

**FILED**

**MAY 31 2006**

Terri A. Lorenzon, Director  
Environmental Quality Council

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE TOWN OF )  
WHEATLAND WASTEWATER STORAGE )  
AND LAND APPLICATION )

Docket No. 05-3801

JOINT STIPULATION FOR WITHDRAWAL OF  
APPEAL AND DISMISSAL WITH PREJUDICE

Petitioners Lorraine Albright, Eugene Birkle and Mary Birkle (Albright and Birkles), and Respondents the Town of Wheatland and the Wyoming Department of Environmental Quality (DEQ), the parties to this Joint Stipulation, have reached an agreement for resolution and withdrawal of the Albright's and Birkles' appeal of Permit No. 04-316 in the above-captioned matter before the Environmental Quality Council (EQC or Council).

The DEQ issued Permit No. 04-316 to the Town of Wheatland on June 9, 2005. Permit No. 04-316 authorizes the Town of Wheatland to construct wastewater reuse pipelines and two storage reservoirs, and to land apply the treated wastewater to irrigate certain lands in accordance with the terms and conditions of the permit and the approved application. Petitioners Lorraine Albright, Eugene Birkle and Mary Birkle, David and Germaine Birkle, and Joe Geringer all petitioned the EQC to appeal Permit 04-316 (the contested permit). Permits Nos. 04-273 and 04-274, which were issued to Wheatland on June 17, 2004, were not timely appealed by these petitioners, and therefore are not contested permits in this appeal. David and Germaine Birkle subsequently withdrew their appeal. **Joe Geringer is not a party to this Joint Stipulation, but he does not object to modification of Permit 04-316 as specifically stipulated below, although he retains his right under his pending appeal in this matter to object to or seek modification of other terms of Permit No. 04-316.**

WYO. STAT. ANN. § 16-3-107(n) and Chapter I, §11 of the DEQ Rules of Practice & Procedure provide for disposition of contested cases by stipulation of the parties upon approval of the Council. To that end, Albright and Birkles, the Town of Wheatland, and the DEQ jointly stipulate as follows:

1. Petitioners Allbright and Birkles and Respondents Town of Wheatland and the DEQ stipulate to modification of Permit No. 04-316 only by adding the terms specified below:

a. The Town of Wheatland shall add a pipeline from Reservoir No. 2 to the ½ circle pivot just south of the Allbright residence (E ½ NE ¼ Section 6). This eliminates transferring the water in an open irrigation ditch from reservoir 2 to the surge/tailwater pond in the NE corner of Section 6.

b. The Town of Wheatland shall provide only Class B water to Marty Shepherd by adding disinfection capability in the form of hypochlorinator injectors to the pumps that lift out of both reservoirs. Chlorine would be added only as necessary to make all reuse water Class B. The Town of Wheatland shall have treated reuse water sampled and analyzed to confirm that disinfection in the form of hypochlorinator injectors adding chlorine at the pumps that lift out of both reservoirs make all reuse water Class B. The sampling and analyses will be conducted monthly during each irrigation season, and on two (2) additional occasions per year at Petitioners' request during the life of the project. Lorraine Allbright will be sent copies of test results.

c. The nozzles on the last 75 feet of the ½ circle pivot sprinkler in the E ½ NE ¼ of Section 6 will be replaced with Low Energy Precision Application (LEPA) nozzles with a bubbler type discharge, which is the equivalent of flood irrigation, in lieu of spray, to prevent wind drift. Chapter 21, Section 9(b)(ii) calls for a 30 foot buffer for flood irrigation reuse of Class B wastewater, which may include the public right-of-way. Chapter 21, Section 9(b)(iii) calls for a 30 foot buffer for flood irrigation reuse of Class C wastewater, which does not include the public right-of-way. As proposed above, all wastewater reused for irrigation in the ½ circle pivot just south of the Allbright residence would be Class B.

d. In the event that conditions in the Town of Wheatland WWTP lagoon system indicate that the effluent fails to meet Class C limits for fecal coliform, the effluent from Lagoon 3 will be sampled for fecal coliform. Also, for one year after start-up of transmission of treated

wastewater to storage reservoirs under permit no. 04-316, the Town of Wheatland shall continue twice monthly sampling of effluent from Lagoon 3 for fecal coliform, ammonia, pH, total suspended solids, and biochemical oxygen demand (BOD5). Lorraine Allbright will be sent copies of test results.

e. Spray irrigation using treated wastewater shall cease during periods when wind conditions are sufficient to cause wind drift from irrigation spray to leave the application site. Petitioners may contact Marty Shepard to report wind conditions which are causing wind drift from irrigation spray to leave the application site.

