



mike barrash <mike.barrash@wyo.gov>

Fwd: Grasslands revised proposed findings

mike barrash

Fri, Jul 15, 2011 at 3:03 PM

To: "Ruby, Jim"

Cc: Joe Girardin

Jim- Attached (PDF) is DEQ's proposed revisions to draft Findings, Conclusions & Order in EQC Docket No. 10-3207A (Paces, Moores, Grasslands Mobile Home Park case). The revisions (pp. 1-2 & 8-10), in bold strike and underline, are intended to address Mr. Bondi's comments in the Moore's Response to DEQ's initial draft Findings relating to identification of referenced standards and burden of proof. Mostly the revisions supply additional citations to the record (hearing transcript), but also clarify that the contested NOV & Order were ultimately based on the need to get the systems permitted. See "Ultimate Facts" ##16-17, pp.8-9. Compliance with applicable standards would be factors in approval or disapproval of a permit application once applications are submitted.

I initially sent the proposed revisions to counsel for the Paces and the Moores on June 23. On June 27, Mr. Hardee replied that he had no objections (see second attached PDF). To date, Mr. Bondi has not informed me of his position on the proposed revisions.

----- Forwarded message -----

From: **mike barrash**

Date: Thu, Jun 23, 2011 at 3:32 PM

Subject: Grasslands revised proposed findings

To:

FILED

JUL 15 2011

Jim Ruby, Executive Secretary
Environmental Quality Council

Counsel- As we discussed, I have made a few revisions to the proposed findings / conclusions prompted by Harry's comments. The revisions are highlighted (bold and underline) in the attached revised draft (PDF). Some of the revisions are text, some are citations to the transcript. See pages 1-2 and 8-10. Let me know what you think so I can submit them to the EQC. Thanks. Also note my new e-mail address.

2 attachments

 **Image (17).pdf**
4874K

 **Image (100).pdf**
385K

TRANSACTION REPORT

JUL/05/2011/TUE 10:03 AM

FAX (TX)

DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	JUL/05	10:02AM	913072664426	0:00:24	1	MEMORY OK SG3 1819



mike barrash <mike.barrash@wyo.gov>

Fwd: Proposed Grasslands Findings, Conclusions & Order (EQC #10-3207A)

mike barrash

Tue, Jul 5, 2011 at 10:54 AM

To: I

Harry- Can you give me a set time this week for us to talk about the revised draft Grasslands findings I sent to you and Jim Hardee on June 23rd. If we can agree on revised draft findings, that would be preferable. If not, I should file the June 23rd draft revisions by the end of this week.

----- Forwarded message -----

From: JAMES HARDEE LAW <

Date: Mon, Jun 27, 2011 at 10:55 AM

Subject: Re: Proposed Grasslands Findings, Conclusions & Order (EQC #10-3207A)

To: Mike Barrash >

Dear Mike,

Per your e-mail, I have no objections.

James A. Hardee

On Mon, Jun 6, 2011 at 1:46 PM, Mike Barrash wrote:

Counsel- As called for in the EQC's May 17, 2011 Order, today DEQ submitted Proposed Findings, Conclusions & Order (PDF copy attached) in Docket No. 10-3207A.

Mike Barrash
 Senior Assistant Attorney General
 Wyoming Attorney General's Office
 123 Capitol Building
 Cheyenne, WY 82002
 (307) 777-6946

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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF:)
James Pace)
P.O. Box 575)
Douglas, WY 82633)
)
And) Docket No. 10-3207A
)
Peter J. Moore & Bonnie Smith-Moore)
103 Hwy. 59)
Douglas, WY 82633)

DRAFT

**REVISED PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER**

This contested case came before the Wyoming Environmental Quality Council (EQC) for an evidentiary hearing on May 12, 2011 in Cheyenne, Wyoming. EQC members present at the hearing were Tim Flitner, Chairman, John Morris, David Searle, and Rich Fairservis. EQC members participating in the hearing via electronic communications links were Dennis Boal and Thomas Coverdale. Mr. Flitner served as presiding officer for the hearing. Counsel appearing for the Parties were Harry Bondi, Esq., for Petitioners Peter Moore and Bonnie Smith-Moore (the Moores), James Hardee, Esq., for Petitioners James and Martha Pace (the Paces), and Mike Barrash, Senior Assistant Attorney General for Respondent Wyoming Department of Environmental Quality (DEQ).

