

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

FILED

JUN 12 1992

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF)	
VIOLATION AND ORDER ISSUED TO)	
MR. LYNN JACKMAN, JACKMAN AND)	DOCKET NO. 2215-91
JACKMAN, 147 "K" STREET,)	
ROCK SPRINGS, WYOMING 82901)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-captioned matter came before the Environmental Quality Council for hearing on June 24, 1991 in Rock Springs, Wyoming. Protestant Lynn R. Jackman of Rock Springs appeared and represented himself. Respondent State of Wyoming, Department of Environmental Quality ("DEQ") was represented by Mike Barrash of the Wyoming Attorney General's Office. Mr. John Crow of the Environmental Quality Council presided at the hearing. Having considered the evidence of record and the arguments of the parties, the Council hereby finds and concludes as follows:

FINDINGS OF FACT

1. During the fall of 1989 Mr. Lynn R. Jackman, as contractor, excavated and hauled to his ranch near Rock Springs approximately 33 truckloads of soil, at least four of which had total petroleum hydrocarbon ("tph") concentrations ranging from 32 to 92 mg/kg, from underground petroleum storage tank removal jobs in Sweetwater County.

2. Tph concentrations of 32 mg/kg or more in soil indicate petroleum-contamination.

3. The Jackman ranch site has never been permitted, approved or authorized by the DEQ for use as a solid waste management facility.

4. On April 5, 1990 the DEQ/Solid Waste Management Program issued Mr. Jackman Notice of Violation No. 2150-90, citing his accumulation at the Jackman ranch of petroleum-contaminated soils from underground storage tank ("UST") removal projects as being in violation of specified Wyoming

statutes and solid waste management regulations.

5. By letter to Mike Barrash of the Wyoming Attorney General's Office dated July 12, 1990, Mr. Jackman, through his attorney, Mr. John M. Scorsine of Rock Springs, agreed to remove to an approved site by November 1, 1990 all the petroleum-contaminated soils he had recently disposed of at the ranch, on the understanding that the State would not pursue further enforcement action against him in the matter.

6. By letter to Mr. Scorsine from Mr. Barrash dated July 17, 1990, the State agreed that Mr. Jackman's verified compliance with the terms of Mr. Scorsine's July 12th letter would satisfy Notice of Violation No. 2150-90 and eliminate the need for further enforcement action in the matter.

7. Mr. Jackman did not remove the soils from his ranch as agreed in Mr. Scorsine's July 12th letter.

8. On February 20, 1991 the DEQ issued Mr. Jackman Notice of Violation & Order No. 2215-91, citing his failure to comply with the terms of the July 12, 1990 letter and ordering that all petroleum-contaminated soils must be removed from the Jackman ranch to a permitted facility within thirty days.

9. Mr. Jackman received Notice of Violation & Order No. 2215-91 on March 5, 1991 and by letter of the same date (filed March 13, 1991) requested a hearing before the Council to contest that Order.

10. The DEQ recommends a clean-up standard requiring removal of soils with tph concentrations greater than 10 ppm (or 10 mg/kg) from sites where depth to groundwater is fifty (50) feet or less below the surface, and removal of all soils with tph concentrations exceeding 100 ppm (or 100 mg/kg) regardless of depth to groundwater.

11. Depth to groundwater underlying the Jackman ranch is approximately one hundred fifty (150) feet below the surface.

CONCLUSIONS OF LAW

1. The Environmental Quality Council has jurisdiction over the parties and the subject matter of this contested case under W.S. 35-11-112(a) and -701(c).

2. The appeal of Order No. 2215-91 was timely made pursuant to W.S. 35-11-701(c)(ii).

3. Petroleum-contaminated soil constitutes solid waste within the meaning of W.S. 35-11-103(d)(i).

4. The deposit and accumulation of petroleum-contaminated soil at the Jackman ranch, which is not a permitted solid waste management facility, is in violation of W.S. 35-11-502(a).

5. The parties' agreement to resolve Notice of Violation No. 2150-90 (documented by letters dated July 12 & 17, 1990), which became the subject of this contested case, was a proper attempt to resolve this matter by conference and conciliation pursuant to W.S. 35-11-701(c).

ORDER

Based on the above Findings of Fact and Conclusions of Law, and pursuant to W.S. 35-11-112(c), the Environmental Quality Council orders that DEQ Order No. 2215-91 be and hereby is modified to read as follows:

1. The DEQ shall designate ten (10) of the truckloads/piles of soil at issue accumulated at the Jackman ranch to be sampled and analyzed for tph concentrations within thirty (30) days at Mr. Jackman's expense.

2. One sample shall be taken from the center of each of the ten designated piles by a qualified technician using methods approved by the DEQ, and the ten samples shall be analyzed by a qualified laboratory using methods approved by the DEQ.

3. The report documenting sampling and analytical procedures, results and chain of custody shall be provided to the DEQ at Mr. Jackman's expense.


4. If all ten samples have tph concentrations less than 100 ppm (or 100 mg/kg), then all 33 truckloads/piles may remain at the Jackman ranch site, but shall not be removed from that site for other use, such as fill material, at other locations.

5. If any one of the ten samples has a tph concentration of 100 ppm (or 100 mg/kg) or greater, then all remaining untested truckloads/piles shall be sampled, analyzed and documented within thirty (30) days at Mr. Jackman's expense as provided in paragraphs 2 & 3 above, and all truckloads/piles having tph concentrations of 100 ppm (or 100 mg/kg) or greater shall be removed to a permitted facility at Mr. Jackman's expense within sixty (60) days.


6. As an alternative to paragraph 5 above, if any one of the initial ten samples has a tph concentration of 100 ppm (or 100 mg/kg) or greater, Mr. Jackman may elect simply to remove all untested truckloads/piles and those measuring 100 ppm (or 100 mg/kg) or greater tph to a permitted facility within sixty (60) days at his expense, without further testing.


7. Mr. Jackman shall promptly provide the DEQ with documentation verifying proper disposal of all truckloads/piles of contaminated or untested soil removed from his ranch.

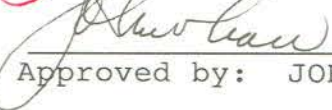
DATED this 11th day of June, 1992.



JOHN C. DARRINGTON, Chairman



JOHN C. SCHIFFER


VINCENT R. LEE


Approved by: JOHN V. CROW



HAROLD I. BERGMAN


PETER C. MAXFIELD

CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 12th day of June, 1992, I served a copy of the foregoing Order by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Lynn Jackman
147 "K" Street
P. O. Box 218
Rock Springs, WY 82902

and by interoffice mail of the same date to:

Dennis Hemmer, Director
Department of Environmental Quality
122 W. 25th Street, Herschler Bldg.
Cheyenne, WY 82002

David Finley, Program Manager
Solid Waste Management Program
122 W. 25th Street, Herschler Bldg.
Cheyenne, WY 82002

Mike Barrash
Assistant Attorney General
Attorney General's Office
123 Capitol Building
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