

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Jim Ruby, Executive Secretary
Environmental Quality Council

IN RE: OBJECTIONS TO MAJOR PERMIT)
AMENDMENT FOR THE NORTH BIG) DOCKET 13-5801
HORN #2 LANDFILL)

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
RESPONSE TO PARK COUNTY'S OBJECTION

Respondent Wyoming Department of Environmental Quality (DEQ), pursuant to the Wyoming Environmental Quality Council's (EQC) Scheduling Order dated April 17, 2013, responds as follows to Petitioner Park County's Objection in the above-captioned contested case:

1st ¶: DEQ **admits** that the proposed major amendment for North Big Horn #2 Landfill would allow North Big Horn #2 Landfill to expand its service area to include all of Big Horn, Hot Springs, Park, Sheridan, and Washakie Counties in Wyoming and Carbon County, Montana, but **denies** that the proposed amendment to expand North Big Horn #2 Landfill's service area would require or obligate localities within the expanded service area to send their municipal solid waste to North Big Horn #2 Landfill or preclude them from sending their MSW to other area landfills permitted to accept it.

"The facts of the matter":

¶1 Petitioner alleges that there are currently seven permitted landfills serving the desired area of expansion of the North Big Horn #2 Landfill.

Response: DEQ **admits** that currently the following seven permitted landfills are authorized to accept municipal solid waste (MSW) from the proposed expanded service area:

- > South Big Horn landfill
- > Washakie County SWDD #1 landfill (aka Worland)
- > Ten Sleep SWDD landfill (aka Ten Sleep)
- > City of Sheridan landfill
- > Thermopolis landfill
- > Billings Regional Landfill
- > Park County "Regional" landfill (aka Cody)

DEQ **admits** that the permitted Powell and Clark landfills are authorized to accept *construction / demolition* (C/D) waste from portions of Park County. DEQ **denies** any other allegations in ¶1.

¶2 Petitioner alleges that Park County has three permitted landfills – two Type I facilities, one with an engineered containment system (ECS), and one Type II facility. The City of Powell is currently included within two Park County Landfill service areas.



Response: DEQ **admits** that currently Park County has three *active* permitted landfills receiving waste: Powell landfill (C/D waste only), Clark landfill (C/D waste only), and Cody / Park County “Regional” landfill (MSW and C/D waste). DEQ **admits** that all three landfills are Type I facilities (Clark landfill was Type II, but was reclassified as Type I due to groundwater impacts). DEQ **admits** that only the Cody / Park County “Regional” landfill has an ECS, but disposal there is still continuing in the unlined area. DEQ **admits** that the City of Powell is currently included within the Cody landfill and Powell landfill service areas, but the Powell landfill can only accept C/D waste. DEQ **admits** that the Meeteetse landfill reached capacity a few years ago, its operating permit has expired and a closure permit application has been submitted. The Meeteetse landfill was a Type II landfill when active and operating. DEQ **denies** any other allegations in ¶2.

¶3 Petitioner alleges that Big Horn County has two permitted active landfills with service areas that are split between the north (North Big Horn #2) and south halves (Big Horn County South) of the county. Both are Type II facilities.

Response: DEQ **admits** that currently Big Horn County has two active permitted Type II landfills, with North Big Horn #2 serving the northern portion of the county and Big Horn County South serving the southern portion of the county.

¶4 Petitioner alleges that Washakie County has two permitted landfills – one Type II facility permitted by the City of Ten Sleep, and one Type I facility permitted by the City of Worland.

Response: DEQ **admits** that currently there are two permitted MSW landfills in Washakie County, a Type II facility operated by the Ten Sleep Solid Waste Disposal District and a Type I facility operated by Washakie County Solid Waste Disposal District #1. DEQ **denies** any other allegations in ¶4.

¶5 Petitioner alleges that Hot Springs County is served by the Thermopolis Landfill, permitted by the City of Thermopolis.

Response: DEQ **admits** the allegation(s) in ¶5.

¶6 Petitioner alleges that Sheridan County is also serviced by the Sheridan Landfill, operated by the City of Sheridan. This landfill also has an ECS in place. Additionally, most of Sheridan County is separated from Big Horn County by a substantial topographic divide i.e., the Big Horn Mountain Range.

Response: DEQ **admits** the allegation(s) in ¶6.

¶7 Petitioner alleges that Carbon County, Montana is currently listed within the service area of the Billings Regional Landfill, which is also an ECS facility.

Response: DEQ **admits** the allegation(s) in ¶7.

¶8 Petitioner alleges that the Wyoming Department of Environmental Quality presented a report entitled Groundwater Impacts and Remediation Costs (at) Wyoming Solid Waste

Facilities to the Joint Minerals, Business and Economic Development Interim Committee on June 10, 2010. (This report was eventually presented to the entire Wyoming Legislative Body).

Response: DEQ **admits** DEQ developed a report entitled “Groundwater Impacts and Remediation Costs [at] Wyoming Solid Waste Disposal Facilities” dated June 30, 2010 and presented it to the Joint Minerals, Business and Economic Development Interim Committee, as called for in Wyo. Stat. Ann. § 35-11-522(e) (which was repealed in 2011 after DEQ provided the report to the interim committee). DEQ **denies** that the statute called for DEQ to present the report to the Wyoming Legislature as a whole, but **admits** that the interim committee may have done so. DEQ **denies** any other allegations in ¶8.