Petitioners requested the hearing to contest Notice of Violation (NOV) & Order No. 4631-10 issued by the DEQ dated March 11, 2010, regarding the water supply system and the sewerage system serving the Grasslands Mobile Home Park on highway 59 north of Douglas in Converse County, Wyoming. The NOV alleged violations pertaining primarily to system permit and operator certification requirements, and the Order prescribed measures to secure compliance with those requirements. **Compliance with the operator certification requirements in the**

Order was achieved prior to the hearing. Tr. pp.29, 36. The main issue for the hearing on the contested Order was whether or not permits from DEQ were required for the mobile home park water supply and sewerage systems. Tr. pp.28, 36. At the conclusion of the evidentiary hearing the participating EQC members voted as follows on a motion to approve the contested NOV & Order: voting for the motion were Thomas Coverdale, Dennis Boal, David Searle and Tim Flitner; voting against the motion were John Morris and Rich Fairservis. The motion passed 4-2. Tr. p.182.

FINDINGS OF FACT

Underlying Facts

Grasslands Mobile Home Park

1. The Grasslands Mobile Home Park (MHP) is located on highway 59 north of Douglas, Converse County, Wyoming. Stipulated Fact #1.
2. Grasslands MHP was previously known as "Mountain View Trailer Park." Stipulated Fact #3; Tr. p.114.
3. The Paces are currently the record title owners of the Grasslands MHP. Stipulated Fact #4.
4. The Paces purchased the Grasslands MHP property in 1984 from the McClures. Stipulated Fact #5; Tr. p.132.
5. The Paces sold the Grasslands MHP by contract to the Moores in September, 2004. Stipulated Fact #6.
6. The Moores have operated the Grasslands MHP since they purchased it from the Paces in September, 2004. Stipulated Fact #7.
7. The Grasslands MHP is served by its own water supply system and sewerage system, which are separate from the City of Douglas' water supply system and sewerage system. Stipulated Fact #2; Tr. p.54.
8. Each unit at the Grasslands MHP has a separate service connection to the water supply system and the sewerage system. Stipulated Fact #13; Tr. pp.111-112, 124.

9. The “Mountain View Trailer Park” (Grasslands MHP) had service connections for seventeen (17) trailer spaces in 1983.

Moore Exhibit 2 (p.1); Tr. pp.113-114.

10. Trailer spaces (service connections) were added since 1983. Tr. p.114.

11. In 2010 there were 25 or 26 service connections at Grasslands MHP (18 or 19 occupied trailers but there could be up to 24 occupied trailers, plus the Moores’ house and a small bathroom in the shop), each with separate service connections. Tr. pp.106-107, 111-113.

12. The resident population of Grasslands MHP was forty-six (46) people in late 2010, and thirty-six (36) at the time of the hearing. Tr. pp.114-115.

Water Supply System

13. In 1983 and at the time the Paces purchased the “Mountain View Trailer Park” (Grasslands MHP) in 1984, the water supply system acquired water from two (2) wells drilled in 1977 and 1980.

Stipulated Fact #19; Moore Exhibit 2 (p.1); Tr. pp.114-116.

14. One earlier well had been abandoned. DEQ Exhibit 19 (p.3); Tr. p.59.

15. Previous owners (the McClures) submitted applications to the State Engineer’s Office in 1980 to install or modify two (2) wells to supply water for the Grasslands MHP. DEQ Exhibits 14-15; Tr. pp.116-117, 132.

16. (McClure) Well #2 was enlarged for expanded use to serve 17 trailer spaces, with the water from Well #2 to be commingled with that of (McClure) Well #3. DEQ Exhibit 14; Tr. pp.116-117.

17. (McClure) Well #3 was installed to replace a domestic well that had sanded up and been plugged and to serve 17 trailer spaces, with the water from Well #3 to be commingled with that of (McClure) Well #2. DEQ Exhibit 15; Tr. p.117.

18. Jim Pace put in a third well in the mid-1980s, after the Paces purchased the Grasslands MHP in 1984. Tr. pp.119, 142.