2. Contingent upon access to the premises for this limited purpose being granted at no cost, the Town of Wheatland shall test the domestic well owned by Lorraine and Darren Allbright, their heirs, successors and assigns, for nitrates and fecal coliform three (3) times (beginning, middle, end) during each land application irrigation season for a period of three (3) years, and once per year after that during the life of the project. Lorraine Allbright will be sent copies of test results. There will be no presumption that test results indicate a specific source of any constituents.

3. WYO. STAT. ANN. § 35-11-112(c)(ii) authorizes the EQC to order that any permit be modified. Petitioners Allbright and Birkles and Respondents Town of Wheatland and the DEQ request that the EQC enter an order approving, incorporating and binding them to this joint stipulation, and ordering that Permit No. 04-316 be modified as specified above.

4. Contingent upon the EQC's entry of an order approving, incorporating and binding them to this joint stipulation, and ordering that Permit No. 04-316 be modified as specified above, Petitioners Allbright's and Birkles' appeals of Permit No. 04-316 shall be deemed withdrawn and dismissed with prejudice.

5. This Joint Stipulation shall be binding upon the parties, their successors and assigns.

6. Each party shall bear its own costs and attorney fees incurred through the entry of an order by the Council approving and incorporating this Joint Stipulation.

WHEREFORE Petitioners Allbright and Birkles and Respondents Town of Wheatland and the DEQ respectfully request that the Council enter an order:

a. approving, incorporating, and binding them to this Joint Stipulation and, in accordance therewith, dismissing with prejudice Petitioners Allbright's and Birkles' appeal in this matter under WYO. STAT. ANN. § 16-3-107(n) and Chapter I, §11 of the DEQ Rules of Practice & Procedure, and

b. ordering that Permit No. 04-316 be modified by adding the terms as specifically stipulated above, pursuant to WYO. STAT. ANN. § 35-11-112(c)(ii).

The signatories certify that they are authorized to bind their respective parties to this Joint Stipulation in EQC Docket No. 05-3801.

FOR LORRAINE ALLBRIGHT:

Lorraine Allbright  
Lorraine Allbright

Date: 5-26-06

FOR EUGENE BIRKLE:

Eugene Birkle  
Eugene Birkle

Date: 5-26-06

FOR MARY BIRKLE:

Mary Birkle  
Mary Birkle

Date: 5-26-06

FOR THE TOWN OF WHEATLAND:

\_\_\_\_\_  
Joel Dingman, Mayor

Date: \_\_\_\_\_

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John Corra  
John Corra, Director

Date: 5/30/06

John Wagner  
John Wagner, Administrator, Water Quality Division

Date: 5/30/06

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FOR LORRAINE ALLBRIGHT:

Lorraine Allbright  
Lorraine Allbright

Date: 5-26-06

FOR EUGENE BIRKLE:

Eugene Birkle  
Eugene Birkle

Date: 5-26-06

FOR MARY BIRKLE:

Mary Birkle  
Mary Birkle

Date: 5-26-06

FOR THE TOWN OF WHEATLAND:

Joel Dingman  
Joel Dingman, Mayor

Date: 5/30/06

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

John Coira  
John Coira, Director

Date: 5/30/06

John Wagner, Administrator, Water Quality Division

Date: \_\_\_\_\_

APPROVED AS TO FORM:

Gay Woodhouse  
Gay Woodhouse, Gay Woodhouse Law Office  
Attorney for Petitioners Allbright and Birkles

Date: May 26, 2006

Douglas Weaver, Wheatland Town Attorney  
Attorney for the Town of Wheatland

Date : \_\_\_\_\_

Mike Barrash  
Mike Barrash, Attorney General's Office  
Attorney for the DEQ

Date : 5/30/2006

**STATEMENT OF JOE GERINGER:**

**I am not a party to this Joint Stipulation, but I do not object to modification of Permit 04-316 as specified above, although I retain my right under my pending appeal in this matter to object to or seek modification of other terms of Permit No. 04-316.**

Joe Geringer  
Joe Geringer

Date: May 26, 2006

APPROVED AS TO FORM:

Gay Woodhouse

Gay Woodhouse, Gay Woodhouse Law Office  
Attorney for Petitioners Albright and Birkles

Date: May 26, 2006

Douglas Weaver

Douglas Weaver, Wheatland Town Attorney  
Attorney for the Town of Wheatland

Date: 5/30/06

Mike Barrash

Mike Barrash, Attorney General's Office  
Attorney for the DEQ

Date: 5/30/2006

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Date: May 26, 2006