

FEB 08 2010

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of February ^{Jim Ruby, Executive Secretary} ~~Environmental Quality Council~~ 2010, by and between the Board of County Commissioners of the County of Sublette, Sublette County, Wyoming ("Sublette County") and the Wyoming Department of Environmental Quality ("DEQ"), for the purpose of settling Sublette County's appeal from DEQ's final determination of January 14, 2009 that all future landfill disposal areas at the Marbleton #2 Landfill ("Landfill") would be required to be constructed with an Engineered Containment System ("ECS"), as more particularly described in Sublette County's Petition for Review of Final Determination and Request for Hearing filed with the Wyoming Environmental Quality Council ("EQC"), Docket No.09-5601. Sublette County and DEQ are the only Parties in this contested case before the EQC. Both Sublette County and DEQ, together with all their current commissioners, directors, administrators, former and future agents, employees, servants, officers, and all of their successors or assigns shall be fully and completely bound by this Settlement Agreement.

TERMS OF SETTLEMENT

a. Consideration. It is agreed by and between the Parties hereto, that in consideration for the mutual promises described herein, and in consideration for Sublette County's stipulation and agreement to dismissal of its appeal before the EQC, Docket No. 09-5601, Sublette County and DEQ agree to file a Joint Stipulation requesting that the EQC enter an Order approving, incorporating and binding the Parties to this Settlement Agreement and dismissing Sublette County's appeal in Docket No. 09-5601.

b. No Adjudication. The Parties to this Settlement Agreement understand this Settlement Agreement is a good faith compromise and settlement of Sublette County's appeal in Docket No. 09-5601 and does not constitute an adjudication based on an evidentiary hearing.

c. **Covenant.** Sublette County and DEQ agree and covenant to seek dismissal of Sublette County's appeal of DEQ's final decision of January 14, 2009 that all future landfill disposal areas at the Marbleton #2 Landfill be constructed with an Engineered Containment System (ECS). The Parties to this Settlement Agreement further agree and covenant as follows:

1. The Parties stipulate and agree that the Landfill is a Type I Municipal Solid Waste Landfill as defined by the DEQ's Solid Waste Rules and Regulations ("SWRR").
2. The Parties stipulate and agree that Chapter 2, Section 4(j) of the SWRR requires that future landfill disposal areas at the Landfill be permitted, designed and constructed with an ECS unless Sublette County demonstrates that the conditions in Chapter 2, Section 4(j)(i)(A) through (D) are met.
3. The Parties stipulate and agree that Sublette County shall submit a complete renewal permit application for the Landfill to DEQ within one hundred twenty (120) days following the date this Settlement Agreement and Joint Stipulation for dismissal of Sublette County's appeal in Docket No. 09-5601 is approved by the EQC.
4. Sublette County's permit renewal application shall, among other things, include an amendment for redesign of the Landfill including vertical contours and closure plans for all unlined disposal areas of the Landfill and an ECS design for future landfill disposal areas in accordance with DEQ's January 14, 2009 final determination. "Future landfill disposal areas" means those trenches, cells, and area fill locations lying within the permit boundary of the Marbleton #2 Landfill that at the date of this Settlement Agreement have not yet been excavated below natural grade for the purpose of receiving solid waste. The location of the "future landfill disposal areas" is south of existing leachate collection sumps L1-1 and L1-2 and includes the cross-hatched area labeled "Permitted Landfill Expansion" on the map attached hereto and incorporated herein as **Exhibit 1**. The areas lying within the permit boundary of the Marbleton #2 Landfill that at the date of this Settlement Agreement have been excavated below natural grade for the purpose of receiving solid waste are in the shaded area directly north of the cross-hatched area labeled "Permitted Landfill Expansion" on the map and the shaded area to the west (the upper left 1/6 of the map, which includes the area labeled "Existing Landfill").
5. The Parties stipulate and agree that, in addition to groundwater monitoring required under the SWRR or the Landfill's permit, Sublette County may conduct additional investigation of groundwater underlying and in the vicinity of the Landfill and may conduct related investigations to demonstrate whether the Landfill is a source of constituents impacting groundwater or whether such impacts are due not to the Landfill, but rather only to a source(s) other than the Landfill.

