

FILED

MAY 22 2006

Terri A. Lorenzon, Director
Environmental Quality Council

Gay Woodhouse
Deborah L. Tyser
Gay Woodhouse Law Office, P.C.
211 West 19th Street, Third Floor
Cheyenne, WY 82001
(307) 432-9399

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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

**PETITIONERS LORRAINE ALLBRIGHT, GENE BIRKLE AND MARY
BIRKLE'S PREHEARING MEMORANDUM**

COMES NOW the Petitioners, Lorraine Albright, Eugene Birkle, and Mary Birkle, by and through their attorneys, Gay Woodhouse and Deborah L. Tyser, of Gay Woodhouse Law Office, P.C., and hereby submit their Prehearing Memorandum.

WITNESSES

Petitioners may call the following individuals as witnesses:

1. Lorraine Albright. 127 East Fairview Road, Wheatland, WY 82201. (307) 322-4143.
Mrs. Albright can testify as to her concerns regarding the use of the wastewater to be used on Marty Shepard's farm.
2. Gene Birkle. 187 East Fairview Road, Wheatland, WY 82201. (307) 322-2674.
Mr. Birkle can testify as to her concerns regarding the use of the wastewater to be used on Marty Shepard's farm.
3. Mary Birkle. 187 East Fairview Road, Wheatland, WY 82201. (307) 322-2674.
Mrs. Birkle can testify as to her concerns regarding the use of the wastewater to be used on Marty Shepard's farm.
4. Lou Harmon. Department of Environmental Quality, 122 West 25th Street, (307) 777-7781.
Mr. Harmon is with the Water Quality Division of the Department of Environmental Quality. Mr. Harmon can testify regarding the Water

Quality Regulations and the Town of Wheatland's permit application.

5. Russ Schamel. Sunshot Engineering. 608 9th Street, Suite 4, Wheatland, WY 82201. (307) 322-9789.
Mr. Schamel is the engineer for the Town of Wheatland and can testify to items included in the application and about the design and construction of the wastewater facilities.

Petitioners reserve the right to add additional witnesses as necessary.

EXHIBITS

Petitioners may introduce the following exhibits:

1. Permit Number 04-316
2. Statement of Basis included with Permit 04-316
3. Design Report: Background Section
4. Town of Wheatland – Lagoon System; Fecal Coliform Performance Curve 2001
5. Town of Wheatland – Lagoon System; Fecal Coliform Performance Curve 2002
6. Town of Wheatland – Lagoon System; Fecal Coliform Performance Curve 2003
7. Town of Wheatland – Lagoon System; Fecal Coliform Performance Curve 2004
8. Addendum to the Design Report (exclusive of Appendix i and ii)
9. Geotechnical Engineering Report issued by Terracon (exclusive of Appendix A through D)
10. Discharge Monitoring Reports from November of 2004 through August of 2005.

Petitioners reserve the right to add additional exhibits as necessary.

FACTS

The Town of Wheatland has been discharging its wastewater into Wheatland Creek. However, the discharge was in violation of the NPDES permit. The Department of Environmental Quality ordered that the Town of Wheatland either meet the requirements in the NPDES permit or stop discharging its wastewater into Wheatland Creek. Ultimately, the Town decided to apply the wastewater onto nearby privately owned farm land.

The Town of Wheatland submitted an application to the Wyoming Department of Environmental Quality to construct facilities to, and to apply, the wastewater onto Marty Shepard's farm. On June 9, 2005, the Wyoming Department of Environmental Quality issued Permit # 04-316. The permit authorizes the Town of Wheatland to:

construct, install or modify a pump station at the outlet of Wheatland Lagoon #3, transmission line to two storage reservoirs to be constructed in Section 6 on the Shepard Farm and to irrigate lands in Section 6 T24N R67W according to the procedures and conditions of the application number 04-316.

The permit states that "This permit verifies only that the submitted application meets the design and construction standards imposed by Wyoming statutes, rules and regulations.

Accompanying the permit is a Statement of Basis. The Statement of Basis states that the permit complies with Chapters 3, 12, and 21 of the Wyoming Water Quality Rules and Regulations.

The Shepard Farm listed in the permit is located within Section 6. Marty Shepard's property is located on the South half of Section 6, and the East half of the Northeast corner. Mr. Shepard has two circle spray irrigation sprinklers in the south half and a one-half circle spray irrigation sprinkler in the east half of the northeast corner. Petitioner Allbright's residence is north of Marty Shepard's half circle spray irrigation field, separated only by East Fairview Road. Directly across from Petitioner Allbright's home, and at the northeast corner of Section 6, there is a small "pond" which has standing water in it. This water is excess water from Marty Shepard's fields. This pond, can and does, overflow. When the pond overflows, it eventually runs easterly down an irrigation ditch along Fairview Road, and eventually crosses under Fairview to the north. Petitioners Gene and Mary Birkle live east from Petitioner Allbright, along the northside

of Fairview Road and receive surface runoff when the “pond” in the northeast corner of Section 6 overflows.

LEGAL ISSUES

In general, the legal issue is whether the application and permit comply with the Water Quality Rules and Regulations. More specifically, petitioners set forth the following legal issues:

Issue 1 – Spray Irrigation Wind Drift.

The permit states that: “This permit verifies only that the submitted application meets the design and construction standards imposed by Wyoming statutes, rules and regulations.” The Statement of Basis attached to the permit states that the permit complies with Chapters 3, 12, and 21 of the Wyoming Water Quality Rules and Regulations. Chapter 21, Section 2 of the Wyoming Water Quality Rules and Regulations states that: “These regulations apply to any person who prepares or applies treated wastewater from domestic sewage.” Chapter 21, Section 9(a)(i) of the Wyoming Water Quality Rules and Regulations state that with regard to isolation of spray irrigation systems, “Wind drift shall not leave the application site.”

