to DEQ's Motion In Limine was served upon Respondent and counsel by depositing the same in the United States mail, postage prepaid, addressed to:

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Rick L. Sollars