

**FILED**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

FEB 25 2008

STATE OF WYOMING

Terri A. Lorenzon, Director  
Environmental Quality Council

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

Docket No. 07-3216

LINCOLN COUNTY LANDFILL'S MOTION FOR SUMMARY JUDGEMENT

COMES NOW, the Lincoln County Landfill, by and through Joseph Cole, Deputy Lincoln County and Prosecuting Attorney, and hereby moves, under Rule 56(a), W.R.C.P., for summary judgment in favor of the claimant in this matter. As grounds for its motion, Lincoln County Landfill informs the Council as follows:

1. On September 25, 2007, the Department of Environmental Quality (the Department) sent a letter to Bob Rawlins, the Lincoln County Landfill Manager. (Attachment A.) The letter declined reimbursement to the Lincoln county Landfill for the installation of additional monitoring wells at the Cokeville and Kemmerer landfills. The Department cited W.S. 35-11-521(b)(iii), which reads, "(b) Grant funding under this section may be provided at existing or closed municipal solid waste landfills for the following: (iii) Installing new monitoring systems or upgrading existing monitoring systems to meet standards for systems established by the department under this article." The Department asserted that the wells were not necessary to meet the minimum standards established by the Department, because the existing wells were adequate. The letter maintained that the Department had considered the Lincoln County application for reimbursement, and that "The Department has also considered

the Water and Waste Advisory Board's recommendation that reimbursement be provided," yet denied the application.

2. On September 13, 2007, the Water and Waste Advisory Board (the Board) met and recommended reimbursement for the Kemmerer and Cokeville projects as show by the attached transcript of that meeting. (Attachment B.)

3. W.S. 35-11-522 governs the actual awarding of grants authorized in W.S. 35-11-521. The relevant portions read:

(b) When funds are available, applications for grants under W.S. 35-11-521 shall be submitted in a form approved by the department. The department shall review all grant applications, determine the eligibility of projects in accordance with W.S. 35-11-521 and provide recommendations for grant funding to the water and waste advisory board.

(c) Following a public hearing, the water and waste advisory board shall provide recommendations for grant awards to the director.

(d) The director shall award grants in consideration of recommendations provided by the water and waste advisory board.

4. The statutorily mandated procedure s for the Department to provide its eligibility determinations to the Board. The Board then holds public meetings and recommends which projects are to be funded. Under the language of the statute, the Board is not bound by the recommendations of the Department. It is charged to hold a hearing and determine which projects should be funded. The director of the Department is then mandated to make grants "in consideration of the recommendations provided by the water and waste advisory board." The language, "in consideration of" rather than "after considering" appears to make the grant decision non-discretionary for the director and the Department.

WHEREFORE, because the Department was required to approve the grant to Lincoln County once the Board had approved it, so judgment for Lincoln County should be granted a matter of law, the Lincoln County landfill asks for summary judgement in this matter and that the Department be directed to honor the recommendation of the Water and Waste Advisory Board to compensate the Lincoln County Landfill for the Kemmerer and Cokeville well projects in the sum of \$1,053.90.

DATED: This 25th day of February, 2008.



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JOSEPH COLE  
DEPUTY LINCOLN COUNTY  
ATTORNEY

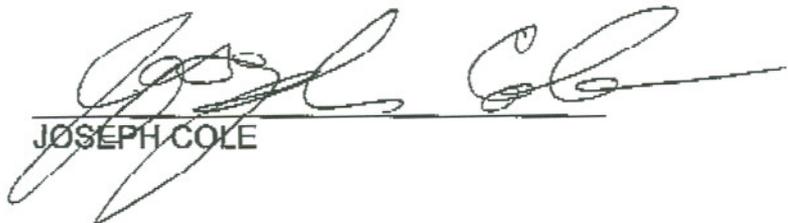
CERTIFICATE OF SERVICE

I Joseph Cole, hereby certify that on the 25th day of February, 2008, I caused a true and correct copy of the Motion for Summary Judgment by placing same in the United States mail, postage pre-paid at Afton, Wyoming and addressed as follows:

Michael Barrash  
Office of the Attorney General  
123 State Capitol  
Cheyenne, WY 82002

And by Fax to:

307-777-6946



JOSEPH COLE