

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE )  
ADMINISTRATIVE ORDER ON )  
CONSENT ISSUED TO THE TOWN )  
OF LUSK, WYOMING )

Docket No. 5568-15

JOINT STIPULATION TO MODIFY  
ADMINISTRATIVE ORDER ON CONSENT

The sixty-second legislature of the State of Wyoming’s 2013 General Session passed House Bill No. 0066 (Enrolled Act No. 114) creating the municipal solid waste (MSW) facility cease and transfer program and the MSW facility cease and transfer grant and loan accounts. In part, House Bill No. 0066 included provisions to provide assistance for closure of small MSW landfills and construction of MSW transfer stations.

In order to enter into the cease and transfer program to obtain funding assistance to close their MSW landfill, on October 13, 2014 the Wyoming Department of Environmental Quality, Solid and Hazardous Waste Division (DEQ/SHWD) and the Town of Lusk (Town) entered into a Memorandum of Agreement (MOA). One requirement of the MOA was for the Town and DEQ/SHWD to enter into an Administrative Order on Consent (AOC) for the purpose of fulfilling any applicable regulatory requirements per the DEQ Solid Waste Rules and Regulations. The Town and DEQ entered into the AOC related to MSW landfill closure funding on April 9, 2015.

The Town has subsequently been accepted into the cease and transfer program to obtain financial assistance for the construction of a MSW transfer station, which also requires the Town to enter into an AOC with the Department. Therefore, in order to obtain funding assistance for MSW transfer station construction, the Town and the DEQ/SHWD now agree that the AOC signed April 9, 2015 (see Attachment 1) is amended in the following ways:

- 3. No later than March 1, 2016 the Town shall provide a schedule for submittal of project designs, plans, and review timelines for the transfer station construction project.
- 43. Disposal of all waste shall cease by December 1, 2016 unless an alternate date is approved in writing by the Administrator.
- 54. The Town is authorized to operate the landfill in accordance with the existing permit application through December 1, 2016 unless an alternate date is

approved in writing by the Administrator. No later than June 1, 2017, the Town shall complete the installation of intermediate cover and vegetation over all disposal units that will no longer receive waste.

- ~~65.~~ The Town agrees to complete closure activities as described in the amended closure permit application.
- ~~76.~~ The Town agrees to conform to all requirements of W.S. 35-11-532.
- ~~87.~~ The Town shall notify DEQ of any changes, irregularities and or problems encountered while carrying out the terms of this agreement. These may include but are not limited to: change orders, contract interpretation issues, withholding liens and scheduling alterations. All change orders shall be approved in writing by DEQ before implementation.
- ~~98.~~ The Town agrees not to advertise the project for bids until plans and specifications (including but not limited to engineer's cost estimate, with bid extensions and detailed cost estimates, which should include estimated costs of major components for the project) have been approved by DEQ.
- ~~109.~~ In the event the Town is unable to draw all funds from the State Land and Investment Board (SLIB) for the landfill closure project by September 30, 2018 (see item #14 in SLIB Loan Agreement with Town) the Town may request an extension from the Office of State Lands and Investments (OSLI) and/or DEQ, at least ninety (90) days prior to this date.
11. In the event the Town is unable to draw all funds from the SLIB for the transfer station construction project by December 1, 2016 the Town may request an extension from the OSLI and/or DEQ, at least ninety (90) days prior to this date.
- ~~1210.~~ In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Town shall stop, or cause to be stopped, construction activities, notify the superintendent of the State Historical Preservation Office and the DEQ of such unearthing, and follow all applicable state and federal laws and regulations governing such occurrences.
- ~~1311.~~ The DEQ shall file this AOC with the Wyoming Environmental Quality Council (EQC) after all parties execute the AOC.
- ~~1412.~~ This AOC is issued with the Town's consent, therefore the Town will not file a request for hearing before the EQC to contest the validity of its terms under W.S. 35-11-701(c)(ii). However, the Town reserves the right to request a hearing before the EQC to contest the later enforcement of terms of this order.
- ~~1513.~~ The effective date of this AOC is the date the final signature is attached.


