

**FILED**

**MAY 23 2006**

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 )

**RESPONDENT WYOMING DEPARTMENT OF  
ENVIRONMENTAL QUALITY'S PREHEARING MEMORANDUM**

Respondent Wyoming Department of Environmental Quality ("DEQ"), Water Quality Division ("WQD"), submits this Prehearing Memorandum pursuant to the Wyoming Environmental Quality Council's ("EQC" or "Council") March 10, 2006 scheduling Order and April 18, 2006 Notice of Hearing and Order in the above-captioned matter.

**DEQ's Witness List**

1. The DEQ will call Louis Harmon, a Wyoming licensed professional engineer employed by the DEQ/WQD, Herschler Building, 4<sup>th</sup> Floor West, 122 W. 25<sup>th</sup> Street, Cheyenne, WY 82002, (307) 777-7781. Mr. Harmon will testify about the terms, conditions, and issuance of contested permit no. 04-316, and related issues identified by the Petitioners.
2. The DEQ may call any of the other parties' witnesses.
3. The DEQ may call any other witnesses as may be necessary for purposes of impeachment or rebuttal.

**DEQ's Exhibit List**

The DEQ will or may seek to introduce the following exhibits:

1. The transcripts (including any deposition exhibits) of the depositions of Petitioners Joe Geringer, Lorraine Allbright, Eugene Birkle, and/or Mary Birkle in this matter.

2. All Petitioners' respective notification of issues pursuant to the Council's Order dated March 10, 2006.

3. All of the Petitioners' respective responses to each of Respondent DEQ's requests for written discovery in this matter.

4. Permit no. 04-273 issued by DEQ/WQD to the Town of Wheatland.

5. Permit no. 04-274 issued by DEQ/WQD to the Town of Wheatland.

6. Permit no. 04-316 issued by DEQ/WQD to the Town of Wheatland.

7. The application package submitted by the Town of Wheatland to the DEQ/WQD for permit no. 04-316, specifically including, but not limited to:

a. Design Report portion of the Town of Wheatland's permit application;

b. July 6, 2004 "Agreement" [for easement] between the Town of Wheatland and Marty Shepard;"

c. "Additional Conditions for Application of Wastewater on Shepard Farm" ("Exhibit 'A'");

d. Two maps, both labeled "EXHIBIT A" ("Setbacks for Land Application of Class 'B' Treated Wastewater" *and* "Setbacks for Land Application of Class 'C' Treated Wastewater");

e. "Addendum to Design Report" ("Reuse for Irrigation on Farm Land" and "Water Budget for Consumptive Use of Treated Wastewater for irrigation of Crops");

f. Map labeled "Exhibit 'A' Crop Scenario for Estimating Consumptive Use of Treated Wastewater;"

g. September 28, 2004 Terracon Geotechnical Engineering Report.

8. Test results for samples taken by DEQ/WQD from Petitioners Allbright's and Birkle's domestic wells in April, 2006.
9. Discharge Monitoring Reports ("DMRs") ("Exhibit 2" to the Allbright's and Birkles' "Notice of Legal Issues")
10. The Council's "Statement of Principal Reasons for Revision and Adoption" of Chapter 21 (dated October 13, 1997).
11. Any exhibits listed by the other parties.
12. Any other exhibits as may be necessary for purposes of impeachment or rebuttal.

#### **Clarification of Legal Issues**

Petitioners are contesting permit no. 04-316, which was issued by the DEQ/WQD to the Town of Wheatland on June 9, 2005. Earlier, on June 17, 2004, the DEQ/WQD had issued two other permits (nos. 04-273 & 04-274) to the Town of Wheatland. Petitioners timely appealed (within sixty days) permit no. 04-316, but not permits nos. 04-273 & 04-274. Consequently, only permit no. 04-316 is contested here. Permit no. 04-316 authorizes the Town 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 application no. 04-316.

The general issue is whether or not the application and permit comply with applicable statutory and regulatory requirements. The specific issues are whether or not the application and permit comply with the particular statutory and regulatory requirements identified by the Petitioners.

Chapter I, Section 3(c)(iii) of the Council's Rules of Practice & Procedure calls for

petitions for hearing to set forth a statement of the facts on which the protest is based, including whenever possible particular reference to the statutes or rules the protestant alleges have been violated. The Council's March 10, 2006 scheduling Order called for each of the Petitioners to notify the other parties of Petitioner's final statement of issues no later than March 10, 2006. Respondent DEQ relies upon and hereby incorporates by reference Petitioners Lorraine Allbright, Gene Birkle and Mary Birkle's Notice of Legal Issues (dated March 10, 2006) and Petitioners' [Lorraine Allbright, Gene Birkle and Mary Birkle] Supplemental Notice of Legal Issues (dated March 15, 2006), and Petitioner Joe Geringer's undated list of 8 issues (received by counsel for Respondent DEQ on March 16, 2006).

**Proposed Stipulation of Facts**

1. DEQ/WQD issued two permits, nos. 04-273 & 04-274, to the Town of Wheatland on June 17, 2004.
2. DEQ/WQD issued permit no. 04-316, to the Town of Wheatland on June 9, 2005.
3. Petitioners timely appealed permit no. 04-316 within sixty days.
4. Petitioners did not timely appeal permits nos. 04-273 & 04-274 within sixty days.

**Proposed Stipulation to Foundation and Admissibility of Exhibits**

1. The transcripts (including any deposition exhibits) of the depositions of Petitioners Joe Geringer, Lorraine Allbright, Eugene Birkle, and/or Mary Birkle in this matter.
2. All Petitioners' respective notification of issues pursuant to the Council's Order dated March 10, 2006.
3. All of the Petitioners' respective responses to each of Respondent DEQ's requests for written discovery in this matter.

4. The application package submitted by the Town of Wheatland to the DEQ/WQD for permit no. 04-316.

5. Permits nos. 04-273, 04-274, and 04-316 issued by DEQ/WQD to the Town of Wheatland.

6. The Council's "Statement of Principal Reasons for Revision and Adoption" of Chapter 21 (dated October 13, 1997).

7. Test results for samples taken by DEQ/WQD from Petitioners Allbright's and Birkle's domestic wells.

DATED this 22nd day of May, 2006.



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CERTIFICATE OF SERVICE

True and correct copies of the foregoing RESPONDENT WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S PREHEARING MEMORANDUM were served by United States mail, first class postage prepaid, and/or hand delivery and/or facsimile transmission on or before the 24th day of May, 2006, addressed as follows:

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