

**FILED**

**JAN 02 2009**

**Jim Ruby, Executive Secretary  
Environmental Quality Council**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF )  
VIOLATION AND ORDER ISSUED TO: )  
Dale Ruby and JM Land & Developing Co. ) Docket No. 08-3601  
2901 Four J Road, Gillette WY 82718 )

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE  
TO DALE RUBY AND JM LAND & DEVELOPING COMPANY'S PETITION

Wyoming Department of Environmental Quality (DEQ), pursuant to the Wyoming Environmental Quality Council's (EQC) Order dated and filed December 3, 2008, hereby answers Dale Ruby and JM Land & Developing Company's (JM Land) Notice of Appeal and Request for Hearing (Petition) in the above-captioned matter. JM Land's Petition mis-designates JM Land as the Respondent. For clarification, JM Land is the Petitioner in this appeal and DEQ is the Respondent.

1. DEQ admits that ¶1 in Petitioner JM Land's Petition constitutes a denial by JM Land. DEQ disagrees with the substance of JM Land's denial in ¶1.
2. DEQ does not administer the requirements of, or speak for, the State Engineer's Office, and therefore denies the averment in ¶2.
3. DEQ does not administer the regulations and requirements of, or speak for, Campbell County, and therefore denies the averment in ¶3.
4. DEQ does not administer the regulations of, or speak for, the EPA, and therefore denies the averment in ¶4.
5. DEQ admits that in 2008 EPA issued Petitioner JM Land an "Emergency Administrative Order" (EAO) in connection with JM Land's

Ridgeway Community Well public water supply system. DEQ does not administer the EPA's EAO or speak for the EPA, and therefore denies any other averments in ¶5.

6. DEQ denies the averment in ¶6.
7. DEQ denies the averment in ¶7.
8. DEQ denies any other averments in JM Land's Petition.

DATED this 2nd day of January, 2009.



Mike Barrash (Bar No. 5-2310)  
Senior Assistant Attorney General  
123 State Capitol Building  
Cheyenne, Wyoming 82002  
307-777-6946

### CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO DALE RUBY AND JM LAND & DEVELOPING CO.S PETITION was served this 2nd day of January, 2009 by United States mail, first class postage prepaid, and also by facsimile transmission, addressed as follows:

Randall T. Cox  
Attorney at Law  
400 South Kendrick St., Suite 101  
Gillette, WY 82716  
FAX: 307-685-0527



BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

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WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S FIRST  
DISCOVERY REQUEST TO DALE RUBY / JM LAND & DEVELOPING CO.

Respondent Wyoming Department of Environmental Quality (DEQ), pursuant to WYO. STAT. ANN. § 16-3-107(g) and Chapter II, Section 10(a) of the DEQ Rules of Practice & Procedure, requests that Petitioner Dale Ruby / JM Land & Developing Co. (JM Land) Fremont County Solid Waste Disposal District (FCSWDD) admit that each of the following requested admissions is true in accordance with Rule 36 of the Wyoming Rules of Civil Procedure, answer the following interrogatories in accordance with Rule 33 Wyo. R. Civ. P., and produce the documents described below for inspection and copying in accordance with Rule 34 Wyo. R. Civ. P. For the purpose of this discovery request, "document" means anything within the scope of Rule 34 Wyo. R. Civ. P.

REQUESTED ADMISSIONS

1. The EPA issued JM Land an Emergency Administrative Order (EAO) in the Matter of "PWS ID#: WY5601602 Ridgeway Community Well" in 2008.
2. The 2008 EAO for the Ridgeway Community Well (p.1) includes a "Finding" that JM Land owns and/or operates the Ridgeway Community Well "water system" in Gillette that provides water to the public for human consumption.

3. The 2008 EAO for the Ridgeway Community Well (p.1) includes a “Finding” that the Ridgeway Community Well water system in Gillette serves an average of 60 persons daily through 17 service connections.

4. The 2008 EAO for the Ridgeway Community Well (p.1) includes a “Finding” that the Ridgeway Community Well water system is a “public water system.”

5. The Ridgeway Community Well system does provide water to the public for human consumption.

6. The Ridgeway Community Well system does have at least 15 service connections or regularly serves an average of at least 25 persons daily.

7. The EPA has not issued JM Land a written notice stating that JM Land’s Ridgeway Community Well is now in compliance with *all* requirements of the 2008 EAO for the Ridgeway Community Well.

8. The EPA has not issued JM Land any statement representing that the EPA has pre-empted DEQ regulation of JM Land’s Ridgeway Community Well water system.

9. The EPA has not issued JM Land any statement representing that EPA actions pertaining to the Ridgeway Community Well water system relieve JM Land from having to comply with DEQ requirements pertaining to the Ridgeway Community Well water system.

10. The 2008 EAO for the Ridgeway Community Well (§12), which requires EPA’s prior approval for a particular plan and schedule, states that EPA ’s approval of such plan and schedule “does not substitute for any State of Wyoming approval of plans and specifications (engineering plans), which may also be required before modifications can be made to the System.”

### INTERROGATORIES

1. If JM Land denies any portion of any of the requested admissions above, please explain in specific detail the complete factual basis for each such denial.
2. Please explain in specific detail the complete legal and factual basis for JM Land to “deny” in ¶1 of its Petition that “the water wells and storage tank and pipeline system constitutes a ‘public water supply’ or public water system.”
3. Please explain in specific detail the complete legal and factual basis, including specific citations to legal authority, for JM Land’s allegation in ¶6 of its Petition that EPA has pre-empted regulation of JM Land’s water system by the DEQ.
4. List individually all documents you referenced or relied upon for your answer(s) to each separate interrogatory above.

### DOCUMENTS TO BE PRODUCED

1. All documents listed in your answer to interrogatory #4 above.

DATED this 2nd day of January, 2009.



Mike Barrash (Bar No. 5-2310)  
Senior Assistant Attorney General  
123 State Capitol Building  
Cheyenne, Wyoming 82002  
307-777-6946

**CERTIFICATE OF SERVICE**

This certifies that a true and correct copy of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S FIRST DISCOVERY REQUEST TO DALE RUBY / JM LAND & DEVELOPING CO. was served this 2nd day of January, 2009 by United States mail, first class postage prepaid, and also by facsimile transmission or email, addressed as follows:

Randall T. Cox  
Attorney at Law  
400 South Kendrick St., Suite 101  
Gillette, WY 82716  
**FAX: 307-685-0527**  
**RT@coxhorning.com**



A handwritten signature in black ink, appearing to read "R. Cox", is written over a horizontal line.