

FILED

OCT 13 2010

Don Ruby, Executive Secretary
Environmental Quality Council

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

IN THE MATTER OF THE ISSUANCE OF)
DEQ PERMIT 10-254R)
)
)
)
)
ISSUED TO SALL, LLC.)
)

EQC Docket No. 10-3801

**SALL’S RESPONSE TO TOWN OF ALPINE’S PROTEST TO
PERMIT/MOTION FOR ADDITIONAL TIME TO PRESENT EVIDENCE
IN THE EVENT THE TOWN OF ALPINE IS ALLOWED TO
SUPPLEMENT ITS PETITION WITH APPROPRIATE SCIENTIFIC
DATA**

SALL, through counsel, submits the following Response to the Town of Alpine’s Petition in Protest and Appeal of Issuance of DEQ Permit and Request for Hearing:

1. SALL concurs with the position of the Wyoming Department of Environmental Quality in “DEQ’s Response to the Town of Alpine’s Petition,” dated and filed October 13, 2010. SALL incorporates by reference each and every denial and statement of lack of information asserted by the DEQ in its pleading.

2. SALL renews and reiterates its Motion to Dismiss on the grounds that the Town’s Petition was not filed in time. In addition to the grounds stated in that motion, SALL further asserts that the time limits imposed by DEQ/EQC Rules and Regulations are tantamount to a Statute of Limitations, not a procedural rule as relied on by the Town in its response. Stated differently, procedural rules in the Wyoming Rules of Civil Procedure allowing for additional time for service of responsive pleadings do not apply in this matter. The time limitation set by the Rules herein is a time limitation which is the same as a statute of limitations. No one would argue that a statute of limitations requiring filing of a claim by a date certain would be extended by extra days to allow for mailing of the claim.

3. SALL cannot formulate a specific, precise response to the Petition of the Town of Alpine because, like the DEQ, the Town of Alpine does not specify or quantify exactly what its claims of deficiency are. Nor does the Town of Alpine specify exactly how the issuance of the permit is in violation of particular requirements of Wyoming Statutes or Regulations.

4. The apparent gravamen of the Town's Petition is that the DEQ did not properly consider sewer/septic flows properly. The Town of Alpine has produced nothing beyond the conclusory statements of its counsel that: 1) the DEQ, acting primarily through Mr. Mark Baron, improperly estimated sewer discharges, which was what was ordered in the DEQ's notice of violation, and/or 2) that sewer/septic flows exceed regulations, and/or 3) that any engineering or other properly qualified expert has reached the same or similar conclusions as the Town's previous attorney; and/or 4) that any actual harm to water quality has been documented or is reasonably predictable at SALL's locations.

5. In spite of the lack of specificity of the Town of Alpine's Petition, SALL offers the following information with respect to part of the process engaged in by Mr. Robert Ablondi and Mr. Mark Baron in compliance with the Notice of Violation and Order and ultimate issuance of the permit:

a. Mr. Baron and Mr. Robert Ablondi, licensed engineer acting on behalf of SALL, made their best efforts to estimate average daily wastewater flow at SALL's facility. In doing so, they primarily considered fresh water inflows for the months of December to May. The reason for this was to eliminate any consideration of irrigation uses of the fresh water and to account for extensive water leakage reported by SALL to Mr. Baron and Mr. Ablondi.

b. One calculation Mr. Ablondi made was the loading capacity rate of the leach field as it was installed. He originally used a percolation rate of 10 minutes per inch, but on the advice and data from Mr. Jeff Vandenberg, who had installed the system, he also calculated the loading capacity using a percolation rate of 4 minutes per inch. Based on that, a calculated loading capacity rate for the leach

field was 1190 gallons per day (gpd) arrived at by reference to DEQ Chapter XI standards.

c. Mr. Ablondi and Mr. Baron also considered information from SALL's owners with respect to usage at the Tavern, as well as fresh water inflow data from the specified months. Based on this data, the best estimate of the outflow from the bar/restaurant portion of the operations was 420 gallons per day.

d. Mr. Ablondi made other calculations and collaborated further with Mr. Baron. It was Mr. Ablondi's best estimate, apparently concurred with by Mr. Baron, that average daily outflows to the leach field were between 920 and 1020 gallons. This was well below the 1190 gpd capacity of the leach field that had been determined, and well within Department rules for small wastewater facilities.

6. The Town of Alpine, acting in its role with authority deligated from the DEQ to issue small wastewater permits, had issued a permit which it attempted to limit as "temporary" on August 12, 2008. This was based, in whole or in part, on statements by the Town's inspector that the leach field in question "exceeded" size requirements.

WHEREFORE, SALL asserts and requests that this Petition and action should be dismissed for the following reasons, that if not dismissed that SALL be afforded an opportunity to file a Motion for Summary Judgment and an evidentiary hearing be conducted:

1. The Petition was filed too late.
2. The Petition contains no specific data of violation or impropriety of the permit.
3. The Petition is not supported by facts or opinions other than those of a lawyer.
4. The Town of Alpine already has made findings that the leach field in question was not only sufficient, but "exceeded" requirements.

DATED this 13th day of October, 2010.

/s/ _____
Gary L. Shockey
Counsel for SALL, LLC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Dismiss was served, via email and U.S. Mail, on the 13th day of October, to Mr. Stefan Fodor, Mr. Richard Rideout, Mr. Luke Esch, Mr. James Lubing, and Ms. Leah Corrigan.

/s/ _____