19. At the time the Paces turned over possession and operation of the Grasslands MHP to the Moores in September, 2004 the water supply system included 3 wells. Stipulated Fact #21; Tr. p.115.
20. The Grasslands MHP's 3 existing water supply wells constitute one system, because they cannot be isolated.
DEQ Exhibit 19 (p.3); Tr. p.171; Tr. p.118 (DEQ Exhibit 19 admitted).
21. There is not an ongoing disinfection process in place for the Grasslands MHP water supply system. Tr. pp.100, 119-120.
22. The Paces have never applied for or obtained a permit from DEQ or from Converse County's delegated program for the Grasslands MHP water supply system. Stipulated Fact #15.
23. The Moores have never applied for or obtained a permit from DEQ or from Converse County's delegated program for the Grasslands MHP water supply system. Stipulated Fact #17; Tr. p115.
24. The Moores currently supply bottled water to Grasslands MHP residents for drinking and cooking, because uranium levels in the Grasslands MHP water supply exceed the drinking water standard. Tr. pp.121-122.

Sewerage System

25. The sewerage system had 3 septic tanks when the Paces purchased the Grasslands MHP in 1984. Stipulated Fact #23.
26. Moores believe the Grasslands MHP septage system now has 4 tanks.
Tr. p.124.
27. The Grasslands MHP sewerage system currently includes a septic tank located near the southwest corner of the Grasslands MHP, with a leach field.
Stipulated Fact #28.
28. The Grasslands MHP sewerage system currently includes a septic tank located south of the operator's trailer (Moores' house), with a leach field.
Stipulated Fact #29.

29. The Grasslands MHP sewerage system currently includes a septic tank located south of a shop near the southeast corner of the Grasslands MHP, *without* a leach field. Stipulated Fact #30.
30. In the mid-1980s, Jim Pace added a cement 1000 gallon tank to the Grasslands MHP sewerage system. Tr. pp.124-125, 136, 143.
31. Prior to December 11, 2009, waste water was pumped out when it hit a certain level in cleanout risers for Grasslands MHP septic tanks and was applied to horse corrals. Tr. pp.101, 125-126.
32. The Moores have now contracted with Jordan Services, LLC of Douglas for pumping, hauling and proper disposal of sewage from the Grasslands MHP sewerage system. Stipulated Fact #10.
33. The Paces have never applied for or obtained a permit from DEQ or from Converse County's delegated program for the Grasslands MHP sewerage system. Stipulated Fact #16; Tr. pp.144-145.
34. The Moores have never applied for or obtained a permit from DEQ or from Converse County's delegated program for the Grasslands MHP sewerage system. Stipulated Fact #18; Tr. p115.

2010 Engineer's Report

35. The Moores retained licensed Wyoming engineer Frank A. Strong IV (M.C. Schaff & Associates, Inc.) in 2010 to evaluate the existing Grasslands MHP water supply system and sewerage system. Stipulated Fact #11.
36. Mr. Strong prepared a report for the Moores, dated October 28, 2010, documenting his evaluation of the existing Grasslands MHP water supply system and sewerage system.
DEQ Exhibit 19; Tr. pp.48, 110-111; Tr. p.118 (DEQ Exhibit 19 admitted).
37. The collection system for the Grasslands MHP sewerage system is made up of 4 inch gravity lines which do not meet current DEQ regulations that require sanitary lines to be no smaller than 6 inches. DEQ Exhibit 19 (p.2); Tr. 53.

