

Apr 22, 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATER OF THE NOTICE)	
OF VIOLATION ISSUED TO)	
)	DEQ Docket No. 4626-10
SALL Enterprises, LLC)	EQC Docket No. 10-3212A

TOWN OF ALPINE'S MOTION TO INTERVENE

The Town of Alpine, (hereafter "Town"), by and through its undersigned attorney, hereby requests, pursuant to Wyo. R. Civ. Pro. 24, and Wyoming Environmental Quality Council ("EQC") Rules, Section 7, Chapter II, that it be allowed to intervene in the above captioned matter as it has vested interests in this matter that cannot be adequately protected by the Parties in this matter.

RELEVANT FACTS

- 1) SALL Enterprise, LLC has filed suit against the Town with regards to a sewer ordinance and the denial of septic tank permits.
- 2) The Town believes that certain past activities regarding unpermitted modifications to the private septic system on SALL property occurred beginning on April 6, 2007 and again on July 25, 2008.
- 3) The Town contends that in April 2007, SALL installed a septic tank without a permit.
- 4) The Town further contends that in July 2008 SALL's leachfield failed and they have not obtained a permit to repair/replace that leachfield.
- 5) In conjunction with the defense of that suit, the Town had consultant, Leon Kjellgren of Nelson Engineering, draft a letter to the Wyoming Department of Environmental Quality (hereafter "DEQ") notifying it of perceived violations of DEQ Rules and Regulations, which letter was dated August 25, 2009 (hereafter the "August 25, 2009 letter")
- 6) DEQ subsequently sent SALL a letter dated October 29, 2009 letter, stating, among other things that it needed to file for DEQ permits for its septic system.
- 7) In March 2010, DEQ issued a notice of violation to SALL.
- 8) SALL has petitioned for review/appeal of that notice and has requested a hearing.
- 9) EQC has commenced these proceedings under the above referenced docket number.
- 10) The Town is not a party to these proceedings, yet employees and a consultant of the Town are being deposed.
- 11) The Town cannot rely on the parties to this matter to protect its interests which are or may be opposed to that of the parties and the other individuals being deposed.
- 12) SALL has requested that EQC issue certain subpoenas for depositions to Town Mayor, Victoria DeCora, Town Administrator Deb Wolfley and Leon Kjellgren.

- 13) The Subpoenas for deposition seek information and records related in any way to the August 25, 2008 to DEQ which alleges violations, and records and all such information related to SALL's septic permit applications SP-01-07 and SP-02-08-TEMP.
- 14) Counsel(s) for the Town have conferred orally and via email with Counsel for SALL to inform him of Mr. Rideout's unavailability to attend the depositions in question as well as to object to the deposition of the Mayor.
- 15) It is understood that Mr. Rideout conveyed to SALL's counsel, with regards to the Mayor's deposition, that the decisions of the Town Council are legislative in nature and made as a collegial body. It was further stated by the undersigned, via email, that it is the Town's position that SALL is not allowed to inquire into the individual mental processes (fact investigation), consideration, through processes, analysis, motives and rationale of the Mayor.
- 16) Mr. Rideout and SALL's council attempted to come to a resolution of the outstanding issues, but were unable to do so.
- 17) SALL's counsel, in a telephone conversation with Mr. Rideout suggested that his Client's might agree to move the depositions if the Town would agree to not enforce provisions of the ordinance that are at issue in the SALL lawsuit against the Town until July 31, 2010.
- 18) Mr. Rideout informed SALL's counsel, that there was no procedural mechanism for Mr. Rideout to bind the Town and as a result, the Town could not agree to the requests of SALL's counsel.
- 19) Mr. Fodor sent the attached April 21, 2010 email in an effort to meet and confer under W.R.C.P 26(c) asking SALL's Counsel to agree to withdraw the subpoena for the Mayor due to scheduling conflicts and the Town's position that the deposition of the Mayor is improper. See Exhibit A.
- 20) SALL's Counsel responded later in the afternoon of April 21, 2010 via email that the noticed depositions would proceed as noticed. See Exhibit A.
- 21) Due to the inability to resolve these matters, the Town is filing these motions.

TOWN'S ARGUMENT IN SUPPORT OF MOTION TO INTERVENE


Pursuant to Wyo. R. Civ. Pro. 24, Intervention, the Town requests that it be allowed to intervene in this action. The Town is not a party to this action, but it claims an interest relating to the subject of the action, namely the Town's ability to regulate sewer and septic tanks within the Town boundaries and the two denied septic tanks permits which are the subject of this action. Furthermore, the Town has an interest in having DEQ investigate and regulate alleged violations in the Town of Alpine and enforce its regulations within the Town. Additionally, given the August 25, 2009 letter and the Notice of Violation issued by DEQ, the Town is so situated that the disposition of this action may as a practical matter impair or impede the Town's ability to protect its interests, and the Town's interests will not be adequately represented by the existing parties. The Town is the governing body that has been delegated the authority to regulate the use of sewers as well as the authority to enforce, administer, permit and inspect sewerage facilities with the issuance or denial of septic tank permits within the municipal bounds of the Town. Pursuant to that authority, the Town denied one permit and restricted the second permit as

¹ Stefan Fodor is the Alpine Town Attorney, Richard Rideout is the Local Government Liability Pool Attorney assigned to defend the Town in the SALL lawsuit against the Town.

temporary. Neither SALL's interests, whose position in this action is diametrically opposed to the Town, and who is seeking to depose the Mayor, nor EQC's interests, are aligned with the Town. The Town has vested interests in maintaining the validity of its septic tank permit denial and septic tank permit condition of temporariness. Since none of the Town's vested interests can be adequately protected by the Parties to this action, the Town requests that it be allowed to intervene. Given the early stage of these proceedings, the application for intervention is timely. See Concerned Citizens of Spring Creek Ranch v. Tips Up, LLC., 185 P.3d 34 (Wyo. 2008). Allowing the Town to intervene should not prejudice the Parties to this action in any way. The undersigned counsel first became aware of the proposed issuance of these Subpoenas, via email from SALL's counsel, on April 14, 2010, eight days prior to the filing of this motion. In the interim, the undersigned had to confer with the Town as well as Mr. Rideout regarding the intervention. Mr. Rideout attempted to get the depositions postponed. It became apparent only late in the afternoon of April 21, 2010, that the depositions would not be moved or suppressed by SALL's counsel, despite requests by both Mr. Rideout and the undersigned. As a result, there exists unusual circumstances that mitigate in favor of intervention by the Town. Accordingly, the Town hereby requests that EQC grant its Motion to Intervene in this matter so that it can adequately protect its interests.

WHEREFORE, for the foregoing reasons, the Town requests that it be allowed to intervene in the foregoing matter.

Dated this 22nd day of April 2010



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Certificate of Service

I hereby certify that the foregoing Motion To Intervene and was served upon the following via the method indicated below.

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