

**FILED**

**JUL 12 2005**

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF THE TOWN OF )  
WHEATLAND WASTEWATER STORAGE ) Docket No. 05-3801  
AND LAND APPLICATION )

DEQ'S MOTION FOR MORE DEFINITE STATEMENT

Respondent Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD), through counsel, pursuant to Chapter I, Section 3(c) and Chapter II, Section 14(a) of the DEQ Rules of Practice & Procedure and Rule 12(e) of the Wyoming Rules of Civil Procedure (W.R.C.P.), moves the Environmental Quality Council (Council) to enter an order requiring Petitioner Joe Geringer to file and serve a more definite statement under Rule 12(e), W.R.C.P. in the above-captioned matter. The grounds for this motion are as follows:

1. By letter addressed to the Environmental Quality Council dated June 17, 2005, filed June 20, 2005 (**copy attached hereto**), Petitioner Joe Geringer stated "I, am a protestant to the Wheatland Permit 04-316, Wastewater Storage and Land Application." The letter then briefly discusses a particular easement between the Eberts and the Town of Wheatland and a lease to Shepards. The one page letter then concludes with the statement "I question the legalities of the wastewater application permit."
2. Chapter I, Section 3(c) of the DEQ Rules of Practice & Procedure requires that a petition for hearing shall set forth, among other things, (iii) a statement in ordinary but concise language of the facts on which the request or protest is based, including whenever possible particular reference to the statutes, rules or orders that the Protestant alleges have been violated.
3. Chapter II, Section 1(a) of the DEQ Rules of Practice & Procedure requires that

the DEQ shall file a responsive pleading to the petition.

4. Chapter II, Section 14(a) of the DEQ Rules of Practice & Procedure provides that the Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with the laws of the state and these rules, shall apply to matters before the Council.

5. Rule 12(e) of the Wyoming Rules of Civil Procedure, which corresponds to Rule 12(e) of the Federal Rules of Civil Procedure, provides that if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement and point out the defects complained of and details desired.

6. A complaint needs to include factual allegations that articulate the essential elements of the claim(s), and conclusional statements or opinions in a complaint, in lieu of facts, are not adequate to satisfy the burden of alleging essential elements. *Giacchino v. Estate of Stalkup*, 908 P.2d 983, 985 (Wyo. 1995).

7. Since the Wyoming Rules of Civil Procedure are patterned after the Federal Rules of Civil Procedure, federal court interpretations of their rules are highly persuasive in interpreting the corresponding Wyoming rules. *Peters v. West Park Hospital*, 76 P.3d 821, 823 (Wyo. 2003).

8. Under the Federal Rules of Civil Procedure, when faced with a complaint which lacks the precision and clarity enabling the defendant to discern what the plaintiff is claiming and to frame a responsive pleading, it is appropriate to move to require the plaintiff to file a more definite statement, pursuant to Rule 12(e). *Anderson v. District Board of Trustees of Central Florida Community College*, 77 F.3d 364, 366 (11th Cir. 1996).

9. Mr. Geringer's June 17, 2005 petition is too vague and ambiguous and lacking in precision and clarity to enable the DEQ to frame a responsive pleading due to the following defects:

a) With regard to the protested DEQ permit itself, the petition simply states that Mr. Geringer protests it and "questions the legalities" of it. These are merely conclusional statements. The petition contains no statement of relevant facts on which the protest is based nor reference to any statutes or rules allegedly violated by issuance of the permit in question.

b) With regard to the brief discussion of the easement between the Eberts and the Town of Wheatland and the lease to Shepards, the petition gives no notice of what legal bearing they have on the issuance of a permit by the DEQ.

10. To enable Respondent DEQ to frame a responsive pleading to Mr. Geringer's petition, the following details are needed:

a) Considering that the DEQ is not a party to either the easement or the lease mentioned in the petition, what duty or constraint does Petitioner allege the easement or lease place upon the DEQ's issuance of permit 04-316?

b) What statutes or rules does Petitioner allege prohibit issuance of permit 04-316 due to the existence of the easement and lease mentioned in the petition?

c) What facts *other than* the existence of the mentioned easement and lease does Petitioner allege to be the basis for his protest of permit 04-316?

d) What statutes or rules does Petitioner allege prohibit issuance of permit 04-316 due to facts *other than* the existence of the easement and lease mentioned in the petition?

11. The hearing before the Council on Petitioner's protest of permit 04-316 should

give all parties the opportunity to present their respective positions on the issues in this case. In order to properly prepare such presentations, the parties need advance notice of what the basis for the protest is. "Notice pleading" is the first step in that process.

THEREFORE, Respondent DEQ respectfully requests that the Council issue an order in accordance with Rule 12(e), W.R.C.P. requiring Petitioner Joe Geringer to file and serve upon Respondent DEQ a more definite statement containing the information listed in paragraph 10 above, within ten (10) days after notice of the Council's order.

DATED this 12 day of July, 2005.



Mike Barrash  
Sr. Assistant Attorney General  
123 State Capitol Building  
Cheyenne, Wyoming 82002  
(307) 777-6946

CERTIFICATE OF SERVICE

The foregoing DEQ'S MOTION FOR MORE DEFINITE STATEMENT was served by United States mail, first class postage prepaid, this 12th day of July, 2005, addressed as follows:

Joe Geringer  
380 East Fairview Rd.  
Wheatland, Wyoming 82201

Lorraine Allbright  
127 East Fairview Rd.  
Wheatland, Wyoming 82201

David and Germaine Birkle  
127 East Fairview Rd.  
Wheatland, Wyoming 82201

Eugene and Mary Birkle  
187 East Fairview Rd.  
Wheatland, Wyoming 82201

