

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

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Jim Ruby, Executive Secretary
Environmental Quality Council

Docket No.-11-5801

In the Matter of the Appeal of the)
DEQ Director's Decision to a)
Request Variance for Sheridan)
Landfill SHWD File # 10.526)

CITY OF SHERIDAN'S RESPONSE

COMES NOW The City of Sheridan (the "City"), by and through its attorney, Greg Von Krosigk of Pence and MacMillan LLC, and its consultant Burns & McDonnell Engineering Company, Inc., which hereby responds to the Wyoming Environmental Quality Council's (the "EQC") ORDER TO RESPOND dated October 13, 2011. The Order was issued as a result of six neighbors who requested a hearing to object to the Wyoming Department of Environmental Quality's (the "DEQ") approval of the Sheridan Landfill Variance Request for the Proposed Municipal Solid Waste (herein "MSW") and Construction and Demolition (C&D) Landfill Development (the "Variance"). In response to the Objectitioner's letters of objection dated October 5, 2011 (collective the "Petition"), the City responds as follows.

I. DEQ'S GRANT OF VARIANCE IS PROPER UNDER WYOMING STATUTE § 35-11-502.

The question before the EQC is whether the DEQ's grant of variance for the City's landfill expansion was proper. It is important to note that the City's proposed expansion of the landfill into the 102 acres adjacent to the long-existing landfill and owned by the City will not be used or operated in any manner that would require a "variance" – every use of the expanded area will comply with Wyoming law. The only reason a "variance" was required is due to the *location* of the expanded site.

The DEQ concluded, after substantial analysis, that the City's proximity variance request, which is attached hereto as **Attachment 1**, does comply with the statutory requirements and will not injure or threaten to injure the public's health, safety or welfare. A copy of DEQ's approval is attached hereto as **Attachment 2**. The only question before the EQC is whether after the public hearings held, the DEQ's written decision reasonably supports its determination and conclusion

that the proximity variance does not injure or threaten to injure the public health, safety or welfare. See, W.S. § 35-11-502(c).

The City performed a Site Location Restriction Demonstration in December 2009 to evaluate and document the location standard status of the proposed MSW and C&D development south of and adjacent to the existing City of Sheridan Solid Waste Disposal Facility. The City's evaluation was conducted in accord with Wyoming Solid Waste Rules (WSWR), Chapter 2 - Sanitary Landfill Regulations, Section 3(a) and Chapter 4 - Construction/Demolition Landfill Regulations, Section 3. WSWR Chapter 2, Section 3 requires a demonstration of compliance for new MSW facilities and must be performed for the following location restrictions:

airport proximity, local zoning ordinances, distances to residences, other buildings, roads, parks, drinking water sources, and surface waters, floodplains, wetlands, Wild and Scenic Rivers Act, National Historic Preservation Act, Endangered Species Act, big game winter range/grouse breeding grounds, fault areas, avalanche areas, hydrogeologic conditions, distance from incorporated cities or towns, and compliance with other standards.

In addition to the aforementioned demonstrations, WSWR Chapter 4, Section 3 requires demonstrations of compliance for new C&D facilities include dust, odor, and nuisance potential.

Pursuant to WSWR Chapter 1, Section 2(i)(i), "for solid waste disposal facilities which do not meet the location standards specified in paragraphs (i) through (iv) of W.S. §35-11-502(c), the applicant may apply to the director for a variance from the standards by submitting a written variance application." Pursuant to the results of the Site Location Restriction Demonstration, the City requested a Variance from the DEQ for the proposed landfill in accordance with W.S. §35-11-502(c) for the following Site Location Restriction Criteria:

- Distance to Residences and Other Buildings
- Distance to Drinking Water Sources
- Distance from Incorporated Cities or Towns

The Variance Request was prepared in accordance with WSWR Chapter 1, Section 2(i)(i) through (iv). From initial submittal of the Variance Request by the City to DEQ through DEQ's final approval, the application process took approximately eighteen (18) months. The following is a timeline of major Variance submittals and DEQ comments:

