

The Town of Alpine, through the combined acts and inaction of its counsel, Mr. Stefan Fodor, its Administrator, Mr. Deb Wolfley, and Mr. Leon Kjellgren, caused the DEQ action by making allegations of DEQ violations without telling the WHOLE STORY to the DEQ. The Town did it in retaliation for SALL filing a lawsuit. The following excerpts from an affidavit [filed in District Court, Lincoln County, Wyoming] of Carla Stone, one of SALL's principals, tells the story as it has now developed:

8.SALL elected to file suit several months ago In the Complaint, SALL deferred bringing these matters to the Court for injunctive relief in hopes that some sort of compromise could be achieved with the Town. That has not happened. In fact, after suit was filed I understand that Mr. Stephan Fodor, Alpine Town Attorney, sent an email to our counsel stating, in effect, that if we didn't drop the lawsuit, the Town of Alpine would report us to the Wyoming Department of Environmental Quality and we would need to "fight" with the DEQ as well as the Town. We at SALL interpreted this as a clear threat and attempt to intimidate us from exercising our legal right to ask the Court to determine whether the Town has the right to charge fees to SALL that are impossible to pay and would put SALL out of business.

9. The Town of Alpine carried out its threat. Its former Town Engineer and now contract consultant, Mr. Leon Kjellgren of Nelson Engineering wrote a multi-page letter to the DEQ alleging violations in the installation of a new septic tank on SALL's property in April, 2008, and upgrading a leach field in August, 2009. I have been in attendance at the deposition of Mr. Kjellgren in connection with the DEQ/EQC proceeding and have learned, according to Mr. Kjellgren's sworn testimony, that basis for much of his accusatory letter was information provided in an email by Mr. Deb Wolfley, Alpine Town Administrator. I also learned that portions of Mr. Kjellgren's letter were either prepared or modified by direct, written input from Mr. Stefan Fodor, Alpine Town Attorney.

10. As a result of the DEQ/EQC action, SALL has incurred substantial legal expenses and costs amounting to thousands of dollars.

11. SALL has also learned, from documents first produced the morning of Mr. Deb Wolfley's deposition on April 22, 2010, that there is written documentation in the form of log entries by the Town of Alpine's designated operator who was granted the right by Wyoming DEQ to inspect for and issue wastewater permits, Mr. Joe Sender. Those written entries demonstrate that Mr. Sender inspected the 2007 tank installation and noted it was appropriate. [Jody Tibbitts] also inspected the 2008 leach field modification and noted it was 150 square feet bigger than it needed to be, was "overbuilt," and was "good to go."

12. During Mr. Deb Wolfley's deposition, SALL learned that Mr. Wolfley did not inform Mr. Kjellgren, engineer, who in turn made allegations to the DEQ against SALL, that Mr. Sender had inspected and approved SALL's septic [tank] modifications.

13. During Mr. Deb Wolfley's deposition, SALL also learned that a permit for the 2009 leach field modification had actually been signed by both Mr.

Wolfley and Mayor Victoria DeCora, but the Town of Alpine withheld the permit because Mr. Diggs Lewis, a SALL principal, would not agree that the Town of Alpine had the authority to limit the permit to a “temporary” term. In spite of multiple inquiries in the litigation, depositions, and discovery requests, I am not aware that the Town has ever demonstrated that it had the authority to limit the duration of a small wastewater treatment facility to a “temporary” term.

14. Put bluntly, SALL believes that the facts demonstrate a concerted effort on the part of the Town of Alpine, its attorney, its engineer, and its administrator, to provide some, but not all, facts to the DEQ resulting in actions by that agency against SALL. It is not yet apparent whether the factual omissions were intentional or inadvertent.

In addition, Mr. Diggs Lewis, also a SALL principal, has filed an affidavit that demonstrates that he was present when Mr. Joseph Sender inspected the tank installation in 2007 and that Mr. Sender indicated his approval. Mr. Lewis was also present when verbal approval for the leach field modifications was given.

The DEQ also apparently agrees that a “temporary” designation on a permit is not legally authorized. The DEQ has dropped its insistence in an October letter to SALL that SALL could get a time-limited permit from the department.

