

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

FILED

STATE OF WYOMING

APR 14 2008

IN RE: TO THE FINAL DETERMINATION)
OF REIMBURSEMENT OF FUNDS)
LINCOLN COUNTY LANDFILLS)

Terri A. Lorenzon, Director
Environmental Quality Council
Docket No. 07-3216

ORDER DENYING RESPONDENT DEPARTMENT OF ENVIRONMENTAL QUALITY'S
MOTION FOR SUMMARY JUDGEMENT

Respondent, the Wyoming Department of Environmental Quality (DEQ), filed a Motion for Summary Judgment in this matter before the Wyoming Environmental Quality Council (EQC) on February 25, 2008. Petitioner is Lincoln County, Wyoming. The Petitioner and the Respondent are the only parties to this contested case.

On March 19, 2008, the EQC heard oral argument on the Respondent's motion. Present for the EQC were Dennis M. Boal, Chairman and Presiding Officer in this case, F. David Searle, Vice Chairman, Kirby L. Hedrick, Secretary, Richard C. Moore, P.E., John N. Morris, Thomas Coverdale and Tim Flitner. Also present were Terri A. Lorenzon, EQC Director and Attorney, Deborah Baumer, Hearing Examiner from the Office of Administrative Hearings, and Marion Yoder, Senior Assistant Attorney General from the Attorney General's Office. Respondent, DEQ, was represented by Michael Barrash, Senior Assistant Attorney General. Petitioner, Lincoln County, was represented by Joseph Cole, Deputy Lincoln County and Prosecuting Attorney and Bob Rawlings, Lincoln County Landfill Manager.

Respondent's motion asks for summary judgment on two grounds: that the

Cokeville and Kemmerer landfills have monitor wells that currently meet DEQ standards; and that costs of preparing plans to upgrade monitor wells that currently meet DEQ standards are not eligible for reimbursement grants under W.S. § 35-11-521.

Having reviewed the parties' filings and considered their oral argument and being otherwise well advised, the EQC finds as follows:

1. Lincoln County concedes, and the EQC finds, that the monitor wells at the Cokeville and Kemmerer landfills are currently adequate under DEQ standards.

2. W.S. § 35-11-521(b) specifies activities for which grant funding may be provided, including (iii) "upgrading existing monitor systems to meet standards" established by DEQ.

3. W.S. § 35-11-522(a) calls for the adoption of "criteria for awarding grants under W.S. 35-11-521."

4. Criteria for awarding grants under W.S. § 35-11-521 were published on October 21, 2006 and updated on September 14, 2007.

5. The Grant Criteria Document (p.3) identifies two "objectives of installing wells and monitoring groundwater": first, meeting identified system specifications for number, capability and placement of wells, and second, determining the nature and extent of release.

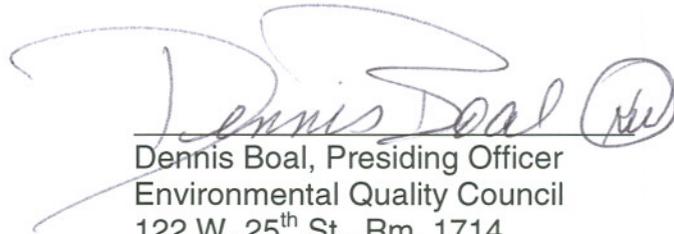
6. The Grant Criteria Document (p.4) states that, "preference may be given to facilities working to achieve the first objective," especially when funds are diminished, but does not exclude work to achieve the second objective from consideration for grants.

7. The adequacy of the current monitoring system is only one of the criteria to be considered in making grants under W.S. § 35-11-521, and the criteria do not limit grant funding for projects to only those needed to meet minimum DEQ standards.

4. Based on the evidence before it, the EQC cannot add the word "minimum" before "standards" in W.S. § 35-11-521(b)(iii) or say, as a matter of law, that the director of the DEQ properly applied the grant criteria in rejecting the Lincoln County Grant application. Issues of material fact, including the extent to which available funds have been diminished, remain to be decided.

THEREFORE, it is ordered that the Respondent Department of Environmental Quality's motion for summary judgment is denied.

DATED: This 12th day of April, 2008.

A handwritten signature in blue ink that reads "Dennis Boal" followed by a circled initial "DB".

Dennis Boal, Presiding Officer
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CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 14th day of April, 2008 I served a copy of the foregoing ORDER by electronic mail to the following parties:

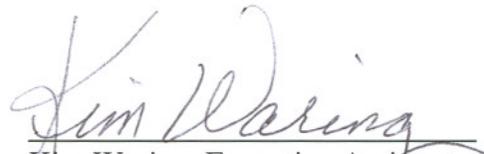
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