Initial Variance Request to submitted to DEQ	December 2009
DEQ comment letter received by City	March 2010
Revised Variance Request submitted to DEQ	September 2010
DEQ comment letter received by City	November 2010
Response to DEQ comments	November 2010
DEQ Final Review letter	November 2010
<i>*DEQ deemed the Variance Request complete, and DEQ staff recommendations to the Administrator and Director was that granting the requested variance(s) was warranted.</i>	
Final Variance Request submitted to DEQ	December 2010
DEQ led Public Meeting in Sheridan	January 2011
DEQ requests additional location information from the City	March 2011
City provides DEQ with requested information	July 2011
DEQ approval of Variance Request	August 2011

After careful consideration, the DEQ reasonably determined that:

1. the proposed design and operation of the facility will minimize the threat to local groundwater resources;
2. Issues such as dust, odor, litter and vectors will be addressed;
3. The conditions of the grant will help protect the neighbors on their stated-concerns; and
4. Most importantly, the variance as to location standards will not injure or threaten to injure public health, safety or welfare.

[See DEQ Decision at Attachment 2]

WDEQ concluded that “the proposed design and operation of the facility will minimize the threat to local groundwater resources,” and stated that “information provided by the City indicated issues such as dust, odor, litter, and vectors will be addressed.

In November 2010, WDEQ staff deemed the Variance complete, and made recommendations to the Administrator and Director that the City be granted the Variance. A WDEQ-led public meeting was held on January 25, 2011. As a result of the claims made at this meeting by the surrounding landowners, WDEQ withheld the final decision on approval or denial of the variance request. On March 23, 2011, WDEQ issued a letter to the City that asked them to look into alternative landfill locations, which is attached hereto in **Attachment 3**. This request required the City to more thoroughly evaluate other locations than the WSWR require – WDEQ had already deemed the Variance application complete, and as part of that application, the City had complied with WSWR Chapter 1, Section 2(ii)(A-C), which state:

- (A) There are no available alternative locations which meet the location standards for a solid waste management disposal facility to meet the disposal needs of the applicant, within a reasonable distance of the boundary of the service area of the facility;
- (B) It is not possible for the applicant to use existing, permitted solid waste management disposal facilities owned by another person within a reasonable distance of the boundary of the service area of the facility; and
- (C) Special or unique conditions or circumstances apply to the applicant and justify granting the variance.

The City performed a limited siting study that evaluated other potentially suitable sites within the County. The study concluded the best landfill alternative continued to be expansion at the existing site. No other practical and feasible location for waste disposal could be readily identified. See July 2011 letter response to WDEQ is included in **Attachment 3**.

Standard of Proof; Burden on Objectioners.

The standard of proof in this contested case hearing is the preponderance-of-the-evidence standard. See *JM v. Dep't of Family Servs.*, 922 P.2nd 219, 223 (Wyo. 1996). The burden of proof is on the Objectioners to show, by a preponderance of the evidence, that the DEQ's grant of the variance should be reversed by this Council because the variance will injure or threaten to injure the public health, safety or welfare. Objectioners cannot meet there burden in this matter – the City and DEQ performed a comprehensive analysis and their conclusion that the variance will not injure or threaten to injure the public is well founded.

II. NO ALTERNATIVE SITES OR OPTIONS AVAILABLE:

As part of the due diligence that the City undertook when preparing the Variance, the City evaluated other practical waste disposal alternatives to fulfill the requirements of WSWR Chapter 1, Section 2(i)(ii)(A). These alternatives included a preliminary alternative landfill site location search and evaluating the construction of a transfer station to haul waste to another landfill within the region.

Information from the preliminary study of alternative landfill sites within Sheridan County can be found in relevant sections of Chapter 5 and Appendix J of the City's Variance Request and the City's letter response to DEQ's comments dated July 2011. These documents can be found in **Attachment 3**. These documents demonstrate the City's exhaustive search for other areas within Sheridan County that would be well suited for landfill development. Unfortunately, alternative sites anywhere within Sheridan County that is free of landfill development obstacles could not be identified. The public users of the landfill in Sheridan County have no other feasible options other than the current site, which has been in operation since the 1940's.

Even if the City were able to identify another site within Sheridan County in the future that would meet all of the DEQ location restrictions, was suitable and practical for development, and could overcome the certain opposition it would face by that site's neighbors, the City (and/or County) would be required to purchase that site, and perform even more extensive permitting and design effort due to a complete subsurface exploration and full site layout and design, mass earthwork activities, and the construction of landfill, transportation, and utility infrastructure.

