

**BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL STATE OF WYOMING**

**IN THE MATTER OF THE OBJECTION            )**  
**TO THE VARIANCE FOR THE SHERIDAN        ) Docket No. 11-5801**  
**LANDFILL    )**

**PRE-HEARING STATEMENT**

The Petitioners, through their attorney, Mary A. Throne of Throne Law Office, P.C., hereby submits its Pre-Hearing Statement.

**NATURE OF THE CASE**

The Petitioners in this case are primarily landowners or well owners objecting to the variance from the statutory location standards granted by the Director of the Department of Environmental Quality to the City of Sheridan Landfill on August 9, 2011. At the outset, it is important to distinguish this matter from a challenge to a permit issued by the Department of Environmental Quality. As the Council is well aware, Section 801 of the Wyoming Environmental Quality Act, imposes a duty on the Director of the DEQ to issue permits once regulatory requirements are met. Wyo. Stat. 35-11-801(a). In contrast, the Director has no duty to issue a variance from a statutory standard, particularly, in the face of substantial opposition from property owners protected by the statutory provisions, none of whom has consented to the expansion of the landfill. The variance here is an exception to a statutory standard, intended to protect human health and the environment, and thus, must be narrowly construed to fulfill the overriding policy and purpose of the Act. This is not a case where the only question is whether the technical requirements for a variance have been met, which they have not, but rather whether the issuance of the variance was an appropriate use of the Director’s discretion.

The Environmental Quality Act, Wyo. Stat. 35-11-502(c), establishes location

standards for landfills constructed after the effective date of the provision, 1989, which apply to the expansion of existing landfills. The statute prohibits the construction of new landfills within one mile of an occupied dwelling, “except with the written consent of the owner,” and within one-half mile of a domestic or livestock water well, again “except with the written consent of the owner of the permit or certificate.” Wyo. Stat. 35-11-502(c)(i) & (iv). The Director may grant a variance from these location standards if recommended by the Administrator of the Solid and Hazardous Waste Division, following a public hearing and “upon written findings that the variance will not injure or threaten to injure the public health, safety or welfare.”

Chapter 1, Section 2(i) of the Wyoming Solid and Hazardous Waste Regulations sets forward a number of application requirements for a variance from the location standards. The City of Sheridan’s variance application has failed to answer a number of the Petitioners’ concerns regarding groundwater protection, and preventing nuisance and protecting property values. Before the Director can conclude the variance poses no threat to public welfare, safety or health, he must find that:

- (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.
- SHWD Ch. 1 Sec. 2(i)(ii).

The Petitioners intend to demonstrate at the hearing that these standards, among others, have not been met.

In addition to challenging the variance, the Petitioners have also appealed the permit renewal. The Petitioners have specific concerns about the plan to landfarm petroleum contaminated soils, to dispose of asbestos and the lack of commitment to ongoing nuisance concerns.

### **WITNESSES**

#### **WILL CALL:**

Dwight French  
152 Peno Road  
Sheridan, WY 82801

Mr. French is expected to testify regarding his concerns about his experience with the operation of the existing landfill, the variance application process and his concerns about the effects on his property values, quality of life and health if the landfill expands in its current location. Mr. and Mrs. French's home is within one mile of the expansion.

Ms. Kayleen McKinzie  
150 Peno Road  
Sheridan, WY 82801

Ms. McKinzie's home is within one mile of the proposed landfill expansion. She is expected to testify regarding issues related to the current operation of the landfill, the variance process, and the effects on her quality of life, well and property values if the landfill expands in its current location.

Mr. Tom Balding  
86 Peno Road  
Sheridan, WY 82801

Mr. Balding's home is within one mile of the landfill expansion. He is expected to testify regarding trash along the county road related to the current operation of the landfill, the variance process and the effects on the quality of life, property values and well if the landfill expands in its current location.

Mr. Glenn Mooney  
19 Coyote Lane  
Sheridan, WY 82801

Mr. Mooney is the President of Sandstone Bluffs Ranch LLC, his family company that owns a dwelling within one mile of the landfill expansion. His sister currently resides in

the family home. He is expected to testify regarding general concerns about the operations of the current landfill, the variance process and the effects on the quality of life, property values and well if the landfill expands in its current location.

Ms. Suzie Puckett  
82 Peno Road  
Sheridan, WY 82801

Ms. Puckett has a well within one-half mile of the expansion and her home is within one mile of the expansion area. She is expected to testify regarding general concerns about the operations of the current landfill, including the concerns of her grazing lessee, the variance process and the effects on the quality of life, property values and well if the landfill expands in its current location. Ms. Puckett may also testify regarding the loss of a potential land sale due to the proposed expansion.

MAY CALL:

Mr. and Mrs. Wayne Senff  
145 Peno Road  
Sheridan, WY 82801

The Senff home is within one mile of the expansion. Mr. or Mrs. Senff is expected to testify regarding nuisance issues related to the current operation of the landfill, the variance process, and about the effects on the quality of life, property values and well if the landfill expands in its current location.

Mr. James Koltiska  
58 Wildcat Road  
Sheridan, WY 82801

Mr. Koltiska has a well within a half-mile of the landfill and a dwelling within one mile. He may be called to testify regarding his experience with the current operation of the landfill, the variance process, and his concerns regarding the effect of the expansion on his well, his property values and his quality of life.