38. The “west system” septic tank located near the southern tip (southwest corner) of the property is oversized, but the absorption (leach) field for it is undersized. Stipulated Fact #28; DEQ Exhibit 19 (p.2); Tr. pp.52-53.
39. Standing water seen in the riser pipe at the end of one of the 3 inch laterals in the “west system” indicates that the laterals are not sufficiently sized for the flow they are receiving. DEQ Exhibit 19 (p.2); Tr. pp.53-54.
40. The “east system” septic tank located on the east portion (near the southeast corner) of the property is slightly undersized and has no absorption (leach) field. Stipulated Fact #30; DEQ Exhibit 19 (p.3); Tr. pp.56-57.
41. Wastewater from the “east system” septic tank currently is being pumped through an aboveground hose to the septic tank located south of the office (operator’s trailer) serving the “middle system.”
DEQ Exhibit 19 (p.3); Tr. pp.57-58.
42. The “middle system” septic tank located south of the office (operator’s trailer) is adequately sized, but the absorption (leach) field for it is undersized. Stipulated Fact #29; DEQ Exhibit 19 (p.3); Tr. p.58.
43. The “middle system” septic tank becomes undersized and its leach field becomes further undersized when wastewater from the “east system” septic tank (which lacks a leach field) is pumped to the “middle system.”
DEQ Exhibit 19 (p.3); Tr. p.58.
44. Grasslands MHP’s 3 water supply wells are all within 200 feet of the “central” (“middle system”) absorption field (which is also currently serving the “east system”), contrary to DEQ water quality regulations that require absorption fields with a flow rate in excess of 2000 gpd to be located 200 feet from all wells. DEQ Exhibit 19 (p.3); Tr. pp.59-60.
45. The well house “lacks a proper exterior seal/envelope” and an abandoned well exists beneath it. DEQ Exhibit 19 (p.3); Tr. pp.59, 61.
46. The Grasslands MHP water supply system has no disinfection system. DEQ Exhibit 19 (p.3); Tr. p.61.

47. The pressure gauge in the well house does not work.
DEQ Exhibit 19 (p.3); Tr. p.61.
48. The wells do not have flow meters. DEQ Exhibit 19 (p.3); Tr. p.62.
49. None of the wells can be isolated. DEQ Exhibit 19 (p.3).
50. There is no system for alternating the wells. DEQ Exhibit 19 (p.3).
51. The distribution system is not adequately sized to provide 35 psi to every service connection during peak demand. DEQ Exhibit 19 (p.3); Tr. p.62.
52. The wells and distribution system do not have the ability to flush and there are several dead ends. DEQ Exhibit 19 (p.3); Tr. p.62.

Ultimate Facts

1. The water supply system currently serving the Grasslands MHP provides water for human consumption through pipes to at least fifteen (15) service connections *or* regularly serves at least twenty-five (25) individuals.
Tr. pp. 111-115, 179.
2. The sewerage system currently serving the Grasslands MHP includes pipelines, conduits, and other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal. Tr. p.179.
3. The public water supply system serving the Grasslands MHP has been modified since 1973. Tr. pp.175, 177, 179-180.
4. The Grasslands MHP water supply system was modified after 1973 by the addition or alteration of one or more wells. Tr. pp.114-117, 119, 142.
5. The Grasslands MHP water supply system was modified after 1973 by the addition of at least seven (7) service connections. Tr. pp.106-107, 111-114, 124.
6. The sewerage system serving the Grasslands MHP has been modified since 1973. Tr. pp.175, 177, 179-180.
7. The Grasslands MHP sewerage system was modified after 1973 by the addition of at least seven (7) service connections. Tr. pp.106-107, 111-114, 124.

8. The Grasslands MHP sewerage system was modified after 1973 by the addition of a 1000 gallon cement tank. Tr. pp.124-125, 136, 143.
9. The Grasslands MHP sewerage system has been modified since 1973 by the pumping of wastewater from the “east system” septic tank through an aboveground hose to the septic tank located south of the office (operator’s trailer) serving the “middle system.” DEQ Exhibit 19 (p.3); Tr. pp.57-58.
10. The contested DEQ Order (No. 4631-10) lists 13 requirements to address the alleged violations. Stipulated Fact #8.
11. Grasslands MHP is currently in compliance with DEQ Order requirements #1, #3, #4, #5 (designation and retention of chief and backup certified operators), and #7 (retention of licensed engineer to evaluate existing water supply system). Stipulated Fact #9; **Tr. pp.29, 36.**
12. Grasslands MHP is currently in at least partial compliance with DEQ Order requirements #6 (contract with sewage hauler and submittal of quarterly reports) and #8 (retention of licensed engineer and licensed geologist to evaluate existing sewerage system). Stipulated Fact #12; **Tr. pp.29, 36.**
13. Grasslands MHP is currently not in compliance with DEQ Order requirements #2 (water supply system disinfection process), #9, #10, #11, #12, **and #13 (water supply system and sewerage system permit applications and plans for related system improvements as needed to meet standards referenced in ¶¶ 7-10 & 13 of the contested Order). **Tr. pp.43-47, 50, 63, 155-156.****
14. Grasslands MHP has never applied for or been issued a permit from DEQ or from Converse County’s delegated program for its water supply system. Stipulated Facts #15, #17.
15. Grasslands MHP has never applied for or been issued a permit from DEQ or from Converse County’s delegated program for its sewerage system. Stipulated Facts #16, #18; Tr. pp.144-145.
16. **Application for a permit from DEQ for t**The existing Grasslands MHP water supply system **is not in compliance with some applicable state will**

