

Apr 23, 2010

Stefan Fodor

Jim Ruby, Executive Secretary

From: Gary Shockey [garyshockey@msn.com] Environmental Quality Council
Sent: Wednesday, April 21, 2010 5:08 PM
To: Stefan Fodor; Richard Rideout
Subject: RE: SALL EQC Depositions



Dear Stefan,
The Kjellgren, DeCora, and Wolfley depositions will be conducted appropriately.

I have extended more than professional courtesies to Richard Rideout in my conversations with him and in efforts to accomodate his schedule. This is in spite of the fact that he nor the Town have any "standing" to participate in the EQC matter. Your position and apparent instructions to Mr. Rideout on behalf of the Town as Mr. Rideout's client are the reasons we are proceeding as we are.

I did not propose an "indefinite" waiver of the fees the Town claims. I proposed that the Town agree to the entry of a TRO until July 31 to give Mr. Rideout and me time to do some factual discovery and legal briefing for the Court and to have the Court resolve issues on that basis. I also proposed that disputed amounts be deposited with the Clerk pursuant to a motion I have filed. My understanding was that you (or the Town) would not authorize Mr. Rideout to enter into such an agreement with me. Absent that, we are left with the mechanisms of litigation.

I have provided notice to Richard of further motions and proceedings in our case.

Best regards,
Gary

From: stefan@fodorlaw.com
To: garyshockey@msn.com; rsideout@qwestoffice.net
Subject: SALL EQC Depositions
Date: Wed, 21 Apr 2010 14:28:17 -0600

Gary:
The Town is objecting to the Deposition of the Mayor. Additionally, the Town is seeking to limit the scope of the depositions of Leon Kjellgren and Deb Wolfley.

With regards to the Mayor's deposition, the decisions of the Town Council are made as a collegial body. Additionally, the ordinances enacted by the Town of Alpine are enacted as a result of a collegial decision. It is the Town's contention that the Plaintiffs are not allowed to inquire into the individual mental processes (fact investigation), consideration, through processes, analysis, motives and rational of the Mayor, and individual Council Members. This very matter was very recently ruled upon by Judge Guthrie in the Save Historic Jackson Hole lawsuit against the Town of Jackson, Civil Action No. 14788.

Only the action of the collegial body is relevant to the decision made. As a result, The Town is requesting that you withdraw the subpoena for the deposition of the Mayor.

With regards to Leon Kjellgren and Deb Wolfley's depositions, If we can agree that only the matter of the Notice of Violation issued by DEQ, the August 25, 2009 letter authored by Leon to DEQ and the surrounding facts will be the subject of these depositions, the Town can avoid filing a motion for a Protective Order limiting the scope of inquiry. If your intent is to delve into all the other matters of the suit against the Town, the Town will have no recourse but to file a motion for Protective Order.

Additionally, it is my understanding that Richard Rideout has had several telephone conversations with you on the matter of his unavailability and inability to attend any of the depositions scheduled for Thursday and Friday of this week. As a professional courtesy, on behalf of the Town, I would ask that you

agree to re-schedule the depositions set to take place Thursday and Friday both due to Richard's unavailability and the fact that the Town has a good faith objection to the deposition of the Mayor and a good faith basis for limiting the scope of the other depositions.

I further understand that you have, in exchange for postponing the depositions, requested that the Town agree to indefinitely waive the provisions of its ordinance whereby water service is shut off for failure to pay water fees, sewer fees or readiness to serve fees. I hope you can understand that neither Richard or I have the ability to make that kind of decision that goes against the clear language of the ordinance. Even if we were to convene a special meeting of the Town Council, I don't believe there is any procedure where the Council could change the requirements of the ordinance (if they were so inclined), short of drafting another one and having three public readings of the new Ordinance.

I further understand that, in exchange for moving the depositions, you have suggested that your clients pay the amounts at issue into an escrow account held by the Court. Again, neither Richard or I have the ability to waive the requirements of the Ordinance. When we met with Judge Sanderson last year, via telephone, my recollection is that he stated, as one of the reasons for denying the TRO, that any money damages paid by your clients could easily be calculated and taken into account if the Plaintiff's prevail in their lawsuit. I don't see how that has changed and hope we can re-schedule the depositions, you clients can pay their outstanding bills to the Town, track those payments as eventual damages and the Town can avoid terminating their water service.

Please let Richard and I know if your clients will

- 1) Withdraw the subpoena for the Mayor
- 2) Agree to limit the scope of the depositions of Leon Kjellgren and Deb Wolfley to the matters surrounding the Notice of Violation, the August 25, 2009 letter authored by Leon to DEQ and the surrounding facts.

If we cannot agree to the above, the Town will be filing a Motion to Quash and Motion for Protective Order with EQC.

We look forward to hearing from you.

