

10-3801

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL STATE OF WYOMING

FILED

SEP 09 2010

Jim Ruby, Executive Secretary Environmental Quality Council

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

TOWN OF ALPINE'S PETITION IN PROTEST AND APPEAL OF ISSUANCE OF DEQ PERMIT AND REQUEST FOR HEARING

The Town of Alpine, through counsel, hereby appeals, protests, appeals and requests a hearing regarding of the issuance of DEQ permit 10-254R to SALL Enterprises, LLC. A copy of the permit at issue is attached hereto. As grounds for this petition, The Town of Alpine states as follows:

- 1. The Name and address of the petitioner is: Town of Alpine, Wyoming, PO Box 3070, Alpine, WY 83128, the name and address of the Town's attorney is Stefan J. Fodor, Fodor Law Office, PC, PO Box 551, Jackson, WY 83001.
2. The permit upon which an objection is being made and upon which an appeal is being requested, Permit 10-254R, is attached.
3. The facts upon which this Petition is based are as follows:

The Wyoming DEQ/WQD issued a Notice of Violation 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, no later than June 1, 2010, file a permit to construct application along with as-built plans and specifications for all the wastewater system construction that was completed on the SALL property in the Town of Alpine after January 1, 2006 and to file such permit with the DEQ/WQD, Southwest District Engineer. The application was also required to include an estimate of the total maximum and average daily wastewater flow for each of the septic system on the SALL property.

SALL appealed the NOV and Order to the EQC on April 8, 2010. 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 as SALL's Greys River Tavern, 14 RV site and bathroom/shower facility.

The Town of Alpine alleges that the permit was improperly issued since the issuance of the permit relies on selective and incomplete water usage data. The data submitted by SALL, through its Engineer, Robert Ablondi, is for the period from December 1, 2009 to May 1, 2010. The Town of Alpine submitted water data for the SALL property showing significantly higher flows for other time periods, namely, the summer of 2009. The Town of Alpine alleges that the water data it submitted for the SALL property shows that SALL used more than 2,000 gallons per day average daily flows in certain months. The Town of Alpine further alleges that the water data shows SALL uses more water than its wastewater system is, by its own admission, designed for.

The Permit in question was reviewed for compliance with Chapter 3 and 11 of the WQD Rules and Regulations. 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.

Furthermore, SALL, through its Engineer, Robert Ablondi submitted information to the DEQ by letter dated June 17, 2010, attached hereto. In that letter, Mr. Ablondi states that the leachfield,

from which both septic tanks flow has a loading rate capacity of 1190 gallons. Water data shows that the SALL facility uses more than 2,000 gallons per day average daily flow during certain months of the year.

Inadequate and selective water demand data:

SALL, submitted inadequate and incomplete water demand data and the DEQ appears to have relied on that inadequate and incomplete water demand data in approving DEQ Permit 10-254R. In addition, the DEQ seems to have ignored water demand data previously submitted by the Town of Alpine showing metered water demands, and as a result, domestic sewage flows, in excess of an average of 2,000 gallons per day for certain months.

Water/Sewage Flows Exceed 2,000 gpd:

The supporting documentation attached to the DEQ permit, prepared by Robert T. Ablondi relies on water demand data from December, 2009 to May, 2010, but, ignores months showing higher water demands than 2,000 gpd and therefore probable higher sewer flows than the design capacity of the as built system recently permitted by DEQ. Water demand data for the SALL property shows that the subject property had average daily demands in excess of 2,000 gallons per day on three separate months and had average daily demand in excess of 3,000 gallons per day during the month of September 2009. Assuming that all metered Town water is utilized domestically (and therefore discharged to the sewer system) and that irrigation water is provided from the onsite well SALL has applied for and paid for in the last two years, and because documented daily demands are in excess of 2000 gpd, a permit under Chapter 16 of the WQD Rules and Regulations is required and a permit under Chapter 3 cannot be issued.


Water/Sewage Flows exceed design capacity of Permitted System

In addition, According to Mr. Ablondi's June 17, 2010, memo, the apparent designed loading rate capacity of the sole leachfield on the subject property is 1190 gpd. Mr. Ablondi's memo indicates that waste from both the tank installed in 2007 and from the other tank on the property flows into the leachfield referenced above. Water demand indicates that the discharge of sewage was in excess of this 1190 gpd capacity in five out of the last eleven months, assuming again that all metered Town water is utilized domestically (and therefore discharged to the sewer

system) and that irrigation water is provided from the onsite well. In no way can the DEQ permit, under any Chapter, an installation for which flow data so grossly exceeds self-admitted design capability.

WHEREFORE, the Town of Alpine requests a hearing on this petition in objection to the issuance of permit 10-254R to SALL.