6. Before undertaking any additional investigation work, Sublette County will prepare and submit to DEQ a work plan(s) detailing the scope, objective(s), plans, specifications, methodologies (including Quality Assurance/Quality Control [QA/QC] procedures to assure reliability of any data obtained) and schedule for the additional investigation. DEQ agrees to consult with Sublette County and its representatives in preparing a work plan(s) and schedule. Any additional investigation work undertaken by Sublette County will be conducted in accordance with a work plan(s) and schedule approved by DEQ. DEQ agrees that its approval of such a work plan(s) and schedule shall not be unreasonably withheld.
7. The Parties stipulate and agree that Sublette County may request for DEQ to reevaluate the January 14, 2009 final ECS determination, which request shall be accompanied by a final report containing specific descriptions of the work actually performed pursuant to the DEQ-approved work plan(s) and schedule, including QA/QC, and all actual data collected and laboratory analyses performed and other pertinent information obtained during the additional investigation in support of Sublette County's request.
8. DEQ agrees to receive, review and consider such written request and accompanying final report submitted by Sublette County in accordance with the DEQ-approved work plan(s) and schedule to determine whether or not the data and analyses provided to DEQ by Sublette County demonstrate that: 1) impacts to groundwater are due not to the Landfill, but rather only to a source(s) other than the Landfill; and 2) that the Landfill meets the conditions found in Chapter 2, Section 4(j)(i)(A) through (D) of the SWRR (attached hereto and incorporated by reference). The Solid & Hazardous Waste Division Administrator will then issue a written final decision on Sublette County's written request.
9. Without precluding a different future determination based on data and analyses available subsequent to the final report referenced in this paragraph, if the Solid & Hazardous Waste Division Administrator determines that the data, analyses and other information in the final report submitted by Sublette County demonstrate that: 1) impacts to groundwater are due not to the Landfill, but rather only to a source(s) other than the Landfill; and 2) that the Landfill meets the conditions found in Chapter 2, Section 4(j)(i)(A) through (D) of the SWRR, Sublette County may submit an application to modify accordingly the ECS requirement in its permit for future landfill disposal areas at the Landfill, which will be processed subject to applicable provisions of the Wyoming Environmental Quality Act and the SWRR.
10. Each Party shall bear its own costs and attorney fees through the filing of this Settlement Agreement and the Joint Stipulation for dismissal of appeal incorporating it.

d. **Counterparts.** The original of this Settlement Agreement and the Joint Stipulation for dismissal of appeal incorporating it shall be filed with the EQC and file-stamped copies provided to the Parties.

JOINT STIPULATION FOR DISPOSITION AND DISMISSAL OF APPEAL

Upon execution of this Settlement Agreement by Sublette County and DEQ, the Parties shall file a Joint Stipulation for Disposition and Dismissal of Appeal with the EQC in Docket No. 09-5601 requesting that the EQC approve, incorporate and bind the parties to this Settlement Agreement and dismiss Sublette County's appeal. Chapter I, Section 11 of the DEQ Rules of Practice & Procedure provides for disposition of contested cases by stipulation or agreed settlement of the parties upon approval of the EQC. In the event the EQC declines to enter an Order approving, incorporating and binding the parties to this Settlement Agreement and dismissing Sublette County's appeal, this Settlement Agreement shall be null and void.

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WARRANTIES

a. All Parties to this Agreement warrant and represent to the other, that they have been fully informed and have full knowledge of the terms, conditions and effects of this Settlement Agreement.

b. All Parties to this Settlement Agreement warrant and represent to the other, that no promise or inducement has been offered or made except as herein set forth, and that this Settlement Agreement is executed without reliance upon any statement or representation by any other Party or his agent.

DATED this 2nd day of February, 2010.