Developing a new landfill in a location other than the City's current site would significantly increase capital development costs, putting an undue burden on the rate payers in the City and County of Sheridan. Assuming site acquisition, extensive site characterization, development of a new DEQ solid waste permit, MSW and C&D landfill construction, new landfill buildings, such as a scalehouse and maintenance building, and utility and transportation infrastructure, a new site at another location could feasibly cost between \$12 million to \$15 million. If the City is required to pursue a new site, tipping fees would likely increase \$30 to \$40 per ton more than tipping fees if the proposed expansion area were developed. Hauling costs to the new landfill are not included in this rate increase. Hauling waste any distance has the potential to significantly increase the landfill tipping fee. A haul distance of 10 miles adds over \$4 per ton to the landfill tipping fee. If required to haul 20 miles, the tipping fee is estimated to increase by more than \$6 per ton. City and County rate payers would be forced to bear this cost.

Provided further, the City also evaluated constructing a transfer station to haul waste to another landfill within the region. The cities of Billings, Montana and Casper, Wyoming were

contacted to determine if it was feasible for the City to assume waste could be transferred to these locations in the future. The City of Billings was unwilling to accept the City's waste. The City of Casper expressed interest, and provided the City with the fees Casper would charged the City for waste disposal (an initial landfill buy-in fee and tipping fee). Casper is approximately 150 miles one-way from the Sheridan.

Using the information provided by Casper, the City modified the 2011 Sheridan Landfill Cost of Service and Rate Design Model to determine tipping fees over the next 5 years. Estimated capital to build a transfer station was significant – approximately \$13.5 million – which the City would be required to fund through debt service. Furthermore, annual transfer station operations and maintenance would increase the City's annual budget by approximately \$2 million dollars, largely due to the significant costs associated with waste hauling (approximately \$30/ton) and the Casper tipping fee (\$38/ton).

The rate analysis determined that in the long-term, landfill tipping fees will be approximately 95% higher, or \$242 per ton, than if the City were to continue with landfill operations and expansion as currently planned. This significant disparity between landfill expansion and waste transfer clearly indicated that landfill expansion is the most economically feasible alternative, and that implementation of a transfer operation would raise the tipping fee to exorbitant levels. By placing such a significant burden on rate payers, illegal dumping within the County would likely increase. Additionally, there would likely be an uptick in County residents burning their waste, which has a significant air quality impacts.

The City has exhausted its study options for waste disposal at another location. In addition to the Variance, alternative waste disposal options have been evaluated in the Sheridan Solid Waste Management Plan (2001) and through the DEQ Integrated Solid Waste Management Planning (ISWMP) process (2009). All three efforts have reached the *same conclusion – that expansion of the existing landfill is the only reasonable alternative for the future of City solid waste disposal*. All other options have been thoroughly studied, and any other landfill or transfer alternative represents an undue financial burden on the City of Sheridan and the Sheridan solid waste rate payers. No other site possesses the current positive attributes, including the benefits of long term municipal planning, reasonable proximity to users, preferred cost, and a long term

history of environmental protection. Planning efforts clearly indicate that pursuit of any other solid waste disposal option at this time would be frivolous.

III. NEIGHBORS'/OBJECTIONERS' COMPLAINTS ADDRESSED BY CITY/DEQ VARIANCE

In the requests for a hearing, seven (7) concerns were raised by the Objectioners:

1. Devaluation of property resulting from ever-expanding operations eastward toward Prairie Dog Creek.
2. Recent changes to water quality in our, and adjacent, domestic neighboring wells.
3. Impacts to air quality in the form of odors and dust increasing tremendously during the past decade as operations have expanded easterly, in our direction.
4. The increased number of vector species; skunks, raccoons, foxes and feral domestic animals are not only a nuisance but present health concerns relative to rabies and bubonic plague.
5. Increasing amounts of blowing rubbish deposited over our entire property.
6. Use of the County Road 139 (East Ridge Road) right-of-way and surface as a convenient, free dumping area.
7. Concerns within our neighborhood that the City does not apparently monitor potential impacts to the Class 2AB Stream, Prairie Dog Creek.