¶9 Petitioner alleges that this report summarized the potential groundwater contamination and provided a cost estimate for remediation at 114 identified operating, closed, and historical landfills in the state of Wyoming. The WDEQ determined that of the 114 sites, 76 had the minimum number of monitoring wells to detect any leachate release. The WDEQ determined that 73 of these 76 landfill sites (96%) had impacts due to leachate and 69 of the 76 sites (91%) had concentrations of one or more constituents that exceeded current groundwater protection standards.

Response: DEQ **admits** that the report’s “Executive Summary” discusses the potential for groundwater contamination and cost estimates for the 76 landfills where monitoring networks were currently (2010) capable of detecting a release and also for the 38 landfills where more data was needed. DEQ **admits** that the report’s “Executive Summary” specifically states that DEQ’s evaluation of monitoring networks at 114 MSW landfills found that additional monitoring wells were needed at more than 70% of those landfills in order to detect “groundwater pollution.” DEQ **admits** that the report’s “Executive Summary” goes on to say that with the installation of approximately 300 new monitoring wells state-wide, 76 of the 114 MSW landfills investigated now (2010) have the minimum number of wells to detect a release. DEQ **admits** that the report’s “Executive Summary” states that based on statistical evaluations, there is “evidence of contamination” at 73 (or 96%) of the 76 landfills with the minimum number of monitor wells to detect a release and contaminant concentrations exceeded groundwater protection standards (GPS) at 69 (91%) of those 76 landfills. DEQ **denies** any other allegations in ¶9.

¶10 Petitioner alleges that this report lists North Big Horn #2 Landfill as having 9 constituents exceeding groundwater protection standards.

Response: DEQ **admits** that the 9 constituents listed were arsenic, barium, beryllium, bicarbonate as HCO₃, chloride, cobalt, iron, lead, and vanadium).

¶11 Petitioner alleges that the addition of the City of Powell’s Municipal Solid Waste (MSW) will approximately double daily tonnage delivered to North Big Horn #2. Additionally, this increase in tonnage will necessitate the reclassification of North Big Horn #2 as a Type I facility.

Response: DEQ **admits** that the addition of all of the City of Powell’s MSW could approximately double daily tonnage delivered to North Big Horn #2 and that such increase in tonnage would necessitate the reclassification of North Big Horn #2 as a Type I facility.

“Comments”:

1) Petitioner comments that the request for an increase in service area of North Big Horn #2 Landfill to include the entire Big Horn Basin, Sheridan County and portions of Southern Montana can only be interpreted as a precursor to becoming a regional MSW facility.

Response: DEQ **admits** that Big Horn County Solid Waste Disposal District (SWDD) requested to expand the service area for its North Big Horn # 2 Landfill to include all of Big Horn, Hot Springs, Park, Sheridan, and Washakie Counties in Wyoming and Carbon County, Montana, but **denies** that the requested expansion of North Big Horn #2 Landfill’s service area would require or obligate localities within the expanded service area to send their municipal solid waste to North Big Horn #2 Landfill or preclude them from sending their MSW to other area landfills permitted to accept it. DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore **denies**, any other averment(s) in Comment #1.

2) Petitioner comments that a minimum doubling of MSW tonnage (and potentially much more as a regional facility) presents a highly elevated potential for increased impacts to already contaminated groundwater.

Response: DEQ **denies** the allegation(s) Comment #2.

3) Petitioner comments that an independent determination of a Performance Based Design should be performed for this facility taking into account the possible impacts of the MSW tonnage increase. The results of this determination should be evaluated prior to granting this permit amendment.

Response: DEQ **denies** the allegation(s) Comment #3.

4) Petitioner comments that the expansion of an unlined, Type II facility to a regional MSW landfill is contrary to recent and current EPA Subtitle D and WDEQ doctrine.

Response: Chapter 1, Section 3(c)(iii) of the DEQ Rules of Practice & Procedure calls for petitions for hearings before the EQC to include particular reference to the statutes, rules or orders allegedly violated. DEQ is without knowledge or information regarding what in “EPA Subtitle D” and what “WDEQ doctrine” Petitioner is referring to in Comment #4 sufficient to form a belief as to the truth of, and therefore **denies**, the averment(s) in Comment #4.

5) Petitioner comments that if this facility is allowed to become a non-ECS regional MSW landfill, it will be able to operate at substantially reduced rates (i.e. lower tipping fees) due to no ECS construction and operation capital expenditures.

Response: DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore **denies**, the averment(s) in Comment #5.

6) Petitioner comments that this would result in economic hardship to other Type I and/or regional facilities in the proposed service area, especially any entities that have followed the current WDEQ doctrine of closing smaller landfills and installing ECS systems at a central MSW

landfill ("Regionalization"). Most of these entities have had to borrow SLIB funds, expend reserves and raise tipping fees to comply with WDEQ regulations and guidelines.

Response: DEQ is without knowledge or information sufficient to form a belief as to the truth of, and therefore **denies**, the averment(s) in Comment #6.

7) Petitioner's Comment #7 is a request, not an allegation or averment, and therefore does not require an admission or denial.

DATED this 3rd day of May, 2013.



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CERTIFICATE OF SERVICE

This certifies that true and correct copies of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO PARK COUNTY'S OBJECTION were served this 3rd day of May, 2013 by U.S. mail, first class postage prepaid, or by hand delivery, and by email, addressed as follows:

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