

FILED
JUL 25 2011

THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF WYOMING
WATER QUALITY DIVISION

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE PROTEST)
TO THE ISSUANCE OF THE PERMIT) Docket No. 11-3801
TO CONSTRUCT NO. 11-008)

RESPONSE TO MOTION TO DISMISS PROTEST

COME NOW Protestants Michael and Heidi Romsa, by and through Alexander K. Davison of Patton & Davison Attorneys, and respond to the Motion to Dismiss Protest, filed by New Fashion Pork, LLP, (“NFP”) as follows:

1. Chapter 1, General Rules of Practice and Procedure, Section 16 “Appeals to Council” states:
 - (a) Unless otherwise provided by these rules or the Environmental Quality Act, all appeals to Council from **final actions** of the Administrators or Director shall be made within 60 days of such action. (emphasis added)
2. The final action on the permit in question occurred on May 3, 2011, not on May 2, 2011.
3. The date of issuance was May 2, 2011 but that was not the final action taken on the permit by the Department of Environmental Quality.
4. The certification found on page 7 of the permit states:

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 Louis Harmon, Program Manager, Water and Wastewater Section, Wyoming Department of Environmental Quality/ Water Quality Division, and completed on **May 3, 2011**. 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.'
(emphasis added)

5. The issuance of the permit was based upon the review of the application package which was not completed until May 3, 2011. Thus, the issuance date could not be the date of final action by the agency.
6. The protest was directed to the permit, not the issuance of the permit.
7. In fact, the protest does not seek to prevent the permit from being issued. Rather it expresses concern with some of the conditions contained in the permit which are a function of the review conducted by the department.
8. The protest of the permit was filed on July 5, 2011 and is timely in that the sixtieth day, July 2, 2011, fell on a Saturday, followed by the remainder of the weekend and the July 4th holiday. See Chapter 1, GRPP, Section 10(a).

As to the issues raised in the motion, the Protestants further state the following:

9. The case relied upon by "NFP" and decided by the council on January 14, 2011, *In the Matter of the Issuance of DEQ Permit 10-254R, issued to SALL, LLC*, EQC Docket No. 10-3801, is not dispositive in this matter.
10. That notwithstanding, upon review of the filings in the *SALL* case and the General Rules of Practice and Procedure, Protestants find themselves in agreement with the position taken by the Town of Alpine in the case.
11. Protestants therefore assert the issues raised by Town of Alpine in Docket No. 10-3801 for the purpose of preserving them on appeal should an appeal result. Specifically, Protestants assert that Chapter 1, GRPP Section 3(b) means that filing can, and perhaps should, be accomplished through service of the protest on both the

Chairman of the Council and the Director of the Department. Service is accomplished when the document to be served is deposited in the mail with the correct address and with postage prepaid.

12. The second argument for dismissal asserted in the Motion to Dismiss is without merit. W.S. § 35-11-112(a), provides: that the council shall

(iii) conduct hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the Department or any division thereof.

(iv) Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act.


13. The above statute also states at (c)(ii) that the council may “order that any permit, license, certification or variance be granted, denied, suspended, revoked or modified.”

Based upon the foregoing, Protestants assert that the protest was timely filed and this matter should progress to hearing before the council.

DATED this 22nd day of July, 2011.

MICHAEL and HEIDI ROMSA

By:



Alexander K. Davison
Patton & Davison
1920 Thomes Avenue, Suite 600
P. O. Box 945
Cheyenne, Wyoming 82003-0945
307-635-4111
Attorney for Protestants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered via the United States Mail, postage pre-paid to the following on the 22nd day of July, 2011.

Keith S. Burron
Associated Legal Group, LLC
1807 Capitol Ave, Suite 203
Cheyenne, WY 82001

Luke J. Esch, Assistant Attorney General
Wyoming Office of the Attorney General
Water and Natural Resources Division
123 State Capitol
Cheyenne, WY 82002

Tim Flitner
Chairman, Environmental Quality Council
122 West 25th Street
Herschler Building, Rm 1714
Cheyenne, WY 82002



Alexander K. Davison