

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

FILED

JAN 08 2018

IN THE MATTER OF THE)
ADMINISTRATIVE ORDER ON CONSENT)
ISSUED TO THE TOWN OF WHEATLAND)
FOR THE WHEATLAND #2 LANDFILL)

Docket No. 5823 Jim Ruby, Executive Secretary
Environmental Quality Council

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 Wheatland (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.

At its December 7, 2017, meeting, the State Lands and Investment Board approved funding for closure of the Town's MSW landfill project totaling \$1,827,085: \$1,686,377 in grant funds and \$140,708 in loan funds. Through the MOA dated December 11, 2017, the Town entered the MSW 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 Town to take specified actions to ensure compliance with applicable regulatory requirements.

WHEREFORE IT IS HEREBY ORDERED THAT:

1. No later than February 1, 2018, the Town shall submit a project schedule including the following items:
 - a. Date by which contract documents are to be submitted to DEQ staff for approval.
 - b. Date by which all permits, easements, rights of way, are to be approved or finalized/signed,
 - c. Date by which the published call for bids are approved by DEQ staff.
 - d. Construction start date
 - e. Substantial completion date
 - f. Construction end date

2. No later than March 1, 2018, the Town shall cease disposal of MSW at the Wheatland #2 Landfill. Disposal of all waste, shall cease by March 1, 2018 unless an alternate date is approved in writing by the Administrator.
3. No later than 180 days after MSW disposal has ceased, the Town shall complete the installation of intermediate cover and vegetation over all disposal units that will no longer receive waste 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 operating permit through March 1, 2018 unless an alternate date is approved in writing by the Administrator.
5. The Town agrees to complete closure activities as described in the approved closure permit.
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. Within one (1) year of receipt of Cease and Transfer project funds, the Town shall begin the project. The Town shall complete construction in accordance with the schedule in the permit issued by the DEQ. The Town shall receive written approval from DEQ before implementing changes which delay the project schedule.
10. In the event the Town is unable to draw all funds from the State Land and Investment Board (SLIB) for the closure project by June 1, 2019 (see SLIB Loan and/or Grant Agreement(s) 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 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.
12. The DEQ shall file this AOC with the Wyoming Environmental Quality Council (EQC) after all parties execute the AOC.

13. 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.
14. The effective date of this AOC is the date the final signature is attached.
15. Neither the Town nor DEQ shall have any claim against the other for attorneys' fees nor 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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: 1-5, 2018 By: 
Todd Parfitt, Director
Department of Environmental Quality

Date: 1-4, 2018 By: 
Luke Esch, Administrator
Solid and Hazardous Waste Division

FOR THE TOWN OF WHEATLAND:

Date: 12/29, ²⁰¹⁷~~2018~~ By: 
Joe Fabian Mayor
Town of Wheatland