

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

DEC 26 1991

TERRI A. LORESON, AUB, WYO
Environmental Quality Council

IN THE MATTER OF THE NOTICE)
OF VIOLATION AND ORDER)
ISSUED TO)
MR. JAMES COOK)
JIM'S TOWING SERVICE, RADIATOR REPAIR)
AND RECYCLING)
1443 U.S. HIGHWAY 30 EAST)
EVANSTON, WYOMING 82435)

DOCKET NO. 2336-91

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1. On May 28, 1991, the Wyoming Department of Environmental Quality (WDEQ) Water Quality Division (WQD) observed the excavation of two (2) petroleum underground storage tanks (USTs) at the Flying J Truck Stop located at 1920 Highway 30 West in Evanston, Wyoming.

2. On August 29, 1991, the WQD received a telephone complaint concerning the decommissioning of USTs at Jim's Towing Service, Radiator Repair and Recycling (Jim's Towing Service) located at 1443 U.S. Highway 30 East, Eagle Industrial Park, Lot 4, Evanston, Wyoming. The complainant alleged that Jim's Towing Service had accepted the two (2) USTs from the old Flying J Truck Stop in Evanston. The complainant also alleged that a black oily substance from one (1) of the tanks was dumped into a borrow pit on-site.

3. On September 19, 1991, WDEQ Solid Waste Management (SWM) personnel inspected Jim's Towing Service at the location identified above. The following solid wastes were identified at the facility: scrap iron, wire, baled newspaper, baled cardboard, aluminum cans, barrels of crushed glass, barrels of plastic, numerous cracked, overturned, and destroyed lead-acid batteries, a white, unidentified insulation material, several areas of stained soils (ranging in color from dark brown to white), and several open-topped 55-gallon drums containing unidentified liquids.

4. On September 30, 1991, SWM personnel received information from Ottley Enterprises (owner of the Flying J Truck Stop in Evanston) that Jim's Towing Service had accepted the two (2) USTs excavated from the Flying J Truck Stop on May 28, 1991. Jim's Towing Service provided the Flying J Truck Stop with a receipt which indicated that Jim's towing had accepted an 8000 gallon tank and a 1000 gallon tank "for scrap purposes to cut up".

5. Section 35-11-103(d)(ii) of the Wyoming Environmental Quality Act and Chapter I Section 1(e)(i)(XX) of the Wyoming Solid Waste Management Rules and Regulations (1990) defines "solid waste" as "garbage and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities".

Metal, newspaper, cardboard, aluminum cans, glass, plastic, lead-acid batteries, and insulation are solid wastes. Once removed, underground storage tanks are also solid wastes.

Chapter I Section 1(e)(i)(DDD) of the Wyoming Solid Waste Management Rules and Regulations (1990) defines "storage" as "the holding of solid waste for a temporary period, at the end of which time the solid waste is treated, disposed of, or stored elsewhere".

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Storage of discarded metal, newspaper, cardboard, aluminum cans, glass, plastic, lead-acid batteries, insulation and USTs is a regulated storage activity under the provisions of Chapter VI Section 2 of the Wyoming Solid Waste Management Rules and Regulations (1990).

Chapter I Section 1(e)(i)(GGG) of the Wyoming Solid Waste Management Rules and Regulations (1990) defines "treatment" as "any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste so as to recover energy or material resources from the waste or so as to render it safer to transport, store or dispose of, or to make it amenable for recovery, reuse, or storage, or for reduction in volume".

Decommissioning USTs is a regulated treatment activity under the provisions of Chapter VI Section 2 and Chapter VIII Section 6 of Wyoming Solid Waste Management Rules and Regulations (1990).

Section 35-11-103(d)(ii) of the Wyoming Environmental Quality Act and Chapter I Section 1(e)(i)(AAA) of the Wyoming Solid Waste Management Rules and Regulations (1990) define a "solid waste management facility" as "any facility for the transfer, treatment, processing, storage or disposal of solid waste".

Chapter I Section 1(e)(i)(KK) of the Wyoming Solid Waste Management Rules and Regulations (1990) defines an "open dump" as "...an uncontrolled solid waste management facility at which solid wastes are placed on the land in such a manner that they present a real or potential hazard to public health and the environment. Open dump includes any solid waste management facility subject to the permitting requirements of these rules and regulations which does not have a current, valid permit".

Jim's Towing Service is storing and treating solid wastes at the location identified above. Jim's Towing Service does not have a current, valid permit to operate a solid waste management storage or treatment facility at the location identified above. The facility identified above constitutes an open dump.

6. Section 35-11-502(a) of the Wyoming Environmental Quality Act states: "No person, except when authorized under the permit system established pursuant to this act, shall: (i) locate, construct, operate or close a solid waste management facility".

