

FILED

DEC 04 2007

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

**Terri A. Lorenzon, Director
Environmental Quality Council**

IN RE: THE FINAL DETERMINATION)
OF REIMBURSEMENT OF FUNDS TO) Docket No. 07-3216
LINCOLN COUNTY LANDFILLS)

THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
RESPONSE TO LINCOLN COUNTY'S REQUEST FOR HEARING

The Wyoming Department of Environmental Quality (DEQ), pursuant to the Wyoming Environmental Quality Council's (Council) November 5, 2007 Order, responds as follows to Lincoln County Government's (County) request for a hearing before the Council in the above-captioned matter.

1. By letter dated October 23, 2007, filed October 25, 2007, Lincoln County requested an expedited hearing before the Council apparently to contest a final decision contained in the DEQ's September 25, 2007 letter to the Lincoln County Landfill Manager, which determined that Lincoln County was not eligible under WYO. STAT. ANN. § 35-11-521 or 35-11-522 for grant funding to reimburse the County \$1,053.90 for 50% of costs incurred for preparation of workplans to install additional monitoring wells at the Cokeville #1 Landfill and the Kemmerer #1 Landfill.

2. Chapter I, Section 3 of the DEQ Rules of Practice & Procedure states that all persons requesting a hearing shall file a written petition, which shall set forth the decision upon which a hearing is requested and, whenever possible, particular reference to the statutes, rules or orders that allegedly have been violated. Chapter I, Section 3(b),(c)(ii)&(iii).

3. Lincoln County's October 23, 2007 letter (Petition) appears to identify the DEQ's September 25, 2007 decision letter as the decision upon which a hearing is requested, but does



not identify any statute(s), rule(s) or order(s) allegedly violated by that decision or explain why it is not possible to do so.

4. Lincoln County's Petition also refers to an earlier March 5, 2007 DEQ decision letter, which Lincoln County "appealed" to the Water and Waste Advisory Board, and to the Advisory Board's "findings."

5. The DEQ admits making the decision contained in the March 5, 2007 letter and that Lincoln County "appealed" that decision to the Water and Waste Advisory Board, but denies that the Water and Waste Advisory Board has the authority to adjudicate "appeals" from DEQ decisions or that "findings" by the Water and Waste Advisory Board constitute an "order," because the powers and duties of the Water and Waste Advisory Board under WYO. STAT. ANN. §§ 35-11-114 and 35-11-522 are solely advisory or recommendatory and do not include hearing or adjudicating "appeals" from DEQ decisions or issuing orders.

6. An administrative agency has and may properly exercise only those powers and authority granted by the Legislature in the statutes creating them. *Parodi v. Wyoming Dept. of Transp.*, 947 P.2d 1294, 1295-96 (Wyo. 1997).

7. Chapter I, Section 16(a) of the DEQ Rules of Practice & Procedure states that, unless otherwise provided, "all appeals to the Council" from final actions of the DEQ Administrators or Director shall be made within 60 days of such action.

8. Its Petition does not allege or reflect that Lincoln County appealed to the Council to contest the DEQ's March 5, 2007 decision letter within 60 days.

9. The DEQ admits that the County's Petition letter to the Council dated October 23, 2007, filed October 25, 2007, is timely for appealing the DEQ's September 25, 2007 decision

letter, but denies that the County's October 23, 2007 Petition is timely for appealing the DEQ's March 5, 2007 decision letter.

10. Until Lincoln County identifies the particular statute(s), rule(s) or order(s) it alleges the DEQ violated by the September 25, 2007 decision being contested here, the DEQ admits making the decision contained in the September 25, 2007 letter to the Lincoln County Landfill Manager, but denies that it violates any applicable statute, rule or order.

11. The DEQ further denies that an "expedited hearing" is needed in this appeal, which appears to be challenging the DEQ's September 25, 2007 decision that Lincoln County was not eligible for grant funding to reimburse \$1,053.90 for 50% of certain costs incurred for preparation of workplans to install additional monitoring wells at the Cokeville #1 Landfill and the Kemmerer #1 Landfill. It is not clear that an evidentiary hearing, expedited or not, is needed in this appeal, because it is not apparent from Lincoln County's Petition whether there are any facts in dispute or issues other than questions of law.

DATED this 4th day of December, 2007.



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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO LINCOLN COUNTY'S REQUEST FOR HEARING was served by United States mail, first class postage prepaid, and by facsimile transmission this 4th day of December, 2007, addressed as follows:

Mr. Bob Rawlings
Lincoln County Landfill Manager
925 Sage Avenue #108
Kemmerer, Wyoming 83101
Phone: 307-877-2096
FAX: 307-877-3101

A handwritten signature in blue ink, appearing to read "N. B. Rawlings", is written over a horizontal line.