

Abigail Boudewyns, WSB No. 7-5223
Senior Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
Ph: (307) 777-7895
Fax: (307) 777-3542
abigail.boudewyns@wyo.gov

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

**IN RE THE MATTER OF THE APPEAL)
TO PROTECT OUR WATER)
JACKSON HOLE)
PERMIT NO. 2022-274) Docket No. 22-3801**

REPLY TO MOTION TO DISMISS PETITION AS MOOT

The Wyoming Department of Environmental Quality (Department), through the Attorney General's Office, hereby replies to Petitioner's response to the Department's February 24, 2023, motion to dismiss. Petitioner, in its response, concedes that the permit which is the subject of this appeal has been revoked. Nevertheless, Petitioner asks the Environmental Quality Council (Council) to address the issues Petitioner raised regarding the propriety of the now revoked permit, or to compel the Department to take or withhold some additional action. However, Petitioner's appeal of the Department's decision to issue the now revoked permit, including any of the underlying factual determinations made by the Department when issuing the permit, is moot. Further, the Department has the exclusive authority to make any future permitting decisions, and Petitioner cites no

authority possessed by the Council to compel remediation of any previously installed infrastructure.

A. Petitioner’s appeal of Permit Number 2022-274, including any of the Department’s underlying decisions, is moot.

Petitioner asks the Council to address various underlying decisions that formed the basis of the Department’s original decision to grant the now-revoked Permit Number 2022-274. However, because the Department revoked the permit, it is no longer necessary for the Council to address any of the Petitioner’s issues. An action should be dismissed, “when, pending appeal, an event occurs which renders a cause moot and makes a determination of the issues unnecessary.” *Gulf Oil Corp. v. Wyo. Oil and Gas Conservation Comm’n*, 693 P.2d 227, 233 (Wyo. 1985). An issue becomes moot when there is no longer a “live controversy with respect to which the court can give meaningful relief.” *CL v. ML*, 2015 WY 80, ¶ 22, 351 P.3d 272, 279 (Wyo. 2015) (quoting *White v. Shane Edeburn Constr., LLC*, 2012 WY 118, ¶ 13, 285 P.3d 949, 953 (Wyo. 2012)).

Under Wyoming Statute 35-11-112(c)(ii), the only remedy available to the Petitioner through this Council is revocation of Permit Number 2022-274. The Department has already revoked Permit Number 2022-274—an event which renders any determination by the Council on any of the factual issues underlying the Department’s original decision to grant Permit Number 2022-274 unnecessary. Therefore, there is no longer any controversy, or issues, for the Council to decide.

B. The Department has the exclusive authority to make initial permitting decisions, subject to appeal to the Council.

Petitioner also appears to ask the Council to make factual determinations regarding any future permit decision the Department might make regarding the subject of the revoked permit. However, the Department possesses the exclusive authority to make any future permitting decisions. Wyoming statutes provide a process for permitting septic systems. *See* Wyo. Stat. Ann. §§ 35-11-109 & 110, -302. The Department's Water Quality Division Administrator reviews permit applications and makes a recommendation to the Director of the Department of Environmental Quality. *See* Wyo. Stat. Ann § 35-11-110. The Director of the Department then has the statutory authority to issue permits. Wyo. Stat. Ann. § 35-11-109(a)(xiii). Only after the Director has issued a permit, and that permitting decision is appealed, does this Council have authority to conduct contested cases regarding the issuance of a permit. Wyo. Stat. Ann. § 35-11-112(a)(iv). An administrative agency's powers, like the Council, are limited by its statutory authority. *Mont. Dakota Utils. Co. v. Pub. Serv. Comm'n of Wyo.*, 847 P.2d 978, 983 (Wyo. 1993). As such, Petitioner may not appeal a permit, or any of the decisions underlying the issuance of a permit, to the Council until the Director has issued the permit. If the Director issues a new permit to Mountain Ventures, Petitioner may then bring an appeal of the Department's permitting decision and any underlying issues before the Council pursuant to Wyoming Statute § 35-11-112.

C. The Council has no authority to compel remediation of any previously installed infrastructure.

Finally, without citing any law, Petitioner asks the Council to make a determination regarding whether it can compel Mountain Ventures to remediate any infrastructure installed under the now-revoked Permit 2022-274. Petitioner concedes that the scope of the Council's authority is found within Wyoming Statute § 35-11-112. As stated above, an administrative agency's powers, like the Council, are limited by its statutory authority. *Mont. Dakota Utils. Co. v. Pub. Serv. Comm'n of Wyo.*, 847 P.2d 978, 983 (Wyo. 1993). When determining the authority granted to an administrative agency, statutes must be "strictly construed." *U.S. West Commc'ns, Inc. v. Wyo. Pub. Serv. Comm'n*, 907 P.2d 343, 346 (Wyo. 1995) (quoting *Mont. Dakota Utils. Co.*, 847 P.2d at 983). "[A]ny reasonable doubt" regarding the "existence of power must be resolved against the exercise thereof." *Id.* In fact, a "doubtful power does not exist." *Id.* No provision of Wyoming Statute § 35-11-112 authorizes the Council to compel Mountain Ventures, or the Department, to remediate any previously installed infrastructure under the now-revoked Permit 2022-274.

CONCLUSION

Any appeal of Permit 2022-274 is now moot, and the Council is without authority to grant any additional remedy sought by the Petitioners. The Department requests the Council to dismiss the case accordingly.

Submitted this 14th day of April, 2023.



Abigail Boudewyns, WSB No. 7-5223
Senior Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
Ph: (307) 777-7895
Fax: (307) 777-3542
abigail.boudewyns@wyo.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2023, I electronically filed the forgoing with the Environmental Quality Council and served all parties using the Environmental Quality Council's electronic notification.



Abigail Boudewyns, Attorney
State of Wyoming – Attorney General