The Town of Alpine did not disclose the approvals of the septic system by Mr. Sender nor the actual issuance of a permit signed by the Mayor and Administrator for the leach field modification to the DEQ. An entity and individuals who have displayed such a lack of candor with the Agency should not be allowed to intervene.

II. THE TOWN OF ALPINE HAS NOT SATISFIED THE REQUIREMENTS OF CHAPTER II, SECTION 7, RELATED TO INTERVENTION

The Rules of Practice and Procedure, Chapter II, Section 7, provide the framework for when intervention is appropriate. In summary, intervention is appropriate when: 1) the intervenor seeks the same relief as the DEQ in this instance, or 2) is otherwise interested in the matter. The Town cannot be seeking the same relief as the DEQ, because the Town has already inspected the tank and the leach field and the Town’s own designated inspectors found both to be appropriate for granting a permit. And the Mayor and Town Administrator signed off on the permit for the leach field.

The only reason the Town can claim to be “otherwise interested” in this matter is to attempt to perpetuate or justify its own misconduct. The Town did not make full disclosure of all facts to the DEQ in its letter alleging violations. The Town should not

now be granted permission to intervene as an interested party to attempt self-serving repair of the damage it already did.

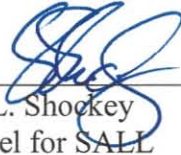
III. IF THE TOWN IS ALLOWED TO INTERVENE, ITS OBJECTIONS TO THE DEPOSITION OF THE MAYOR SHOULD BE DENIED.

If the Town becomes a party to this matter, it should not be allowed to withhold the Mayor from giving testimony in a deposition. The Town's position on this is based on the assumption that inappropriate questions would be asked of the Mayor – an assumption that is not true.

One line of inquiry that the Mayor necessarily must respond to is her signature on the permit for the 2008 leach field modification – and what justification she had in her attempts to modify the permitting authority of the DEQ via the town inspector to make the permit only “temporary.” This is but one example of questions the Mayor should be required to respond to.

DATED this 7th day of May, 2010.

/s/



Gary L. Shockey
Counsel for SALL

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was served on Mr. John Burbridge and Mr. Stefan Fodor on the 7th day of May, 2010.

/s/



8-27

LRK/09-005-02

August 25, 2009

WYDEQ
Water Quality Division
122 West 25th Street
Herschler Building, 4th Floor-West
Cheyenne, WY 82001

ATTN: Mr. Lou Harmon, Program Principal

RE: Notice of Alleged Violation of Certain Wyoming Statutes and DEQ Rules and Regulations Regarding Water Quality Considerations within the Town of Alpine, Wyoming

Dear Mr. Harmon:

I represent the Town of Alpine, Wyoming in its defense of a lawsuit filed by The Tavern, LLC and SALL, LLC, disputing the Town's statutory ability to reasonably force abandonment of septic tanks and require connection to a newly installed sewage collection system within the Town limits. The civil action requests a declaration from the court that the actions of the Town are illegal, not authorized by statute or case law, and are null and void as to their effect on the plaintiffs, and seeks certain monetary damages from the Town. The Town believes, and I concur, that it is within its statutory right and obligation to require connection under the requirements of Ordinance 194-2009-50 (attached hereto) and is vigorously defending itself against the civil action.

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The newly installed sewage collection system, placed in operation in July 2009, as shown on the enclosed Town map, runs adjacent to the plaintiffs property (a commercial development consisting of an RV park and bar). The collection system leads to a new sewage treatment facility which was placed in operation in December 2008. Both facilities were constructed with over \$8 million in Mineral Royalty Grants and SRF Loans provided by the State Land and Investment Board.

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Because of the civil action filed against it, the Town is forced to defend itself and its actions with all available rigor, and is requesting support from the DEQ in that effort. The Town believes that certain past activities regarding unpermitted modifications to the existing private septic system on the property of The Tavern, LLC occurred beginning on April 6, 2007 and again on July 25, 2008. The modifications are delineated in the enclosed email to Leon Kjellgren from Deb Wolfley, Town Administrator, dated August 24, 2009. In addition to the facts set forth in that email, on April 6, 2007 when the Mayor was made aware of the imminent installation of a non-permitted septic tank, she personally delivered a copy of the Town's then current ordinance forbidding the

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installation of new septic tanks and/or leachfields to one of the SALL, LLC principals, Mr. Diggs Lewis to inform him of the prohibition on installing tanks. Mr. Lewis disregarded the Mayor and the facts show that SALL continued to install its septic tank without obtaining a permit.

