

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

FEB 21 2014

IN THE MATTER OF OBJECTIONS TO)
ANCHOR ENVIRONMENTAL, INC.'s) DOCKET NO. 13-5802
WDEQ/SHWD PERMIT APPLICATION)
FILE NO. 50.022)

Jim Ruby, Executive Secretary
Environmental Quality Council

RESPONDENT WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
OBJECTION AND RESPONSE TO THE TOWN OF MILLS' MEMORANDUM OF LAW
AND BRIEF IN OPPOSITION TO PERMIT APPLICATION

Respondent Wyoming Department of Environmental Quality (DEQ), files this Objection and Response to the Town of Mills' Memorandum of Law and Brief in Opposition to Permit Application, filed February 18, 2014. The grounds for this Objection and Response are as follows:

Item six of the Wyoming Environmental Quality Council's (EQC) December 30, 2013, scheduling ORDER provided that Petitioners shall file preliminary statements of issues no later than January 10, 2014. As DEQ requested during the December 27, 2013 scheduling conference, in which the Town of Mills participated, item seven of the EQC's December 30, 2013, scheduling ORDER provided that the DEQ may file a bench brief outlining legal issues and legal support by February 13, 2014, and that any "responses to the brief" shall be filed by the Petitioners by February 18, 2014.

The Town of Mills filed a Preliminary Statement of Issues, dated January 10, 2014 (filed January 13, 2014), which listed ten issues. Two of the issues listed express objections to the facility location that are essentially zoning issues. Issues #4 and #8 are:

4. To what extent should the interests of the Town of Mills be considered in objecting to the introduction of a new petroleum contaminated, solid/liquid waste disposal site being established less than one-half mile *outside* the Town's projected growth boundaries? (italics added)
8. Did applicant comply with all lawful requirements, including public notice prior to the re-zoning of the subject property to "light industrial use"?

Pursuant to item seven of the EQC's scheduling ORDER, the DEQ filed a four page Memorandum of Law Regarding Compliance with Zoning-Based Location Standards on

February 13, 2014 to address whether, as a matter of law, those two particular issues are properly before the EQC in this case under the Wyoming Environmental Quality Act.

Although item seven in the December 30, 2013, scheduling ORDER provided that Petitioners could file “responses” to the DEQ’s bench brief by February 18, 2014, the Town’s Memorandum of Law and Brief in Opposition to Permit Application goes far beyond a response to the DEQ’s very narrow four page memorandum on two zoning issues. In fact, the Town’s Brief (page 2) states:

The Town of Mills’ objections to this proposed facility are not limited to the zoning issues discussed in *Respondent, Wyoming Department Of Environmental Quality’s Memorandum of Law Regarding Compliance With Zoning-Based Location Standards* filed February 13, 2014. The Town raised several other concerns in its Preliminary Statement of Issues which have never been addressed. The Town raised additional issues in its response to the Department of Environmental Quality’s discovery requests which have also been ignored.

The DEQ’s bench brief was narrowly aimed at discussing the law concerning zoning-related issues the Town raised in its initial November 22, 2013 objection letter and again in its January 10, 2014, Preliminary Statement of Issues. The EQC’s scheduling Order did not call for DEQ to address all issues in the bench brief. DEQ is not ignoring other issues, which will be addressed in the full evidentiary hearing. DEQ never intended or understood the EQC to expect that the bench brief would be a substitute for the evidentiary hearing itself.

Although not titled as such, perhaps the Town intends its Brief to serve as a motion for summary judgment, based on the following statements contained therein:

- “The new facility proposed by Anchor Environmental *demands summary denial* as being both procedurally deficient and unlawfully located.” Page 1.
- “*Summary denial* of the application is warranted in this matter.” Page 2.
- “Mills respectfully asserts this proposed facility *should be summarily denied* as violating W.S. §35-11-502.” Page 5.
- “this application *should be summarily denied.*” Page 7.
- “Mills asserts this permit *should be summarily denied* without requiring the parties opposing this obviously defective application to expend additional public funds.” Page 14.

(Emphasis added)

If the Town's Brief is to be treated as a motion for summary judgment, then item three of the scheduling Order provides for a hearing on such dispositive motions prior to the final evidentiary hearing. Summary judgment would be available only if there is no genuine issue of material fact and the Town is entitled to judgment as a matter of law. W.R.C.P. 56(c). Review of the exhibits attached to the Town's Brief reveals that there are genuine issues of material fact which preclude summary judgment.

For example, the Town alleges "Defective Notice" and asserts that "[t]his application should never have been approved with these obvious violations." Town's Brief, pp.5-6. Specifically, the Town alleges that "[a]mong the most fundamental procedures would have been to notify the Town of Mills about this application, either when it was filed or once the application was determined to be complete as required by law," but "[n]either notice was provided to Mills in this case." Town's Brief, pp.5-6. To support this allegation, the Town claims that "Mr. Skovgard (the applicant) admitted that he had failed to include the Town of Mills in the notices prepared and mailed by his engineers (Inberg-Miller) in support of this application," and that:

Further evidence of this fatal omission is found in the Exhibits 3 and 4 attached hereto. These exhibits clearly show the Town of Mills was omitted from the mailing list prepared by applicant. Anchor had a statutory obligation to notify the Town of Mills and it failed to provide the required notice.

