

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING



IN THE MATTER OF THE NOTICE OF)
VIOLATION AND ORDER ISSUED TO)
MR. JAMES COOK, JIM'S TOWING)
SERVICE, RADIATOR REPAIR AND) DOCKET NO. 2336-91
RECYCLING, 1443 U.S. HIGHWAY)
30 EAST, EVANSTON, WY 82435)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Department of Environmental Quality/Solid & Hazardous Waste Division ("DEQ") issued a Notice of Violation & Order (Docket No. 2336-91) dated December 2, 1991 to Mr. James Cook, d/b/a Jim's Towing Service, Radiator Repair and Recycling ("Jim's Towing Service"). Mr. Cook filed a timely request for hearing to contest the Order pursuant to W.S. 35-11-701(c). A contested case hearing in this matter, conducted in accordance with the Wyoming Administrative Procedure Act, was held in Rock Springs on Tuesday, October 20, 1992. Mr. Vince Lee of the Environmental Quality Council served as Hearing Examiner. Also present at the hearing were Ms. Terri Lorenzon, attorney for the Council, Mr. James Cook, the Protestant, Mr. Ken Schreuder and Ms. Vickie Vance, representing the DEQ, and Mr. Mike Barrash of the Wyoming Attorney General's Office as counsel for the DEQ. Having considered the evidence before it and the statements of the parties, the Council hereby finds and concludes as follows:

FINDINGS OF FACT

1. It is undisputed that Mr. James Cook, d/b/a Jim's Towing Service, has been operating a facility at Evanston, Wyoming where various discarded materials, including lead acid batteries, have been accumulated and stored for eventual recycling, and where at least two salvaged underground storage tanks have been cut up for scrap.
2. W.S. 35-11-103(d)(ii) defines "solid waste management facility" to include any facility for storage, treatment or processing of solid waste.
3. W.S. 35-11-502(a) requires a permit or authorization from the DEQ for location, operation or closure of a solid waste management facility.
4. W.S. 35-11-504 requires a bond or other assurance of financial responsibility for the proper operation, remediation or closure of solid waste management facilities.
5. W.S. 35-11-509 restricts the manner in which persons may discard lead acid batteries.
6. Chapter VI of the Wyoming Solid Waste Management Rules & Regulations prescribes standards for operation of solid waste treatment and storage facilities, and Chapter VIII prescribes standards for decommissioning underground storage tanks ("USTs").
7. It is undisputed that Mr. Cook has never applied for nor obtained a permit or authorization from the DEQ for a solid waste management facility at his Evanston site, nor has he supplied a bond or other assurance of financial responsibility.
8. During a visit to the Cook site on September 19, 1991, DEQ personnel observed and photographed, among other things, improperly stored, cracked and overturned lead acid batteries.
9. On December 2, 1991, the DEQ issued Notice of Violation & Order No. 2336-91 to Mr. Cook identifying practical concerns about his operation and citing the applicable state statute and regulations.

10. It is unclear whether or not Mr. Cook's operation is currently in compliance with applicable state operating standards.

11. It appears that Mr. Cook's facility may be the only recycling facility in the area and, as such, renders a service to the community.

12. The DEQ is not seeking any penalty or punitive measures against Mr. Cook, but rather is attempting to secure Mr. Cook's compliance with state law.

CONCLUSIONS OF LAW

1. The Council has jurisdiction in this matter under W.S. 35-11-112 and 35-11-701(c).

2. Discarded materials stored at Mr. Cook's Evanston facility constitute solid waste within the meaning of W.S. 35-11-103(d)(i).

3. Mr. Cook's on site UST decommissioning activities and storage of discarded materials for eventual recycling constitute a solid waste management facility within the meaning of W.S. 35-11-103(d)(ii).

4. Mr. Cook's operation of a solid waste management facility at his Evanston site without a DEQ permit and without supplying assurance of financial responsibility are violations of W.S. 35-11-502(a) and 35-11-504 of the Wyoming Environmental Quality Act.

5. Mr. Cook's accumulation and storage of discarded lead acid batteries at his Evanston site, which is not authorized for such purpose, is in violation of W.S. 35-11-509.

ORDER

1. The DEQ's Order (No. 2336-91), dated December 2, 1991 is affirmed, with the schedule for compliance to run from the date this Order of the Council is filed.

2. The DEQ is strongly encouraged to take all appropriate steps to help Mr. Cook comply with permit requirements, if possible.

DATED this 10th day of February, 1993.


VINCENT R. LEE
Hearing Examiner

CERTIFICATE OF SERVICE

17th Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the day of February, 1993, I served a copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

James Cook
Jim's Towing Service,
Radiator Repair and Recycling
1443 U.S. Highway 30 East
P. O. Box 417
Evanston, WY 82435

and also to the following persons via interoffice mail:

Dennis Hemmer, Director
Department of Environmental Quality
122 West 25th Street, Herschler Building
Cheyenne, WY 82002

David Finley, Program Manager
Department of Environmental Quality
Solid & Hazardous Waste Program
122 W. 25th Street, Herschler Bldg.
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