Over the past year, the Town has attempted to work with the plaintiffs in hopes that the unpermitted and unauthorized septic modifications would be a mute issue when the new collection system was available. Now that it is available, but with the plaintiff's recent refusal to connect and filing of a civil action, the Town requests the support of the State in investigation of what we believe to be specific past and continuing violations of provisions within the Wyoming Environmental Quality Act as it applies to groundwater quality. In that light, the Town of Alpine alleges the following:

- a. Multiple modifications were made to the existing private septic system on plaintiff's property as described in the August 24, 2009 email in violation of Wyoming Statute 35-11-301 (a portion of the Wyoming Environmental Quality Act) and Chapter 3 of the Wyoming Water Quality Rules & Regulations, the latter of which states in Section 1 that:

“no person, except when permit authorized, shall: construct, install, modify or operate any public water supply, sewerage system, treatment works, disposal system or other facility, excluding uranium mill tailing facilities, capable of causing or contributing to pollution, except that no permit to operate shall be required for any publicly owned or controlled sewerage system, treatment works, disposal system or public water supply.”

Section 2 of Chapter 3 also states that, “these regulations shall apply to all public water supplies as defined in Section 3 (a) (iv) of these regulations and to all private, municipal, commercial and industrial (including mining) sewerage systems, treatment works, disposal facilities, biosolids management facilities, treated wastewater systems and other facilities capable of causing or contributing to pollution”

The Town believes that said modifications were made without permit authorization by the State of Wyoming.

- b. The Town's general permitting procedure is covered by State Statute W.S. 35-11-304 which stipulates that to the extent requested, authority to enforce and administer W.S.35-11-301 (a) (iii) and (v) shall be delegated to qualifying municipalities, water and sewer district or counties. Delegation of authority is limited to **small wastewater facilities**, publicly owned or controlled non-discharging treatment works, sewerage systems and public water supply distribution systems.

In this case, the Town's permitting procedure is for its benefit only in order to monitor septic system alternations within its Town limits. The Town has no

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requirement, or authority, to issue a permit on the SALL property due to its commercial land use status. Section 3 of Chapter 3 (Rules and Regulations) defines **small wastewater systems** as:

“any sewerage system, disposal system or treatment works having simple hydrologic and engineering needs which is intended for wastes originating from a **single residential unit** serving no more than four families or which distributes 2,000 gallons or less of domestic sewerage per day.”

This definition of small wastewater system is verbatim with the definition in Section 35-11-103 of the Wyoming Environmental Quality Act. **“Single residential unit”** intuitively does not include **“commercial.”** Moreover, the 2,000 gallon per day limit is a qualifier of the parameters for a single residential unit and does not create a separate category for non residential units with less than 2,000 gallons per day. Put another way, a small wastewater system is a single residential unit that serves four or less families or which could serve more than four, so long as the discharge is less than 2,000 gallons per day. Under no reasonable interpretation of this definition is a commercial use encompassed.

- c. Moreover, in addition to not meeting the definition of a single residential unit, thus excluding this property from being deemed a small wastewater system, extenuating circumstances are present on the SALL property which do not allow it to fit into the category of “simple engineering needs.” First, inherent in any RV Park is the strong possibility, if not probability, that RV waste containing formaldehyde, or another additive, is present, which by design serves to inhibit anaerobic bacterial growth. Consequently, waste decomposition in a septic tank does not occur to the extent that it would without the additive. Secondly, the subsoil structure throughout the lower bench of Alpine, is well known to consist of coarse gravelly material with high percolation rates, in some cases exceeding the maximum allowable. These two circumstances combined serve to exacerbate potential effluent quality from the SALL private disposal system.

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In conclusion, the Town of Alpine requests that the State conduct an investigation of possible water quality violations on or within the SALL property. If substantiated, the Town requests that the State enforce applicable provisions of existing statutes and its policy rules and regulations.

Please understand that although the Town’s ultimate objective is to force connection to the public collection system, the Town does not expect the State to engage in direct defense of its sewer connection ordinance. The Town does request, however, that the state enforce its existing statutes, rules and regulations in order to assure that the “status quo” scenario is understood to be unacceptable.