Chapter I Section 1(f) of the Wyoming Solid Waste Management Program Rules and Regulations (1990) states: "A permit or a one-time or emergency disposal authorization is required for the location construction, operation or closure of any new or existing solid waste management facility as specified by Chapter I, Section 5, or by the applicable chapter of these rules and regulations. All facilities shall be located, designed, constructed, operated and closed in accordance with the permit or disposal authorization issued by the department." Chapter VI of the Wyoming Solid Waste Management Rules and Regulations is applicable to solid waste transfer, treatment, or storage facilities.

Jim's Towing Service does not have a permit to operate a solid waste management facility at the location identified above. Jim's Towing Service is in violation of Section 35-11-502(a) of the Wyoming Environmental Quality Act and Chapter I Section 1 (f) of the Solid Waste Management Rules and Regulations (1990).

7. Chapter I Section 1(e)(i)(PP) of the Wyoming Solid Waste Management Rules and Regulations (1990) defines "promiscuous dumping" as "the unauthorized placement of solid wastes in an area that is not approved by the department as a solid waste management facility". Chapter I Section 1(h)(i) of the Wyoming Solid Waste Management Rules and Regulations (1990) prohibits "Promiscuous dumping".

Solid waste has been promiscuously dumped at Jim's Towing

Service, an area that is not approved by the department as a solid waste management facility. Jim's Towing Service is in violation of Chapter I Section 1(h)(i) of the Solid Waste Management Rules and Regulations (1990).

8. Section 35-11-509 of the Wyoming Environmental Quality Act states: "No person shall discard, or otherwise dispose of a lead acid battery except by delivery to an automotive battery retailer or wholesaler, to a collection or recycling facility authorized under the laws of Wyoming, or to a secondary lead smelter permitted by the environmental protection agency."

Numerous lead acid batteries have been discarded at Jim's Towing Service. Jim's Towing Service is in violation of Section 35-11-501 of the Wyoming Environmental Quality Act.

9. Any person who violates any provisions of the Environmental Quality Act, or any rules, standard, permit, license, or variance adopted thereunder is liable to a penalty of ten thousand dollars (\$10,000) for each day of violation, which penalty may be recovered in a civil action brought by the Attorney General in the name of the People of the State of Wyoming; and

10. This notice is being sent to you pursuant to Wyoming Statute 35-11-701(c), which requires that in any case of failure to correct or remedy an alleged violation the Director of the Department of Environmental Quality shall cause a written notice to be issued and served on the person alleged to be responsible.

ORDER

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. Jim's Towing Service will immediately cease the receipt of additional USTs at the facility described above.

2. Within fifteen (15) days of the issuance of this Notice of Violation and Order, Jim's Towing Service shall:

a. remove all cracked, damaged or leaking lead-acid batteries which have been discarded at the facility described above to an automotive battery retailer or wholesaler, to a collection or recycling facility authorized under the laws of Wyoming, or to a secondary lead smelter permitted by the environmental protection agency.

b. remove all remaining lead-acid batteries to an approved facility as described above or stockpile them in an upright position on a concrete, asphalt or plastic-lined pad.

c. sample and analyze all wastes at the facility described above which may contain asbestos, and forward the results to the Department as soon as they are available.

3. Within sixty (60) days of the issuance of this Notice of Violation and Order, Jim's Towing Service shall submit financial assurance as required pursuant to Wyoming Statute 35-11-504(a) and Chapter VII Section 2 of the Wyoming Solid Waste Management Rules and Regulations (1990). The financial assurance shall cover the third-party costs to effect closure, including, but not limited to the following:

a. Removal and disposal of buildings, fences, roads and other facility developments, and reclamation of affected lands;

b. Removal and off-site treatment or disposal of any wastes that are being stored or treated;

c. Decontamination, dismantling and removal of any

wastes that are being stored or treated;

4. Within ninety (90) days of the issuance of this Notice of Violation and Order, Jim's Towing Service shall submit:

a. a closure plan and schedule meeting the requirements of Chapter VI Section 3(e) of the Wyoming Solid Waste Management Rules and Regulations (1990).

- OR -

b. a renewal application meeting the requirements of Chapter VI Section 2(c) of the Wyoming Solid Waste Management Rules and Regulations (1990).

5. This Order is final and binding unless, not later than ten (10) days after the day of its postmark, it is appealed by filing a written request for a hearing before the Environmental Quality Council, 122 W. 25th Street, Cheyenne, Wyoming 82002.

Dated this 2 day of December, 1991.

David A. Finley
David A. Finley
Manager
Solid Waste Program

Dennis Hemmer
Dennis Hemmer
Director
Department of Environmental
Quality