

**FILED**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

APR 14 2008

Terri A. Lorenzon, Director  
Environmental Quality Council

IN RE: THE FINAL DETERMINATION                    )  
OF REIMBURSEMENT OF FUNDS TO                    ) Docket No. 07-3216  
LINCOLN COUNTY LANDFILLS                         )

ORDER DENYING PETITIONER LINCOLN COUNTY'S  
MOTION FOR SUMMARY JUDGMENT

Petitioner Lincoln County filed a Motion for Summary Judgment in this matter before the Wyoming Environmental Quality Council (EQC) on February 25, 2008. Respondent is the Wyoming Department of Environmental Quality (DEQ). Petitioner Lincoln County and Respondent DEQ are the only parties in this contested case.

The EQC heard oral argument by the parties on Petitioner's motion on March 19, 2008. EQC members present at the hearing were Dennis M. Boal, Chairman and Presiding Officer in this case, F. David Searle, Vice-Chair, Kirby L. Hedrick, Secretary, Richard C. Moore, P.E., John N. Morris, Thomas Coverdale, and Tim Flitner. Also present were Terri A. Lorenzon, EQC Director/Attorney, Deborah Baumer, Hearing Examiner from the Office of Administrative Hearings, and Marion Yoder, Senior Assistant Attorney General from the Attorney General's Office. Petitioner Lincoln County was represented at the hearing by Deputy Lincoln County Attorney Joseph Cole and Bob Rawlings, Lincoln County Landfill Manager. Respondent DEQ was represented at the hearing by Mike Barrash, Senior Assistant Attorney General.

Petitioner's motion asks for summary judgment determining that as a matter of law the DEQ Director is required to follow the Water and Waste Advisory Board's (Advisory Board) recommendations for awarding grants, on the grounds that the statutory language in WYO. STAT. ANN. § 35-11-522(c) and (d) makes grant award recommendations by the Advisory Board binding mandates for the DEQ Director.

Having reviewed the parties' filings and considered their oral arguments, and being advised in the premises, the EQC finds and orders as follows:

**Findings:**

1. The EQC has jurisdiction over the subject matter and the parties to this contested case proceeding under WYO. STAT. ANN. § 35-11-112 and Chapter I, Section 16 of the DEQ Rules of Practice & Procedure.
2. The Wyoming Rules of Civil Procedure apply to this contested case proceeding before the EQC. Chapter II, Section 14 of the DEQ Rules of Practice & Procedure.

3. Rule 56 of the Wyo. R. Civ. Pr. provides for summary judgment on motions where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.

4. Grant funding may be provided to local government owned or operated municipal solid waste landfills for specified monitoring-related activities. WYO. STAT. ANN. § 35-11-521(b).

5. Following a public hearing, the Water and Waste Advisory Board shall provide recommendations for municipal solid waste landfill monitoring grant awards to the DEQ Director. WYO. STAT. ANN. § 35-11-522(c).

6. The DEQ Director shall award municipal solid waste landfill monitoring grants in consideration of recommendations provided by the Water and Waste Advisory Board. WYO. STAT. ANN. § 35-11-522(d).

7. The DEQ Director denied a request by Lincoln County for landfill monitoring grant funding, which the Water and Waste Advisory Board had recommended be awarded.

8. Under the statutory language in WYO. STAT. ANN. § 35-11-522(c) and (d), as a matter of law the DEQ Director is required to consider, but is not required to follow, the Water and Waste Advisory Board's recommendations for awarding grants, and the grant award recommendations by the Advisory Board are not binding mandates for the DEQ Director.

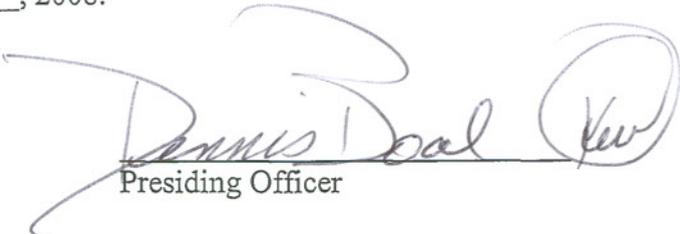
9. The Advisory Board's role in the landfill monitoring grant award process provides a valuable opportunity for discussion and exchange of views on issues prior to the DEQ Director's grant award decision, which if contested is then subject to review by the EQC.

10. Petitioner Lincoln County is not entitled to summary judgment determining that as a matter of law the DEQ Director was required to follow the Water and Waste Advisory Board's recommendation for awarding the municipal solid waste landfill monitoring grant requested by Lincoln County.

**Order:**

It is hereby ordered that Petitioner Lincoln County's motion for summary judgment is denied.

DATED this 14<sup>th</sup> day of April, 2008.

  
Presiding Officer

**CERTIFICATE OF SERVICE**

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 14<sup>th</sup> day of April, 2008 I served a copy of the foregoing **ORDER DENYING PETITIONER LINCOLN COUNTY'S MOTION FOR SUMMARY JUDGMENT** by electronic mail to the following parties:

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