FOR THE BOARD OF COUNTY
COMMISSIONERS OF SUBLETTE,
SUBLETTE COUNTY, WYOMING:

FOR WYOMING DEQ:

William W. Cramer
William W. Cramer, Chairman
Sublette County Commissioner

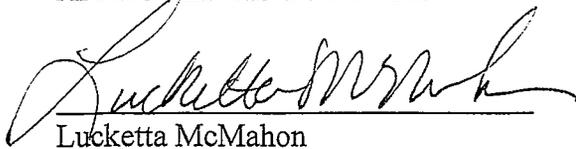
John Corra
John Corra, Director
Wyoming DEQ

Joel Bousman
Joel Bousman
Sublette County Commissioner

Carl Anderson
Carl Anderson, Administrator
Wyoming DEQ, Solid & Hazardous
Waste Division

John P. Linn
John P. Linn
Sublette County Commissioner

APPROVED AS TO FORM:

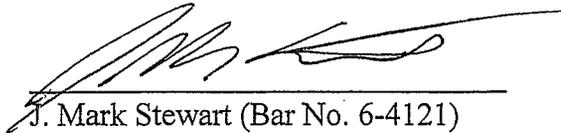


Lucketta McMahon
County and Prosecuting Attorney
For Sublette County, Wyoming

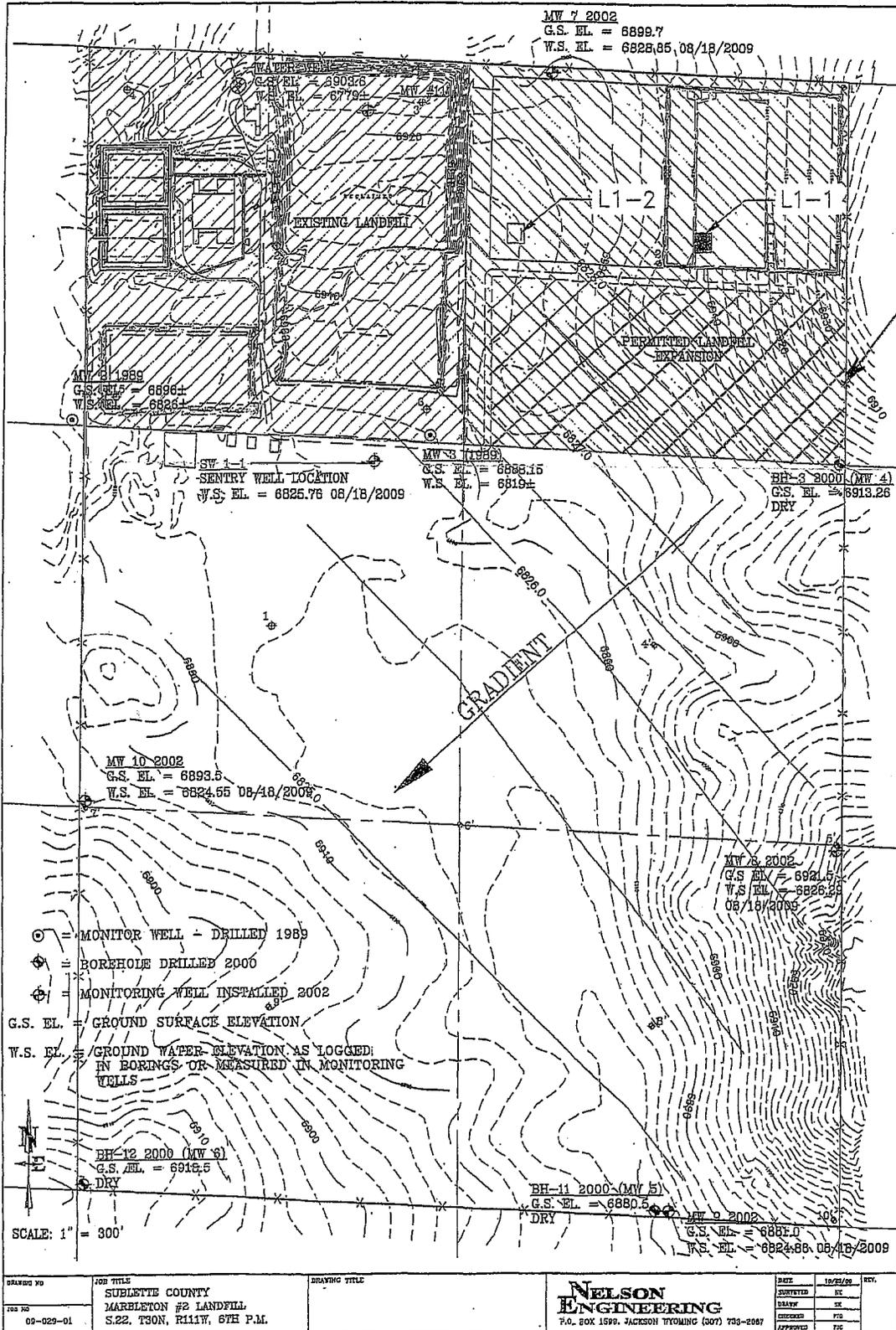
APPROVED AS TO FORM:



Mike Barrash (Bar No. 5-2310)
Senior Assistant Attorney General
Attorney for Wyoming DEQ



J. Mark Stewart (Bar No. 6-4121)
DAVIS & CANNON, LLP
Attorney for Sublette County, Wyoming



FUTURE LANDFILL DISPOSAL AREAS

EXHIBIT 1

CHAPTER 2

SANITARY LANDFILL REGULATIONS

Section 1. In General.

(a) Authority: The authority for the rules and regulations promulgated in this chapter is the Wyoming Environmental Quality Act, W.S. 35-11-101 et seq.

(b) Applicability: This chapter governs sanitary landfills.

(c) Objective: The objective of these rules and regulations is to set forth permit application requirements and to establish minimum standards for the location, design, construction, operation, monitoring, closure, and post-closure maintenance of sanitary landfills.

(d) Severability: If any section or provision of these regulations, or the application of that section or provision to any person, situation, or circumstance is adjudged invalid for any reason, the adjudication does not affect any other section or provision of these regulations or the application of the adjudicated section or provision to any other person, situation, or circumstance. The Environmental Quality Council declares that it would have adopted the valid portions and applications of these regulations without the invalid part, and to this end the provisions of these regulations are declared to be severable.

(e) Reserved

(f) One-time or emergency waste management authorization: The one-time or emergency waste management authorization procedure described in Chapter 1, Section 5, will not be considered for the land disposal of municipal solid wastes or mixed wastes.

Section 2. Sanitary Landfill Application Requirements.

(a) Permit transition: The following rules concerning permit application submittals under Chapter 1, Section 2 will apply.

(i) Existing facilities:

(A) Existing facilities that have received wastes after September 13, 1989:

(I) The operator of any facility with a complete permit application or a permit that has not expired by September 13, 1989 shall be required to submit a renewal application, unless the operator elects to close the facility before January 1, 1994. The renewal application shall be submitted after

(C) October 9, 1997, for Type II sanitary landfills.

(c) Access roads: Roads leading to sanitary landfills shall not be subject to the location standards described in this section.

Section 4. Design and Construction Standards. Each facility shall be designed and constructed in compliance with the standards listed in this section.

(a) Surveyed corners: All site boundary corners shall be surveyed and marked with permanent survey caps.

(b) Access restrictions:

(i) The working area of all facilities shall be fenced in such a manner as to discourage people and livestock from entering the facility and to contain litter within the facility. Additional fencing may be required to restrict access to reclaimed areas or other areas that may present public health and safety hazards.

(ii) All access roads shall be equipped with a gate which can be locked when the facility is unattended.

(c) Posting: Each point of access shall be identified by a sign, which shall be easily readable and shall be maintained in good condition, and which contains at a minimum the following information:

(i) The facility name;

(ii) The name and phone number of the responsible person to contact in the event of emergencies;

(iii) The hours of operation;

(iv) Wastes that are prohibited from disposal at the facility;

(v) A requirement to notify the landfill operator of any asbestos wastes.

(d) Access roads: Facility access roads shall be constructed to enable use under inclement weather conditions.

(e) Firelanes: All facilities shall have a fire lane which is a minimum of ten (10) feet wide around all active solid waste management units or within the perimeter fence.