Respectfully submitted this 7th day of September, 2010



Stefan J. Fodor
Counsel for Town of Alpine
Fodor Law Office, PC
PO Box 551
Jackson, WY 83001
stefan@fodorlaw.com

CERTIFICATE OF SERVICE

I, Stefan J. Fodor, certify that on the 7th Day of September, 2010, I served a copy of the foregoing by registered mail, return receipt requested to the following:

Tim Flinter, Chairman
Environmental Quality Council
Rm 1714 Herschler Building
1st Floor West
122 W. 25th Street
Cheyenne, WY 82002

John Corra, Director
DEQ
Herschler Building
4th Floor West
122 W. 25th Street
Cheyenne, WY, 82001

Gary L. Shockey, PC
Attention: Gary Shockey
Counsel for SALL
PO BOX 10773
Jackson, WY 83002



Stefan J. Fodor

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION
AS-BUILT
PERMIT TO CONSTRUCT

PERMIT NO 10-254R

NOV & Order Docket No. 4626-10

SALL Enterprises Septic Tank and Leach Field

This permit hereby authorizes the applicant:

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

to have constructed a septic tank and leach field replacement to serve the Greys River Tavern and 14 RV sites, (a Shower/Bathroom Facility is also connected to leach field but has a separate septic tank), according to the procedures and conditions of the application number 10-254R. The facility is located at NW ¼ SE ¼ Section 29, T36N, R119W in the county of Lincoln, in the State of Wyoming. The construction, installation, or modification allowed by this permit was completed around the date of April 6, 2007 for the septic tank and around the date of July 25, 2008 for the leach field.

The issuance of this permit confirms that the Wyoming Department of Environmental Quality (DEQ) has evaluated the application submitted by the permittee and determined that it meets minimum applicable construction and design standards. The compliance with construction standards and the operation and maintenance of the facility to meet the engineer's design are the responsibility of the permittee, owner, and operator.

Granting this permit does not imply that DEQ guarantees or ensures that the permitted facility, when constructed, will meet applicable discharge permit conditions or other effluent or operational requirements. Compliance with discharge standards remains the responsibility of the permittee.

Nothing in this permit constitutes an endorsement by DEQ of the construction or the design of the facility described herein. This permit verifies only that the submitted application meets the design and construction standards imposed by Wyoming statutes, rules and regulations. The DEQ assumes no liability for, and does not in any way guarantee or warrant the performance or operation of the permitted facility. The permittee, owner and operator are solely responsible for any liability arising from the construction or operation of the permitted facility. By issuing this permit, the State of Wyoming does not waive its sovereign immunity.

The permittee shall allow authorized representatives from DEQ to enter and inspect any property, premise or place on or at which the facility is located or is being constructed or installed for the purpose of investigating actual or potential sources of water pollution, and for determining compliance or non-compliance with any rules, regulations, standards, permits or orders.

Nothing in this permit shall be construed to preclude the institution of any legal action or other proceeding to enforce any applicable provision of law or rules and regulations. It is the duty of the permittee, owner and operator to comply with all applicable federal, state and local laws or regulations in the exercise of its activities authorized by this permit.

The issuance of this permit does not convey any property rights in either real or personal property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

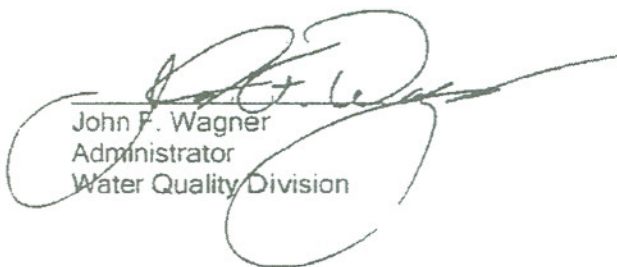
The permittee shall construct and operate the permitted facility in accordance with the statements, representations, procedures, terms and conditions of the permit application, supporting documents and permit. This permit does not relieve the permittee from any duty to obtain any other permit or authorization that may be required by any provision of federal, state or local laws.

In carrying out its activities authorized by this permit, the permittee, owner and operator shall comply with all of the following permit conditions:

- 1 of 2 The applicant will provide immediate oral or written notice to the Wyoming Department of Environmental Quality, Water Quality Division (WQD), Southwest District Engineer, 510 Meadow View Drive, Lander, WY 82520, 307-332-3144, FAX 307-332-3183, in accordance with the provisions of Section 11, Chapter 3, Wyoming Water Quality Rules and Regulations of any changes or modifications which are not consistent with the terms and conditions of this permit.

- 2 of 2 The review and approval of this permit is based upon the items identified in the attached "Statement of Basis".