The City responds to these complaints as follows:

Complaint 1: Devaluation of property resulting from ever-expanding operations eastward toward Prairie Dog Creek.

Response: This general landfill location has been the City's waste disposal site since 1940s. The Objectioners have provided no evidence or support in their complaint that their property has been devalued by the expansion which is subject of this Variance into the 102 acres owned by the City for landfill purposes for nearly ten years. The City is unaware of any relevant appraisal data that can verify this claim. The general direction of waste disposal has been moving westward, not eastward, since 1990.

Complaint 2: Recent changes to water quality in our, and adjacent, domestic neighboring wells.

Response: The City operates a comprehensive groundwater monitoring network that utilizes monitoring wells to provide both vertical and horizontal coverage of the groundwater beneath the landfill facility. The groundwater monitoring network effectively monitors the occurrence and quality of the groundwater with wells positioned around the perimeter of the landfill, both down-gradient and up-gradient from the landfill.

The groundwater monitoring network is sampled semi-annually. Groundwater samples are collected and analyzed according to DEQ compliance monitoring using baseline and detection monitoring parameters listed in the DEQ Solid Waste Rules, Chapter 2, Section 6(b)(ii)(D)(I) and Appendix A, respectively. These groundwater compliance parameters include inorganic parameters, metals, and volatile organic compounds (VOCs). The groundwater analytical data is statically evaluated and results enable a detailed understanding of any changes to the groundwater quality.

Site-wide (former landfill, existing landfill, and proposed expansion area), the estimated average groundwater velocity is approximately 25.58 ft/year, which results in a travel time of 59 years to the nearest downgradient well. On the proposed expansion area, calculations using expansion area data yield an average groundwater velocity of 2.28 ft/year and travel time of 658 years to the nearest downgradient well. In either scenario, if a constituent was detected and determined to be statistically significant during a sampling event, the City would have adequate time to identify, analyze, and address any release from the landfill before it could be detected in downgradient wells.

In addition to groundwater monitoring, the City also samples leachate from the landfill on a semi-annual basis. Statistics are used to routinely compare the constituents in the leachate to those in ambient groundwater.

Leachate and groundwater monitoring at the proposed facility will be defined in an updated site-wide sampling and analysis plan, which will be submitted with the proposed landfill area permit application. For more information, please see **Attachment 4a**, which includes relevant excerpts, tables, and figures from the Variance that pertain to the City's groundwater monitoring network.

Finally, during the public comment period for this Variance Request, the City understood a neighbor immediately adjacent to the landfill had their domestic wells professionally tested but those results were not provided to the City after completed. The City understands that this was a one-time sampling event, and the well(s) had not been previously sampled in order to provide background data to verify and make relevant constituent detections potentially impacting groundwater quality.

Complaint 3: Impacts to air quality in the form of odors and dust increasing tremendously during the past decade as operations have expanded easterly, in our direction.

Response: As a requirement of the City's existing landfill permit, the City adheres to DEQ's operating standards, WSWR, Chapter 2, Section 5(n), which addresses the

minimization of dust and odors. Since 1990, landfill operations have been moving westward, not eastward.

Daily cover is applied to the MSW landfill working face each night prior to the landfill closing, which minimizes dust and odor from the landfill.

In an effort to preserve landfill space, the City composts green waste (grass clippings, leaves, branches, etc.). Biosolids from the City's wastewater treatment plant are periodically mixed in with the compost using best management practices. The City acknowledges that odor is an infrequently byproduct of composting operations, which are conducted at the landfill but are separate from MSW landfill operations. Because of the addition of biosolids, composting is regulated by the Environmental Protection Agency (EPA) Standards for the Use or Disposal of Sewage Sludge 40 CFR Part 503 under the Clean Water Act. Composting operations will not be performed on the proposed expansion area, and any odors produced by composting operations are irrelevant to the Variance.

If dust becomes prevalent during periods of dry weather, City personnel wet on-site gravel roads to reduce blowing dust particles.

The Sheridan Landfill is periodically inspected by DEQ. Recent inspection reports are included in **Attachment 4b**, and make no note of any dust or odor issue.

Finally, DEQ Variance Conditions #4, #5, #8, and #9, which are included in Attachment 2 in the DEQ August 9, 2011 letter approval of the Variance, also address dust control requirements for expansion area.