[incidentally, Richard is having email trouble today]
Regards,

Stefan J. Fodor
Fodor Law Office, PC
307.733.2880

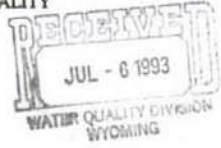


DELEGATION AGREEMENT

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

TOWN OF ALPINE, WYOMING



Article I. Authority

1. Pursuant to the authority of W.S. 35-11-304(a), the State of Wyoming, acting through the Administrator of the Water Quality Division and the Director of the Department of Environmental Quality, and the Town of Alpine, a local governmental entity, referred to herein as "Entity", enter into the following Delegation Agreement.

Article II. Introduction and Purpose

2. This Agreement is authorized by W.S. 35-11-304, which provides that, to the extent requested by a municipality, the water and sewer district or county, the Administrator of the Water Quality Division, with the approval of the Director of the Department of Environmental Quality, shall delegate the authority to enforce and administer the provisions of W.S. 35-11-301(a)(iii) to local governmental entities, subject to certain conditions.

This Agreement provides for local assumption of such authority, and for promulgation of local regulations consistent with the standards and provisions of the Wyoming Environmental Quality Act and applicable standards and regulations promulgated pursuant to the Act.
3. The purpose of this Agreement is to foster State-Local cooperation and conformity in the regulation of small wastewater facilities and to provide uniform and effective application of the provisions of Wyoming law relating to the construction and operation of these facilities.
4. Under this Agreement, the enforcement and administration of permitting and inspection of small wastewater facilities is delegated to qualifying local governmental entities which have complied with the requirements of W.S. 35-11-304, applicable Wyoming Water Quality Rules and Regulations, and the terms of the Wyoming Administrative Procedure Act, W.S. 16-3-101, et seq.

Article III. Requirements for the Agreement

5. The State, by the Administrator of the DEQ/WQD, and the Entity by the Mayor affirm that they will comply with all of the provisions of this Agreement, all applicable standards and Wyoming Water Quality Rules and Regulations and regulations promulgated by the entity and that they will continue to meet all the conditions and requirements specified in this Agreement.
- (a) The Administrator of the Department of Environmental Quality, Water Quality Division shall be responsible for administering this Agreement on behalf of the State of Wyoming. The Mayor shall administer this Agreement on behalf of the Entity, in accordance with W.S. 35-11-304(a)(ii).
 - (b) The Department of Environmental Quality, Water Quality Division has and shall continue to have authority to carry out this Agreement, and shall expend sufficient funds to effectively implement the delegation and oversight activities contemplated in W.S. 35-11-304(a).

Article IV. Terms of the Agreement

6. By execution of this Agreement, the Department of Environmental Quality, Water Quality Division delegates and the Entity accepts the authority and responsibility to enforce and administer the provisions of W.S. 35-11-301(a)(iii) for small wastewater facilities. This delegation includes the authority to develop necessary rules, regulations, standards and permit systems, to review and approve construction plans, conduct inspections, issue permits, to enforce against violations, and to develop rules governing the review and appeal of any decision made by the Entity.
- (a) The Entity agrees to enforce and administer the permit program for the facilities identified, above, for the areas within its boundaries. The boundaries are identified on the map included in Attachment A, incorporated in this Agreement by this reference.
 - (b) The Entity hereby designates the Mayor as the "Delegated Local Official" who is authorized to enforce and administer the permitting program delegated herein. The authorizing minutes from the Entity is included in Attachment B, incorporated herein by this reference.
 - (c) The names of the individuals designated as waste treatment operator and authorized to review permits and their qualifications are included in Attachment C, incorporated herein by this reference.

- (d) The Entity has established rules, regulations and standards for the issuance of permits required under W.S. 35-11-301(a)(iii), which are at least as stringent as those promulgated by the State under W.S. 35-11-302(a)(iii). The local rules include the process by which an aggrieved party may seek a review of the Entity's action. Such standards and rules, as promulgated, are found in Exhibit D, attached and incorporated herein by reference.
- (e) The local Entity has developed and adopted permitting procedures consistent with those established in current rules and regulations of the State. The procedures, as adopted by the Entity are also included in Attachment D, incorporated herein by reference. See Attachment G, Application Form and Standard Engineering Form to be used for all applications.
- (f) The Delegated Local Official shall establish and maintain an adequate system of records and information for each project permit, inspection, and enforcement action. The records and information system to be used by the local agency is described in Attachment E, attached and incorporated herein by reference. Upon termination of this Agreement, all records or copies of records will be provided to DEQ.
- (g) The Entity agrees to submit status reports to the Administrator annually. The Administrator will annually review the status report and may conduct an on-site program evaluation of the local program to assess the Entity's compliance with the terms of this agreement. Upon request and reasonable notice, the Administrator may during business hours inspect the records and procedures of the Entity with regard to the review, issuance, inspection and enforcement of the permit program.
- (h) The Entity shall have the option of referring application to the Department of Environmental Quality, Water Quality Division for review and approval. Such permits shall be issued by the Department of Environmental Quality, Water Quality Division and copies of said permit and approved plan provided to the Town of Alpine. Such permits will contain a condition requiring inspection by authorized waste treatment operator of the Town of Alpine, as recognized by the DEQ.
- (i) The Entity agrees to save and hold harmless the state, its officers, agents and employees from all suits, causes of action, claims, or demands of any nature which may be brought forth, or on account of any injury, death or damage arising out of the performance or omissions of the Entity pursuant to this Delegation Agreement.