There are no provisions in the submitted application which meet (or even address) the standard imposed in the regulations that no wind drift shall leave the application site when spray irrigation is used.

Issue 2 – Minimum Level of Wastewater Treatment

The permit states that: “This permit verifies only that the submitted application meets the design and construction standards imposed by Wyoming statutes, rules and regulations.” The Statement of Basis attached to the permit states that the permit

complies with Chapters 3, 12, and 21 of the Wyoming Water Quality Rules and Regulations. Chapter 21, Section 10 of the Water Quality Regulation state that “Treated wastewater must receive the equivalent of primary treatment and a maximum fecal coliform value of less than 1000/100 ml in order to be reused in accordance with these regulations.” Further, Section 11 of Chapter 21 states that:

The ability of the treatment process to deliver the class of treated wastewater required for a particular use will be considered by the permitting authority when approving or denying wastewater reuse in accordance with Section 6. The criteria for evaluation treatment reliability may include the following as appropriate: (i) Multiple units and equipment; (ii) Alternative power sources; (iii) Alarm systems and instrumentation, (iv) Operator certification and stand-by capability; (v) Bypass and dewatering capability; (vi) Frequency of sampling; (vii) Hydraulic and organic loading design capabilities; and (viii) Emergency storage.

Test results from Sunshot Engineering provided in the permit application show that on occasion, treated wastewater has exceeded 1000/100 ml fecal coliform limit. Further, Dishcarge Monitoring Reports submitted to the DEQ from the Town of Wheatland demonstrate that the discharge from the city lagoons exceeded the fecal coliform limit of 1000/100 ml. Specifically, in June of 2005, there was a daily maximum fecal coliform reading of 2060, more than twice the limit. Again in March of 2005, the maximum daily fecal coliform reading was 1800.

There are no provisions within the application that demonstrate how the Town of Wheatland/Shepard will ensure that the treated wastewater from the city lagoons will not exceed 1000/100 ml.

Further, there are no provisions within the application for bypass or dewatering systems which would cause the city lagoons to stop pumping water to the Shepard lagoons when the treated wastewater contains fecal coliform in amounts greater than

1000/100 ml.

Once treated wastewater containing more than the maximum allowable amounts of fecal coliform is transported to the Shepard lagoons, there are no provisions for treating the water within those lagoons in order to get the wastewater to its appropriate water quality levels.

Issue 3 – Lack of permits for City Lagoons

Currently the three city lagoons are not permitted through the State Engineer's Office. The city lagoons themselves are not in compliance with the law. Therefore, the Town of Wheatland cannot legitimately permit additional structures and holding ponds out of the city lagoons since the city lagoons still do not have the property permitting.

Issue 4 – Odor control

Chapter 2, Section 11(a)(i) of the DEQ's Air Quality Rules and Standards states:

The ambient air standard for odors from any source shall be limited to: An odor emission at the property line which is undetectable at seven dilutions with odor free air as determined by a scentometer as manufactured by the Barnebey-Cheney Company or any other instrument, device, or technique designated by the Division as producing equivalent results. The occurrence of odors shall be measured so that at least two measurements can be made within a period of one hour, these determinations being separated by at least 15 minutes.

There are no provisions in the permit which address odor problems caused from the lagoons on the Shepard property.

Issue 5 – Contamination of well water

At the northeast corner of Section 6 is a pond which holds excess water. Presently, the pond exists as a result of spray irrigation only, without any flood irrigation which typically results in accumulation of more surface water. According to the

application, Marty Shepard will be using spray and flood irrigation methods in the northeast corner of Section 6. This will only increase the amount of water currently in the pond.

The soil in this area is permeable and Petitioner Allbright is concerned about well water contamination if the treated wastewater, containing fecal coliform, penetrates the ground and contaminates the aquifer which feeds her well water. Condition four of the permit requires that earthen dikes placed along East Fairview Road will be maintained to divert overflow. While this is aimed at addressing overflow, the practical effect will be that more wastewater will accumulate in the northeast corner of Section 6 and create greater potential from groundwater infiltration.


There are no provisions in the permit which address contamination of the well water.

Issue 6 – Legal Description in Permit

The permit does not contain the legal description of Marty Shepard's land. The permit references Section 6 in general. However, Marty Shepard does not own all of the land located in Section 6. The permit needs to be amended to state the legal description of the land owned by Marty Shepard.

Respectfully Submitted this 22nd day of May, 2006.

GAY WOODHOUSE LAW OFFICE, P.C.



Gay Woodhouse
Deborah L. Tyser
211 West 19th Street, Third Floor
Cheyenne, WY 82001
307/432-9399
Attorneys for Petitioners

CERTIFICATE OF SERVICE


I hereby certify that on this 22nd day of May, 2006, a true and correct copy of the foregoing was served by first-class mail, postage prepaid, and addressed to:

Mike Barrash
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002

Terri A. Lorenzon, Director
Environmental Quality Council
122 W. 25th St.
Herschler Bldg R. 1714
Cheyenne, Wyoming 82002

Doug Weaver
604 10th Street
P.O. Box 219
Wheatland, WY 82201-0219

Joe Geringer
380 E. Fairview Road
Wheatland, Wyoming 82201


Of: Gay Woodhouse Law Office, P.C.