

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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

Docket No. 10-3801

FILED

SEP 16 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

TOWN OF ALPINE'S RESPONSE TO SALL'S MOTION TO DISMISS


The Town of Alpine, through counsel, hereby files its response to SALL, LLC's ("SALL") Motion To Dismiss and hereby states as follows:

1. The permit in question was dated July 6, 2010.
2. Chapter I, General Rules of Practice and Procedure ("GRPP"), Section 16(a) provides that "all appeals to Council from final actions of the Administrators or Director shall be made within sixty (60) days of such action".
3. Adding 60 days to July 6, 2010, yields a date of September 4, 2010.
4. September 4, 2010 is a Saturday.
5. September 5, 2010 is a Sunday.
6. September 6, 2010 is Labor Day, a federal holiday.
7. September 7, 2010 is the next business day.
8. Chapter I of GRPP, Section 10(a) provides that "[W]hen time prescribed by these rules or by order of the Council for doing any act expires on a Saturday or legal holiday, such time shall extend to and include the next succeeding business day".
9. September 7, 2010 is the date on which the Town of Alpine's petition was mailed to the Chairman of the Council and the Director of the Department.
10. Chapter I of GRPP, Section 3(b) provides "[A]ll persons requesting a hearing or protesting a permit shall file two copies of a written petition directed to and served upon both the Chairman of the Council and the Director of the Department".
11. Section 3(b)(i) provides that "[O]riginal service shall be by registered mail, return receipt requested. Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure".

12. Filing is made by service on the Chairman and Director. Alternatively, one could drive to Cheyenne and file a petition with the clerk at the EQC, but this would fail to meet the requirements of the GRPP which provide that **protesting a permit is effectuated by service**. Ch. 1 GRPP, Section 3(b) (emphasis added).
13. Service is made by mail.
14. Service by mail is complete upon mailing. W.R.C.P 5(b).
15. The Town of Alpine mailed its petition on September 7, 2010, within the 60 day limit imposed by the GRPP and, as a result, its petition and appeal were timely filed.
16. Taking SALL's argument that the date received and stamped by the EQC is the date of filing, one could mail the petition via registered mail in accordance with the GRPP, and conceivably, the Chairman and the Director could refuse to accept the registered mail, and the filing would never occur. Surely this tortured result cannot be implied from the language of the GRPP.
17. Alternatively, Ch I of GRPP, Section 10(b) provides that "[F]or good cause shown, extensions and continuances of time may be granted or denied at the discretion of the Council".
18. Given that the "purpose of the Environmental Quality Council (EQC) is to adjudicate environmental disputes and enact regulations to implement the Environmental Quality Act to protect the health of the people of the state and the environment of the State of Wyoming", (EQC Strategic Plan 2007-2008) the Town argues that it has made allegations that the DEQ permit at issue was improperly issued, based on faulty data and that the wastewater treatment system in place at SALL is inadequate to handle its sewer flows. The Town's position is that EQC has a vested interest in having a hearing on this matter to determine if in fact the allegations are true and a potential threat to the health of the people of the state and the environment of the State of Wyoming exists, rather than dismiss an appeal on a two day technicality.

WHEREFORE: The Town of Alpine requests that SALL's Motion To Dismiss be denied and that the Town's petition and appeal be set for a hearing.

Respectfully submitted this 16th day of September, 2010



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CERTIFICATE OF SERVICE

I, Stefan J. Fodor, certify that on the 16th Day of September, 2010, I served a copy of the foregoing by email and US mail, postage prepaid to the following:


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