Article V. Other Conditions of the Delegation

7. At the option of the Town of Alpine, projects involving mounded system, evapotranspiration beds, and small waste stabilization ponds as described in Sections 26(c), 27 and 31 of the county regulations may be referred to the Department of Environmental Quality for a technical review. Results of the technical review will be provided to the Office of Planning and Development for their consideration in evaluating a permit application.
8. No permit shall be issued for any facility which would result in non-compliance with an approved Water Quality Management Plan prepared under Sections 208 or 201 of the Federal Clean Water Act.
9. Upon approval of this Agreement, the Entity will promptly proceed to assume the responsibility to implement this Agreement, and to hire, train and organize personnel as necessary. The Department of Environmental Quality, Water Quality Division will provide technical and other assistance as requested in order to insure a smooth transition period.
10. The Entity will commence performing the functions delegated by this Agreement upon the date of execution and continue until such time as delegation is suspended or revoked or until the Entity provides ninety (90) days notice of intent to terminate the Agreement.
11. This Agreement may be amended at any time by the written agreement of both parties.

Article VI. Changes in State or Entity Standards

12. The State may from time to time revise and promulgate new or revised construction and/or operation standards and administrative procedures. If necessary in order to meet the requirements of W.S. 35-11-304(a), the Entity shall make such changes as may be accomplished by rule-making within six months of notice by the State. Such changes shall be made in conformity with the requirements of W.S. 16-3-101, et. seq.
13. The State and Entity shall provide such other with copies of any changes to their respective laws, rules, and regulations and standards which pertain to the administration and enforcement of this agreement.

Article VII. Inspection

14. The Delegated Local Official shall provide for inspection of all facilities during construction to ensure the facilities have been constructed according to approved plans and specifications. The Delegated Local Official may also conduct periodic operation inspections of facilities permitted under the authority of this Agreement, and may

implement procedures for inspection and the reporting of inspection in conformity with W.S. 35-11-109(a)(vi). The Delegated Local Official will be the point of contact and inspection authority in dealing with permittees concerning operations and compliance with the permitting and operation standards covered by this Agreement.

15. For oversight purposes, the DEQ/WQD may designate authorized representatives to enter and inspect the construction and/or operation of the facilities described in this Agreement. Said inspections shall be conducted in conformity with W.S. 35-11-109 (a)(vi). The Entity shall receive reasonable notice of such inspection and may participate in this inspection.

Article VIII. Enforcement

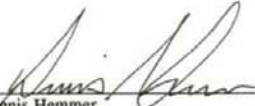
16. The Entity shall be the primary enforcement authority concerning local compliance with the requirements of the construction and permitting management activities delegated by this Agreement. A legal opinion indicating that the Entity has necessary authority to enforce compliance at the local level is attached, Attachment F.
 - (a) Should the local governmental entity and the State fail to agree regarding the propriety of any enforcement action or inaction, the DEQ/WQD may take any action necessary to comply with the terms of the Wyoming Environmental Quality Act and applicable standards and regulations. The Agreement does not limit the State's authority to enforcement against other violations of State law.
 - (b) Through periodic reports, the local governmental entity shall notify the DEQ/WQD of all violations of applicable laws, regulations or orders and all actions taken with respect to such violations.

Article IX. Revocation, Suspension or Termination

17. This Agreement may be voluntarily terminated by the Entity upon 90 days written notice. Additionally, the Administrator with the approval of the Director may revoke or temporarily suspend this Delegation Agreement if the Entity fails to perform its delegated duties or has otherwise violated the terms of this Agreement. The Administrator shall immediately notify the Delegated Local Official in writing of any revocation or suspension of the permitting authority. Such administrative action is subject to review by the Environmental Quality Council if the Entity so requests within 20 days or notice of the State's action. Unless a revocation or suspension is appealed to the Council, it becomes effective 20 days after the receipt of such notice.
18. The Entity may not assign any of its functions or authority delegated by this Agreement without prior written consent of the Administrator.

19. The parties to this Agreement have read and understand all of its provision. This Agreement is effective upon execution this _____ day of _____, 1993 and shall remain in effect until terminated as provided above.

Department of Environmental Quality



Dennis Hemmer
Director
Department of Environmental Quality

7-1-93
Date



William L. Garland, Administrator
Water Quality Division

7-1-93
Date



Keith Burron
Assistant Attorney General


July 1, 1993
Date

Town of Alpine



Donn H. Wooden, Mayor

July 8, 1993
Date



Mari Stewart, Town Clerk-Treasurer

July 8, 1993
Date