The SALL suit, in addition to other remedies, seeks injunctive relief preventing the Town from enforcing its ordinance and its built-in penalty provisions. Irrespective of the outcome of that pleading, DEQ’s responsibility for enforcing State Statute as well as its

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own rules and regulations cannot be abdicated. Consequently, we are asking that DEQ investigate any potential violations and if violations are found, that DEQ issue a notice of violation and ensure compliance with its rules and regulations, by ordering this business to connect to the Town sewer system (which we believe is really the only valid outcome should a violation be found) and ordering other action as DEQ deems necessary such as fines and supplemental environmental protections.

Thank you in advance for your support in this matter. If you have any questions or require additional information, please do not hesitate to contact either myself, or Deb Wolfley, Alpine Town Administrator.

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Sincerely,

Leon R. Kjellgren, P.E.

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Leon Kjellgren

From: Deb Wolfley [dwalpine@silverstar.com]
Sent: Monday, August 24, 2009 12:44 PM
To: 'Leon Kjellgren'
Subject: SALL / Tavern

April 6th, (Friday) 2007, town maintenance director, Val Jensen noticed a new septic tank being installed behind the building of the Tavern on the Greys. Val talked to town building inspector, Joe Sender, about the tank being installed and no permit was issued by the town.

Police Officer Mark Gizas of the Alpine Police Department was instructed by Town Officials to verbally tell the owners of the Tavern on the Greys to cease and desist work on the installation of the septic tank until a permit was issued. Officer Gizas did verbally advise the Owners to cease and desist.

April 9th, 2007, Town Inspector Joe Sender and Town Maintenance Director, Val Jensen went to Tavern on the Greys to look at septic tank and discovered that the tank had already been installed. Sometime during the week end, the new tank had been installed.

April 10, 2007, Carla Stone, co owner of the Tavern turned in a "Small waste water system permit and application" to the Town. Fees were paid at that time.

No permit was issued by the Town due to the fact that no inspection was made prior to installation of the septic tank.

7-25-08, Town Officials was contacted by owners of the property at the Tavern on the Grey's, Lot 2A of the Palispark Subdivision about a leach field problem that needs to be fixed. They were told by Terra Miller, P&Z secretary that the site would have to be inspected by Jody Tippetts, the Town Building Inspector before a permit could be issued. Carla Stone paid the fees at that time. On 7-28-08, he was called by the property owners to inspect a leach field. He went there, but they were not yet ready for inspection. On 7-31-08 he was called back for inspection, which Jody said they passed inspection.

8-1-08, (Friday), Town Building Inspector Jody Tippetts, brought in to Town Hall a "Septic Permit Application" sheet for lot 2A of the Palispark Subdivision, owned by S.A.L.L. LLC, and Tavern on the Grey's. Terra changed the form to read "Leachfield Permit Application" and wrote in big red letters "Temporary" on top of the form because of the sewer ordinance language.

8-4-08, Terra filled out a "Small Wastewater System Permit Application" with all the appropriate information. By the signature line for property owner, Terra wrote in "Temporary Leach Field Only". She was unsure if she had charged the right amount of fee for a leach field permit, so it was taken to council meeting on 8-5-08. Council approved the \$100.00 fee for a temporary leach field permit. The Town notified SALL / Tavern of the permit and that it was a temporary permit, but they refused to sign it because it said temporary.

8-8-08, Town Attorney mailed letter to SALL/ Tavern a letter clarifying the Town's position on the septic tank and leach field matter.

8-12-08, SALL / Tavern Group responded with a letter.

8-20-2008 Town Attorney responded with letter and it was delivered by Town Administrator.

9-22-08 town Administrator mailed a letter to SALL reminding them that the permit needs to be signed.

8/27/2009

10-21-2008 Vickie asked Mr Lewis during council meeting to come in and sign the application for the temporary leach field permit, but Mr Lewis said he was not going to sign it because it said temporary.

Vickie on one of these issues went over to the Tavern and told Diggs that he needs to get a permit, but I can't remember which incident it was. She will be back tomorrow and I will ask her and let you know.

If you need anything else, please let me know.

8/27/2009

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