(f) Buffer zones: All facilities shall have a buffer zone which is a minimum of twenty (20) feet within the facility perimeter fence.

(g) Topsoil: Topsoil from all disturbed areas shall be stripped and stockpiled in an area which will not be disturbed during facility operation. These stockpiles shall be identified by signs, and vegetated as required for stabilization. This topsoil will be used for site reclamation. Topsoil shall not be removed from the facility without written authorization from the administrator.

(h) Structural stability: Engineering measures shall be incorporated into the landfill design and construction to ensure stability of structural components in unstable areas, fault areas, and seismic impact zones. Landfill designs in unstable areas shall consider the factors described in Section 3(b)(i)(F). Landfill designs in seismic impact zones shall consider the factors described in Section 3(b)(i)(E).

(i) Surface water structures: Surface water structures shall be designed and constructed to control surface water run-on and run-off as follows:

(i) Temporary structures anticipated to be used for periods less than five (5) years shall accommodate a 25-year, 24-hour precipitation event;

(ii) Permanent structures and temporary structures anticipated to be used for five (5) years or longer shall accommodate a 100-year, 24-hour precipitation event.

(iii) Sediment control structures shall be designed and constructed in accordance with Chapter 11 of the Water Quality Division Rules and Regulations.

(j) Engineered containment system requirement:

(i) Applicability: Effective on the dates specified in paragraph (j)(ii) of this section, new Type I sanitary landfills, new landfill cells at existing Type I sanitary landfills, and horizontal expansions of area fills at existing Type I sanitary landfills must meet the requirements of Sections 4(j) and 4(k) of this chapter, unless the operator demonstrates to the administrator that all of the following conditions are met:

(A) Native soils underlying the landfill are sufficiently impermeable to prevent potential contamination of groundwater through operation of the facility; and

(B) Waste types or operating practices minimize the potential for contamination of underlying soils and/or groundwater; and

(C) Site hydrologic conditions are sufficient to protect groundwater from contamination; and

(D) The facility receives less than 500 short tons of unprocessed household refuse or mixed household and industrial refuse per operating day, on a monthly average. Containment systems at these facilities shall include leachate collection and leak detection systems.

(ii) The engineered containment system requirements of paragraph (i) of this section are effective on the following dates:

(A) October 9, 1993, for Type I sanitary landfills; and

(B) April 9, 1994, for Type I sanitary landfills which receive less than one hundred (100) tons per day of municipal solid wastes.

(iii) For Type II facilities, the administrator may determine, based on consideration of the factors in paragraph (j)(i) of this section, that an engineered containment system is required to protect public health and the environment. Following such a determination, the administrator shall notify the facility owner or operator and shall specify an effective date for the determination. The owner or operator shall be required to comply with the requirements of paragraph (j) of this section for any new trench or expansion of any new area fill at the facility constructed after the effective date of the administrator's notification.

(k) Design/construction of engineered containment systems: Engineered containment systems shall be designed and constructed to meet these standards:

(i) Engineered barrier layers forming caps and/or liners constructed of clay shall have a maximum vertical hydraulic conductivity of $1 \times 10E-7$ cm/sec (0.1 ft/yr). These barrier layers shall have a minimum thickness of 24 inches. Clay barrier layers shall be constructed in lifts which do not exceed six (6) inches in thickness, and uniform compaction of these lifts shall be assured through the use of appropriate equipment. Clay barrier layers forming a cap shall be overlain by a layer of soil which is of suitable thickness to protect the clay barrier layer from frost penetration.

(ii) All engineered containment system components shall be supported by material of sufficient bearing strength to prevent subsidence and failure of any component. This bearing strength shall be documented through materials testing as specified by the administrator.

(iii) Synthetic membranes used as part of any containment system shall be of a material and thickness which is suitable for the intended use, but in no case shall be less than 0.030 inches thick (30 mils). All synthetic membranes shall be underlain by a suitable bedding material.

(iv) Lateral drainage layers included in composite cap and liner system designs shall be composed of either granular material or a synthetic drain net of suitable lateral permeability to promote acceptable drainage, as approved