Mr. Tony Trangmoe  
P.O. Box 391  
Dayton, WY 82836

Mr. Trangmoe is a grazing lessee of Suzie Puckett. He may be called to testify regarding the trash on his grazing lease from the current operation of the landfill, as well as his family's decision not to purchase property from Ms. Puckett upon learning of the landfill's planned expansion.

Mr. Tim Moe  
Wyoming Department of Environmental Quality  
2100 West 5<sup>th</sup> Street  
Sheridan, WY 82801

Mr. Moe is an inspector for the Wyoming Department of Environmental Quality and may be called to testify regarding his inspections of the City of Sheridan Landfill.

Ms. Betty French

Please see Dwight French above.

Ms. Jeanine Bursell  
134 Peno Road  
Sheridan, WY 82801

Ms. Bursell is Mr. Mooney's sister and may be called to provide testimony regarding here experiences living on the family property.

Mr. Tony Pelosky  
1552 Coffeen Avenue  
Sheridan, WY 82801

Mr. Pelosky retired from the City of Sheridan and is familiar with the landfill operations. He may be called to testify regarding his experience with the landfill and his concerns about its effects on the property of his daughter, Ms. McKinzie.

Ms. Kim Ripley  
607 Canby Street  
Sheridan, WY 82801

Ms. Ripley is the daughter of Mr. and Mrs. Senff. She may be called to testify regarding her concerns about the effects of the landfill expansion on her parents' property.

Mr. Kyle Koch/Ms. Julie Koch  
278 E. Ridge Road  
Sheridan, WY 82801

Mr. and Mrs. Koch may be called to testify regarding their experiences with current landfill operations, the variance process, and concerns regarding the effects of the landfill expansion on their quality of life, their well, and their property values.

In addition, the Petitioners reserve the right to call any witnesses listed by either the City of Sheridan or the Wyoming Department of Environmental Quality.

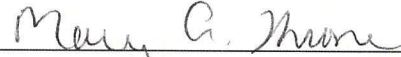
## **EXHIBIT LIST**

1. Warranty Deed dated March 5, 1981
2. Warranty Deed dated October 17, 2002
3. Letter from Hugh K. Batty, MD dated November 7, 2011 in regards to Dwight French
4. Memo from Office of States Lands & Investments dated August 25, 2011
5. Email from Brandy Kean to Dan Roberts dated October 14, 2011
6. Email from Charles Martineau to Brandy Kean with 'cc' to Dan Miller dated August 9, 2010
7. Memorandum of City of Sheridan Wyoming dated January 3, 2011
8. Talking Points/Suggested Path Forward, CD/MSW Variance Application prepared by Burns & McDonnell Engineering Company, Inc. dated August 10, 2009
9. Email from Charles Martineau to Dan Miller dated June 21, 2010
10. Memorandum from Brandy Kean, P.E. from Burns & McDonnell to Dan Roberts, P.E. from City of Sheridan Utilities Director dated February 1, 2011
11. Telephone Minutes/Clarification on Comment Letter/Sheridan Variance Request dated June 17, 2010
12. Email from Brandy Kean to Dan Roberts with 'cc' to Charles Martineau dated August 19, 2011
13. Email from Brandy Kean to Melissa with 'cc' to Charles Martineau, Tony Baumgartner, Dan Roberts dated February 11, 2011
14. Email from Brandy Kean to Jason Baker, Charles Martineau, Dan Roberts dated January 31, 2011
15. Email from Brandy Kean to Charles Martineau with 'cc' to Dan Roberts dated October 4, 2011
16. Composite Exhibit from DEQ Compliance file

17. Variance Application Findings from Department of Environmental Quality
18. Letter from Department of Environmental Quality to Bob Rawlings, Landfill Manager, Lincoln County dated August 25, 1998
19. Memorandum from Scott Miller – SHWD/Lander to Dave Finley – Solid & Hazardous Waster Division Administrator through Ken Schreuder- Solid Waster Program Manager dated August 21, 1998
20. Memorandum from Carl Anderson, SHWD Administrator to John Corra, Director-Wyoming Department of Environmental Quality dated July 21, 2010
21. Letter from Carl Anderson, Department of Environmental Quality to Jill Shockley Siggins, Chairperson of Park County Commissioners dated July 20, 2010
22. Letter from David A. Finley, Administrator, Department of Environmental Quality to Mr. Randy Raymer, Upper Platte River SWDD dated December 5, 2003
23. Letter from Sandy Stahl, P.C. from PMPC Civil Engineers to Dale Anderson, Senior Environmental Analyst, Wyoming Department of Environmental Quality dated December 10, 2003
24. Memorandum from Dale Anderson to SHWD File #:10.515, Upper Platte River SWDD dated July 11, 2003
25. Wyoming Department of Environmental Quality/Solid and Hazardous Waste Division/Chapter 1
26. Photographs from Glenn Mooney's property
27. Photographs of property from Dwight and Betty French
28. Photographs of property from Tom Balding
29. Photograph from Kayleen McKenzie

The Intervenors also reserve the right to use exhibits identified by other parties as well as exhibits for rebuttal and impeachment purposes.

DATED this 7<sup>th</sup> day of May, 2012.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Pre-Hearing Statement and copies of the Proposed Intervenors' Exhibits were served by electronic mail, this 7th day of May, 2012, to the following:

Kim Waring Environmental Quality Council  
122 W 25<sup>th</sup>. Room 1714  
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