AUTHORIZED BY:


John F. Wagner
Administrator
Water Quality Division


John V. Corra
Director
Department of Environmental Quality

7/6/10
Date of Issuance

MDB/rm/10-0560

STATEMENT OF BASIS

1. Permit Number 10-254R
2. Application reviewed for compliance with the following regulations
Chapters 3 and 11 of the Wyoming Water Quality Rules and Regulations.
3. Does the permit comply with all applicable regulations identified above?
Yes.
4. If a Section 17 of Chapter 3 review is required indicate the basis for determining groundwater will be protected.
Not Required.
5. Documentation of Statement of Basis The archive file for this permit includes adequate documentation of all sections of this Statement of Basis.

CERTIFICATION

The issuance of this permit is based upon a review of the application package submitted in accordance with the requirements of Chapter 3, Section 6, Wyoming Water Quality Rules and Regulations. This review was performed by Mark D. Baron, P.E., mbaron@wyo.gov, Southwest District Engineer and completed on June 25, 2010. Permit issuance is recommended based upon statements, representations, and procedures presented in the permit application and supporting documents, permit conditions, and the items identified in this "Statement of Basis."

cc: Deb Wolfley, Town of Alpine, P.O. Box 3070, Alpine, WY 83128
Jody Tibbitts, Town of Alpine, P.O. Box 3070, Alpine, WY 83128
Robert T. Ablondi, P.E., Rendezvous Engineering, P.C., P.O. Box 4858, Jackson WY 83001



RENDEZVOUS ENGINEERING, P.C.

Civil Engineers and Planners in Wyoming and Idaho

Rendezvous Project No: 07-004

June 17, 2010

Mr. Mark Baron, P.E.
Wyoming Department of Environmental Quality
510 Meadowview Drive
Lander, Wyoming 82520

Re: SALL Enterprises, LLC

Dear Mark:

The following information is submitted in response to our conversation on June 8, 2010 regarding the SALL Enterprises, LLC septic system. This information supplements the information we sent on June 10, 2010 in a memorandum to Lou Harmon.

- 1) **Soil Percolation Rate:** Local contractor Jeff Vandeburg, who installed the leachfield portion of the system in 2008, indicates that percolation rates are in the range of 4 minutes per inch for this area. He has used this rate for a number of systems installed in the area. This would be typical for the sandy gravel soils common to the area. Based upon this percolation rate, the leachfield would have a loading rate capacity of about 1190 gpd based upon the Chapter XI standards.
- 2) **Water Table:** The owners have contacted local well driller Cordon Nelson who has worked on the well located on the SALL property. He indicates that the pump is set at a depth of about 160 feet and that the water table is at about 150 feet. They were not able to get a sounder into the well to confirm this depth. I would expect that the water level may be higher at times of the year when the reservoir level is up but still greater than 65 feet in this area.
- 3) **Tavern Flow Data:** The only flow data is from the $\frac{3}{4}$ inch water meter which serves the Greys River Tavern. Most recently, the owners determined that during period of 12/1/09 to 5/1/10, they used a total of 63,454 gallons for an average of about 420 gallons per day. During the summer months, there is also some irrigation use which does not pass through the septic tank and leach field. The owners thought that the use during this period was representative of the use throughout the year for the Tavern portion of the facility.

Also during the summer months (June through September) there is additional use associated with the shower/bathroom facility that is also connected to this flow meter. The waste from this shower facility does not pass through the 1000 gallon septic tank installed in 2007 but through a separate septic tank that was a part of the original system. The effluent from the tank does however flow into the leachfield that was reconstructed in 2008. Records from pumping the tank indicate that it has a volume of 1000 gallons. No changes were made to this septic system in either

2007 or 2008. The owners estimate that the flow from this bath facility is in the range of 500 to 600 gallons per day during the 4 month summer period. They also indicated that they have installed low flow fixtures for the showers and toilet facilities. However, they have not been able to isolate the flow with the current piping and are still aware of some minor leaks downstream of the flow meter.

Based upon these flow measurements and estimates, the total flow from this facility is in the range of about 920 to 1020 gpd during the summer months. This is still well within the 2000 gpd criteria for a small system.

- 4) **RV Flow Data:** Water meter data from 2009 indicated a total average daily flow of 213 gpd for a three month period. The owners believe that this meter services 14 units. Projecting use on this facility is more variable due to the fact that occupancies vary significantly with the types of RV's connected and the length of time the units are connected. This is a separate system and would also appear to be well below the 2000 gpd small system criteria.
- 5) **Permit Application.** Attached is a completed DEQ application form signed by SALL general manager Carla Stone. I have noted on the permit application that this is to submit record information from facilities permitted by the Town of Alpine in 2007 and 2008 as previously discussed.

Please let me know if you have any questions or need additional information regarding this facility and application.

Sincerely,



Robert Ablondi, P.E.

Cc: Diggs Lewis (diggs1@silverstar.com)
Gary Shockey (garyshockey@msn.com)
John Burbridge (jburb1@state.wy.us)
Lou Harmon (lharmo@wyo.gov)



Enclosure: Signed permit application

