

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

FILED

AUG 31 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF)
VIOLATION ISSUED TO:)

) DEQ Docket No. 4626-10
) EQC Docket No. 10-3212A

SALL Enterprises, LLC)
P.O. Box 3189)
Alpine, WY 83128)

**RESPONSE OF THE DEPARTMENT OF ENVIRONMENTAL
QUALITY/WATER QUALITY DIVISION TO THE "TOWN OF ALPINE'S
OBJECTION TO ISSUANCE OF DEQ PERMIT AND REJECTION OF
SETTLEMENT AGREEMENT"**

The Department of Environmental Quality ("DEQ")/Water Quality Division ("WQD") by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, hereby responds to the Town of Alpine's ("Alpine") Objection to Issuance of DEQ Permit and Rejection of Settlement Agreement, and states to the Environmental Quality Council ("EQC") the following:

1. The DEQ/WQD issued NOV and Order, Docket No. 4626-10, to SALL Enterprises, LLC ("SALL") on March 19, 2010, alleging that SALL failed to acquire a permit from the DEQ/WQD prior to constructing or modifying its septic systems. The Order directed SALL to:

a. No later than June 1, 2010 a permit to construct application, along with plans and specifications, must be submitted to the Wyoming Department of Environmental Quality, Water Quality Division, Southwest District Engineer by a professional engineer licensed in the State of Wyoming.

b. This application must provide as-built information for all the wastewater system construction that was completed on the SALL Enterprises' property in the Town of Alpine on or after January 1, 2006.

c. This application must include an estimate of the total maximum and average daily wastewater flow for each of the septic systems on SALL Enterprises' property in the Town of Alpine.

2. SALL appealed the NOV and Order to the EQC on April 8, 2010.

3. On April 22, 2010, Alpine filed a Motion to Intervene for the purpose of protecting its interests which was granted on June 8, 2010.

4. In its Motion to Intervene, Alpine alleged that it was protecting an interest in maintaining its ability to regulate its septic and sewer systems, protect its decision to deny permits to construct or modify SALL's septic system, and to protect its interest during the depositions of various Alpine employees and elected officials.

5. SALL has complied with the Order as set forth in paragraphs 1(a) through 1(c) above.

6. On July 6, 2010, the DEQ/WQD issued permit 10-254R to SALL for an as built septic tank and leach field replacement to serve SALL's Greys River Tavern, 14 RV sites and a bathroom/shower facility.

7. As the DEQ/WQD's Order has been complied with by SALL, any issues before the EQC in the above captioned matter are now moot, and therefore, SALL's appeal should be dismissed.

8. On July 20, 2010 Alpine filed its objection to the issuance of permit 10-254R and request for the EQC to reject the settlement agreement based on the contention

that the permit was improperly issued because the WQD ignored water usage data provided by SALL. Alpine's objection should be denied on the ground that the objection is not a proper appeal and Alpine is not entitled to participation in the settlement of claims between the original parties in the above captioned matter.

9. Chapter I, Section 16 of the DEQ/WQD General Rules of Practice and Procedure ("GRPP") allow appeals to the EQC of final DEQ actions within 60 days of such action. GRPP, Ch. I, § 16.

10. The issuance of permit 10-254R to SALL is a final action by the DEQ/WQD which is appealable to the EQC in a separate action.

11. GRPP, Chapter I, Section 3 requires:

(b) All persons requesting a hearing or protesting a permit shall file two copies of a written petition directed to and served upon both the Chairman of the Council and the Director of the Department.

(i) Original service shall be by registered mail, return receipt requested. Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure.

(ii) Where protestant is objecting to a permit, he shall also serve the permit applicant with a copy of the petition and all other pleadings and motions.

(c) The petition for hearing shall set forth:

(i) Name and address of the person making the request or protest and the name and address of his attorney, if any.

(ii) The action, decision, order or permit upon which a hearing is requested or an objection is made.

(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 Applicant or Protestant alleges have been violated.

(iv) A request for hearing before the Council.

(d) The filing of such petition shall constitute the commencement of the proceeding on the date filed.

GRPP, Ch. I, § 3(b), (c), and (d).

12. Alpine's Objection fails to comply with the requirements of a petition for review as set forth by GRPP, Chapter I, Section 3. Alpine's objection fails to include the address of the objector, the address of the objector's attorney and fails to contain a particular reference to the statutes, rules or orders alleged to be violated. In addition, Alpine failed to serve, by registered mail, return receipt requested the Chairman of the EQC and the Director of the DEQ. Lastly, Alpine's objection is improperly filed in the above captioned matter when it should be a new action before the EQC, separately docketed, objecting to the issuance of WQD permit 10-254R to SALL.

13. As an intervenor, Alpine's participation in the proceedings is limited to "the right to have notice, appear at the taking of testimony, produce and cross-examine witnesses, and be heard on the argument of the case." GRPP, Ch. II, § 7(c). Alpine, as an intervenor, has no right under the GRPP to be included in, or object to the settlement of this matter by the DEQ/WQD and SALL.

14. The role of the Alpine as an intervenor in the above captioned matter may be limited by the EQC, including excluding Alpine from participating in the settlement agreement entered into by SALL and the DEQ. *See Nielson v. Thompson*, 982 P.2d 709, 713 (Wyo. 1999). (After permitting initial intervention, a district court may limit the role

of an intervenor, where a creditor of a party to a divorce proceeding intervened for the purpose of protecting its interest in a debt, but was denied participation in the property settlement between the parties to the divorce action.)

WHEREFORE, for the reasons stated herein, the DEQ prays that the EQC enter an ORDER granting SALL Enterprise's and DEQ's joint motion to dismiss the above captioned matter.

DATED this 31st day of August, 2010.

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY



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CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that the foregoing Response was served by US. Mail, postage prepaid, and addressed correctly, to the following on the 31st day of August, 2010:

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