Complaint 4: The increased number of vector species; skunks, raccoons, foxes and feral domestic animals are not only a nuisance but present health concerns relative to rabies and bubonic plague.

Response: The City employs best management practices to provide vector control at the landfill. These practices are incorporated into the landfill operating plan, which meets the requirements set forth by WSWR, Chapter 2, Section 5(m).

Daily cover is applied to the active landfill working face to provide vector control. This routine cover sufficiently controls vectors, thereby reducing the risk of disease transmittal through vectors at the landfill.

City personnel have not noticed any increase in vector species at the landfill. The neighbor immediately adjacent to the landfill has reported some increase on his lands but it is expected that increase is due to other factors on his lands (such as silage piles, harvest waste, wet conditions, etc.). If the City personnel were to notice any increase in vector species, it would have immediately notified

Sheridan's Animal Control Department. Animal Control responds to these requests by either trapping or removing the vectors through other methods.

Because vector control is part of the City's landfill permit, DEQ would take note if vector species were observed to be an issue during a routine inspection. City personnel are unaware of any instance in which DEQ noted vectors on their inspection reports.

Finally, vector control requirements are also specified in DEQ Variance Condition #6, which is included in Attachment 2.

Complaint 5: Increasing amounts of blowing rubbish deposited over our entire property.

Response: In accordance with the landfill operating plan, City personnel follow the guidelines set forth in WSWR Chapter 2, Section 5(1), which requires the landfill facility to implement a routine litter collection program. City personnel collect litter as necessary and complete litter logs and corresponding grid maps during each litter collection event. A recent litter log and grid map is included in **Attachment 4c**, and indicates the City's diligent efforts to control litter around the landfill. At a minimum, litter is collected weekly, and as shown in the log, often much more frequently.

To proactively manage blowing litter, the City maintains litter fences around the active face of the landfill to inhibit the dispersion of litter from the landfill working face. The working face is covered at the end of each working day to eliminate the potential for blowing litter overnight.

Finally, DEQ Variance Conditions #2, #3, and #9 require a stringent litter program, and ensure the City will maintain its current rigor in regard to litter pick-up. These conditions are included in Attachment 2 in the DEQ August 9, 2011 letter approval of the Variance.

Complaint 6: Use of the County Road 139 (East Ridge Road) right-of-way and surface as a convenient, free dumping area.

Response: There are two potential pathways for litter onto County Road 139; waste blowing from transport vehicles and illegal dumping.

In an effort to reduce litter from residential and private haulers, the City of Sheridan has instituted a load ordinance, which states that all loads entering the landfill must be secured in such a manner that none of the load escapes the vehicle during transport. Violation of this ordinance results in a fee for the hauler.

Illegal dumping is more difficult to enforce, just as it may be along any rural road. Law enforcement is called when people are caught illegally dumping along the county road.

County Road 139 is monitored for litter and illegal dumping in the same manner that neighboring land is monitored for blowing litter. Landfill crews frequently travel this road, and if waste is observed, it is immediately removed and transported to the landfill. As with neighboring land, the City maintains an open door policy – personnel welcomes communication that reports litter or illegal dumping along the road so City staff has an opportunity to promptly address it.

Complaint 7: Concerns within our neighborhood that the City does not apparently monitor potential impacts to the Class 2AB Stream, Prairie Dog Creek.

Response: Clean storm water that flows off the site is sampled semi-annually, which exceeds the requirements of the landfill's NPDES permit, which does not require sampling. Results of this monitoring are kept at the landfill and reviewed by WDEQ during routine landfill inspections.

Please see the response to Claim 2 above, which describes the comprehensive groundwater monitoring network employed at the landfill. This groundwater monitoring network, which would identify constituents in the groundwater that originated at the landfill, serves to adequately protect Prairie Dog Creek from the impacts of landfill operations.

Finally, DEQ Variance Condition #7 requires landfill staff to continue storm water best management practices at the proposed landfill. Condition #7 is included in Attachment 2.