require a plan to achieve compliance with standards referenced in ¶¶ 7 & 9 of the contested Order. Tr. pp.43-47, 50, 63, 155-156.

17. **Application for a permit from DEQ for t**The existing Grasslands MHP sewerage system **is not in compliance with some applicable state will require a plan to achieve compliance with standards referenced in ¶¶ 8 & 10 or 13 of the contested Order. Tr. pp.43-47, 50, 63, 155-156.**

CONCLUSIONS OF LAW

1. The EQC has jurisdiction in this contested case under WYO. STAT. ANN. §§ 35-11-112(a)(iii) and 35-11-701(c)(ii). Tr. p.179.
2. No person shall modify any public water supply except when authorized by a permit issued by the DEQ pursuant to the Wyoming Environmental Quality Act. WYO. STAT. ANN. § 35-11-301(a)(v).
3. No person shall modify any sewerage system except when authorized by a permit issued by the DEQ pursuant to the Wyoming Environmental Quality Act. WYO. STAT. ANN. § 35-11-301(a)(iii).
4. WYO. STAT. ANN. § 35-11-302(a) authorizes the DEQ to recommend rules, regulations, standards and permit systems to promote the purposes of the Wyoming Environmental Quality Act.
5. WYO. STAT. ANN. § 35-11-103(c)(viii) defines “public water supply” to mean a system for providing to the public water for human consumption through pipes or constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals.
6. WYO. STAT. ANN. § 35-11-103(c)(iii) defines “sewerage system” to include pipelines, conduits, constructions, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
7. The above-referenced provisions of WYO. STAT. ANN. §§ 35-11-103(c), 35-11-301(a), and 35-11-302(a) were in the Wyoming Environmental Quality Act as it was originally enacted in 1973 (except that a “public water supply” was initially defined as one distributing water by only ten (10) or more service connections).

8. The water supply system serving the Grasslands MHP, as modified since 1973, is a “public water supply” as defined in WYO. STAT. ANN. § 35-11-103(c)(viii). Tr. pp. 111-115, 179.
9. The sewerage system serving the Grasslands MHP, as modified since 1973, is a “sewerage system” as defined in WYO. STAT. ANN. § 35-11-103(c)(iii). Tr. p.179.
10. The public water supply system serving the Grasslands MHP, as modified since 1973, is subject to the permit requirement in WYO. STAT. ANN. § 35-11-301(a)(v). Tr. pp.175, 177, 179-180.
11. The sewerage system serving the Grasslands MHP, as modified since 1973, is subject to permit requirement in WYO. STAT. ANN. § 35-11-301(a)(iii). Tr. pp.175, 177, 179-180.
12. Respondent DEQ has met its burden of proof in this case, because a preponderance of the evidence shows that the Grasslands MHP needs a permit for its public water supply system and for its sewerage system. Tr. pp. 19, 175.

ORDER

1. DEQ Order No. 4631-10 is affirmed.
2. The time periods for compliance with DEQ Order items #2, #9, #10, #11, #12 and #13 shall commence from the date the EQC enters and files these Findings, Conclusions & Order.

SUBMITTED this ____ day of June, 2011.

DRAFT
Mike Barrash (WY Bar #5-2310)
Sr. Assistant Attorney General
123 State Capitol Building
Cheyenne, WY 82002
(307) 777-6946

CERTIFICATE OF SERVICE

This certifies that true and correct copies of the foregoing REVISED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER were served on this ____ day of June, 2011 by United States mail, first class postage prepaid, and also by facsimile transmission or email addressed as follows:

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