1614. Neither the Town nor DEQ shall have any claim against the other for attorneys' fees or other costs incurred throughout the process outlined above, including costs incurred in the preparation of this AOC. Each party shall bear its own attorney fees and costs, if any, incurred through the date that both parties sign this AOC. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
1715. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this AOC shall not be construed to create such status. The rights, duties, and obligations contained in this AOC shall operate only between the parties to this AOC and shall inure solely to the benefit of the parties to this AOC. The parties to this AOC intend and expressly agree that only parties signatory to this AOC shall have any legal or equitable right to seek to enforce this AOC, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this AOC, or to bring an action for the breach of this AOC.
1816. The State of Wyoming and the DEQ do not waive sovereign immunity by entering into this AOC and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other state law.
1917. Either party may request changes to this AOC. Any changes, modifications, revisions, or amendments to this AOC that are mutually agreed upon by the parties shall be incorporated by written instrument, executed, and signed by all parties to this AOC. DEQ will then submit the changes, modifications, revisions, or amendments to the EQC for approval.
2018. The laws of the State of Wyoming shall govern the construction, interpretation, and enforcement of this AOC. The Courts of the State of Wyoming shall have jurisdiction over this AOC and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
2119. Should any portion of this AOC be judicially determined to be illegal or unenforceable, the remainder of the AOC shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
2220. Each party represents that they are authorized to enter into this AOC, agree to comply with and to be bound by the terms of this AOC, and further agree that they will not contest the basis or validity of this AOC. This AOC shall become binding upon the parties once executed by all parties.

All other terms of the original Administrative Order on Consent not specifically modified above remain unchanged and in effect as originally ordered by the Environmental Quality Council.


Therefore, the Town of Lusk and the DEQ now jointly stipulate to the above modification of the AOC signed on April 9, 2015 and request that the EQC enter an order approving, incorporating, and binding the parties to their Joint Stipulation as modified herein.

Dated this 11<sup>th</sup> day of November, 2015

FOR THE TOWN OF LUSK:

  
\_\_\_\_\_  
Patricia Smith, Honorable Mayor  
Town of Lusk

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

  
\_\_\_\_\_  
Luke Esch, Administrator  
Solid and Hazardous Waste Division

  
\_\_\_\_\_  
Todd Parfitt, Director  
Department of Environmental Quality

**Attachment I**

DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF WYOMING

IN THE MATTER OF THE )  
ADMINISTRATIVE ORDER ON CONSENT )  
ISSUED TO TOWN OF LUSK FOR )  
THE LUSK LANDFILL. ) Docket No. 5568-15

ADMINISTRATIVE ORDER ON CONSENT

House Bill 0066, commonly referred to as the Cease and Transfer bill, was enacted by the Wyoming legislature in the 2013 general session. Under this bill, Wyoming Statutes (W.S.) 35-11-528 through W.S. 35-11-532 were enacted enabling municipal solid waste (MSW) facility operators to receive funds to assist in the building of MSW transfer stations and for closure of small landfills. To be eligible for funding, operators must enter into a Memorandum of Agreement (MOA) with the Wyoming Department of Environmental Quality (DEQ), Solid and Hazardous Waste Division (SHWD); implement and revise the community's solid waste management plan; cease disposal of all MSW streams at the closing facility; and conform with applicable statutes (cited above).

The MOA requires the operator to enter into an Administrative Order on Consent (AOC) with the DEQ within 180 days from the effective date of the MOA. The AOC is an agreement between the DEQ and the Town of Lusk (Town) issued for the purpose of establishing a schedule for the Town to take specified actions to maintain compliance with solid waste regulations and with the MSW Cease and Transfer Program requirements.

The Town has a previous Administrative Order on Consent, Docket Number 4755-10, which was issued November 30, 2010. The November 30, 2010 AOC is superseded by this AOC.

At its October 2, 2014 meeting, the State Loan and Investment Board (SLIB) approved funding for the Town's landfill closure project. The estimated total project cost was \$2,101,875. The SLIB approved \$1,417,500 in grant funds and \$157,500 in loan funds. The Town has previously secured a Mineral Royalty Grant to use for their matching funds. Through a Memorandum of Agreement dated October 13, 2014, the Town entered the Municipal Solid Waste Cease and Transfer Loan and Grant Program.

Therefore, pursuant to W.S. 35-11-501 and W.S. 35-11-528 through 35-11-532, the DEQ is issuing this AOC, with the Town's concurrence, to establish the following schedule which requires the ENTITY to take specified actions to ensure compliance with applicable regulatory requirements.