City's Efforts to Solicit Public Participation:

In the letters requesting a hearing, Objectors claimed that, "During the public meeting regarding the subject variance held February 24, 2011 at Holy Name Parish Center in Sheridan, Wyoming, we and our neighbors were promised that a committee consisting of representatives from our neighborhood and local government would be formed to address the following concerns. These include: [Claims 1 through 7 above]." The DEQ-led public meeting for the Variance was held on January 25, 2011. Operational concerns regarding the current landfill were voiced by several members of the public in attendance. Until this meeting, City personnel were unaware of any neighbors' dissatisfaction with landfill operations. In the last four years, the City had not received a telephone call, e-mail, or in-person visit from these neighbors to report any of the purported operational issues.

It was because of the January 25th meeting that the City held another ‘better neighbor’ meeting on February 24, 2011 at the Holy Name Parish Center. This meeting was unaffiliated with the Variance, and schedule solely to address the operational issues regarding the existing landfill that were raised in the January 25, 2011 DEQ public meeting. At the onset of the meeting, those in attendance were made aware of the meeting’s purpose – that regardless of DEQ’s decision, it was the City’s intent for the existing landfill to be a better neighbor to surrounding landowners.

The City engaged a local public relations professional to facilitate the February 24, 2010 meeting. The meeting included information about existing landfill operations, but was primarily focused on a small-group breakout session where all of those attending participated. Each group brainstormed landfill operations that functioned well and those that needed improvement. Groups then brainstormed how the insufficient operations could be improved. Each small group shared these ideas for operational enhancement with the large group.

At the end of the February 24, 2011 meeting, City personnel committed to researching and evaluating all of the landfill improvement ideas and stated a second meeting would be held in approximately one month. Two landfill neighbors (Dwight French and Jim Koltiska) were chosen as the City’s ‘accountability partners’, or neighborhood representatives, to communicate with City personnel, assist staff with any clarifications, if necessary, and ensure follow-through with scheduling of the next meeting.

The second ‘better neighbor’ meeting was held on March 31, 2011. The intent of this meeting was to again engage surrounding landowners and present solutions to the issues brought forth in the February 24, 2010 meeting for their approval. The presentation prepared by the City for this meeting is included in **Attachment 5**. Midway through the meeting, a landowner (who was also one of the neighborhood representatives selected in the previous meeting) stated that in actuality, existing operations were not a concern, and those in attendance were only there to discuss and oppose the Variance. There was no objection from the other landowners in attendance.

It should also be noted that prior to the initial Variance Request submittal, the City sent a letters to property owners with wells that would be affected by the Variance. Copies of this letter

are included in **Attachment 6**. The letter notified each well owner of the City's intention to expand the landfill, and requested the well owner contact the City for a meeting to discuss the Variance. Two of the five well owner's responded to the City's request for a meeting.

Additionally, the City reached out to the public during the ISWMP planning process (2008–2009), which identified the expansion area as the most feasible disposal alternative. The City advertised in the *Sheridan Press* and conducted two public meetings, neither of which were attended by any of the Objectioners. During the planning effort, a work session was held with the City Council, and many of the Sheridan County commissioners were in attendance. This work session, as well as a presentation of final ISWMP results, was reported in the *Sheridan Press* and broadcast on the local public access television channel.

The record clearly shows that the Objectioners' claim of "lack of communication and consideration" is false. In actuality, the City has made every reasonable effort to involve the public in the landfill decision-making process.

IV. CONCLUSION

In the highly-technical and complicated task of landfill permitting, the City's long-term investigation and evaluation process was not taken lightly, nor in a vacuum free from substantial opportunity for the public's involvement; however, a government is charged with making the final decision that is in the public's best interests. The City of Sheridan must expand its landfill operations to meet community needs and has proposed to do so in the least intrusive manner for all of its community members, both financially and physically.

The EQC's affirmation of the DEQ's well-supported decision to grant the variance is required. First, the DEQ's decision to approve the variance meets the Wyoming Statutory requirements. Further, the DEQ's decision is supported by evidence in the record. Finally, EQC's affirmation of the DEQ's decision is the only option which allows the City's to meet its commitment to its residents, the residents of Sheridan County, and to the State of Wyoming to administer a sustainable solid waste management program. The Objectioners cannot meet their burden of proof to reverse the DEQ's grant of the variance for its well-supported decision.

Except as otherwise specifically admitted above, the City denies each and every other allegation made by Objectioners in their letter of contest filed with the EQC.