WHEREFORE IT IS HEREBY ORDERED THAT:

1. The Town agrees to submit a closure permit amendment application for the Lusk landfill no later than August 1, 2016. The closure permit amendment shall contain

any necessary revisions to update the closure permit to account for additional waste taken since the permit was issued. The permit amendment shall also contain a project schedule including the following items:

- a. Contract Documents submitted to DEQ staff for approval
  - b. All permits, easements, rights of way, approved or finalized/signed
  - c. Publish call for bids approved by DEQ staff
  - d. Construction start date
  - e. Substantial completion date
  - f. Construction end date
2. Within six (6) months of approval of the closure permit amendment submitted in # 1 above, the Town shall begin the project. The Town shall complete construction in accordance with the schedule in the amended closure permit issued by the DEQ. The Town shall receive written approval from DEQ before implementing changes which delay the project schedule.
  3. Disposal of all waste shall cease by December 1, 2016 unless an alternate date is approved in writing by the Administrator.
  4. The Town is authorized to operate the landfill in accordance with the existing permit application through December 1, 2016 unless an alternate date is approved in writing by the Administrator. No later than June 1, 2017, the Town shall complete the installation of intermediate cover and vegetation over all disposal units that will no longer receive waste.
  5. The Town agrees to complete closure activities as described in the amended closure permit application.
  6. The Town agrees to conform to all requirements of W.S. 35-11-532.
  7. The Town shall notify DEQ of any changes, irregularities and or problems encountered while carrying out the terms of this agreement. These may include but are not limited to: change orders, contract interpretation issues, withholding liens and scheduling alterations. All change orders shall be approved in writing by DEQ before implementation.
  8. The Town agrees not to advertise the project for bids until plans and specifications (including but not limited to engineer's cost estimate, with bid extensions and detailed cost estimates, which should include estimated costs of major components for the project) have been approved by DEQ.
  9. In the event the Town is unable to draw all funds from the State Land and Investment Board (SLIB) for the landfill closure project by September 30, 2018 (see item #14 in SLIB Loan Agreement with Town) the Town may request an extension from the Office of State Lands and Investments (OSLI) and/or DEQ, at least ninety (90) days prior to this date.



10. In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Town shall stop, or cause to be stopped, construction activities, notify the superintendent of the State Historical Preservation Office and the DEQ of such unearthing, and follow all applicable state and federal laws and regulations governing such occurrences.
11. The DEQ shall file this AOC with the Wyoming Environmental Quality Council (EQC) after all parties execute the AOC.
12. This AOC is issued with the Town's consent, therefore the Town will not file a request for hearing before the EQC to contest the validity of its terms under W.S. 35-11-701(c)(ii). However, the Town reserves the right to request a hearing before the EQC to contest the later enforcement of terms of this order.
13. The effective date of this AOC is the date the final signature is attached.
14. Neither the Town nor DEQ shall have any claim against the other for attorneys' fees or other costs incurred throughout the process outlined above, including costs incurred in the preparation of this AOC. Each party shall bear its own attorney fees and costs, if any, incurred through the date that both parties sign this AOC. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
15. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this AOC shall not be construed to create such status. The rights, duties, and obligations contained in this AOC shall operate only between the parties to this AOC and shall inure solely to the benefit of the parties to this AOC. The parties to this AOC intend and expressly agree that only parties signatory to this AOC shall have any legal or equitable right to seek to enforce this AOC, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this AOC, or to bring an action for the breach of this AOC.
16. The State of Wyoming and the DEQ do not waive sovereign immunity by entering into this AOC and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other state law.
17. Either party may request changes to this AOC. Any changes, modifications, revisions, or amendments to this AOC that are mutually agreed upon by the parties shall be incorporated by written instrument, executed, and signed by all parties to this AOC. DEQ will then submit the changes, modifications, revisions, or amendments to the EQC for approval.
18. The laws of the State of Wyoming shall govern the construction, interpretation, and enforcement of this AOC. The Courts of the State of Wyoming shall have jurisdiction



over this AOC and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.


19. Should any portion of this AOC be judicially determined to be illegal or unenforceable, the remainder of the AOC shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
20. Each party represents that they are authorized to enter into this AOC, agree to comply with and to be bound by the terms of this AOC, and further agree that they will not contest the basis or validity of this AOC. This AOC shall become binding upon the parties once executed by all parties.

**Authority**

The signatories certify that they are duly authorized to bind their respective Parties to this Administrative Order on Consent.

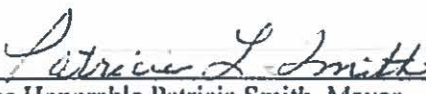
WE HEREBY CONSENT to the provisions of this Administrative Order on Consent:

**FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:**

Date: 4-3, 2015      By:   
Luke Esch, Administrator  
Solid and Hazardous Waste Division

Date: 4/9, 2015      By:   
Todd Parfitt, Director  
Department of Environmental Quality

**FOR THE Town of Lusk:**

Date: March 31, 2015      By:   
The Honorable Patricia Smith, Mayor  
Town of Lusk