Town's Brief, p.6.

Actually, Exhibits 3 and 4 to the Town's Brief show that the Town of Mills was *not* omitted from the mailing list. See attached excerpts from Brief Exhibits 3 and 4 and copy of the Town's November 22, 2013, objection letter showing the same mailing address (P.O. Box 789) as that in the mailing lists. Furthermore, the Town does not contend that it did not in fact have *actual* notice of the proposed permit, because it timely filed the referenced November 22, 2013 objection letter and is a party in this case contesting the permit.

The Town's Brief contains similarly inaccurate assertions about:

- Whether the proposed Anchor facility is subject to Wyo. Stat. Ann. § 35-11-306¹ or to Wyo. Stat. Ann. § 35-11-502 or both. Pages 3-5.

¹ See attached DEQ Exhibits #30, which identifies permitted § 306 commercial oil field waste disposal facilities listed by DEQ, and #31, which shows an actual, listed permitted § 306 commercial oil field waste disposal facility (North Bill Disposal in Converse County).

- Whether “[t]he facility is clearly designed for *the commercial treatment, transfer, storage and disposal of wastes* as defined by W.S. § 35-11-103” (emphasis added), which does not contain such definition, although Wyo. Stat. Ann. §35-11-103(d) does define a “solid waste management facility” (as opposed to a “commercial solid waste management facility”) as one for “*the transfer, treatment, processing, storage or disposal* of solid waste” (emphasis added). Page 5.
- “Whether any appeal of the county’s re-zoning was filed pursuant to § 18-5-20[3] is irrelevant to this matter” and whether “the Council is vested with broad authority to reject the application” based on the Town’s disagreement with the Natrona County Board of County Commissioners’ decision to re-zone an unincorporated area that includes the proposed facility location. Pages 12 - 13.

The evidence on which the EQC will ultimately decide questions of fact material to these issues will be presented at the final evidentiary hearing. Until then, genuine issues of material fact remain regarding the alleged bases for summary denial asserted in the Town’s Brief. Time does not permit DEQ to respond here to each assertion in the Town’s Brief (which resembles a dispositive motion). Instead, DEQ will rely on item three in the scheduling Order for an opportunity to do so immediately prior to the final evidentiary hearing.

DATED this 21st day of February, 2014.



Mike Barrash (WSB #5-2310)
Jeremy Gross (WSB #7-5110)
Wyoming Attorney General’s Office
123 State Capitol Building
Cheyenne, Wyoming 82002
(307-777-6946)

CERTIFICATE OF SERVICE

This certifies that true and correct copies of the foregoing RESPONDENT WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S OBJECTION AND RESPONSE TO THE TOWN OF MILLS' BRIEF IN OPPOSITION TO PERMIT APPLICATION were served this 21st day of February, 2014 by United States mail, first class postage pre-paid, and/or by email, addressed as follows:

Robert J. Hand Jr.
Hand & Hand
152 N. Durbin, Suite 300
Casper, WY 82601
robh@vcn.com

Town of Mills and Lisa Whetstone
c/o Lisa Whetstone, Mills Town Clerk
lwhetstone@millswy.com

Jo Ann and Donnie Kenyon
4215 S. Skyline Road
Casper, WY 82604

Jonathan Phillips
144 N. 7th
Mills, WY 82604
ejpwy@hotmail.com

Dennis Herrick
5210 Westside Place
Mills, WY 82604
drh66flh@gmail.com

Jim Skovgard
Anchor Environmental, Inc.
jim.skovgard@anchor-inc.com



Wyoming Attorney General's Office



INBERG-MILLER ENGINEERS

50.022

Quality Solutions Through Teamwork

December 18, 2012

15203-CE

Patrick Troxel
WDEQ-SHWD
510 Meadow View Drive
Lander, WY 82520



RE: COMPLETENESS REVIEW - PUBLIC NOTICE
ANCHOR ENVIRONMENTAL SOIL TREATMENT, TRANSFER, & RECYCLING FACILITY
SHWD FILE #50.022

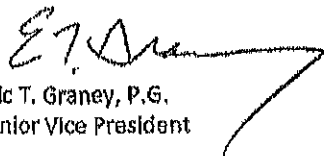
Dear Patrick:

In accordance with the WDEQ letter dated September 28, 2012, regarding the Completeness Review for the referenced project, we are providing documentation that we have compiled with the Public Notice requirements.

- Copy of finalized Public Notice for all mailings and publication in the Casper Star Tribune.
- Public Notice's sent via First Class Mail
 - Mayors and County Commissions within 50 miles of transfer station (see copy of mail label list - 1 page).
 - Property owners within one-half mile of transfer station (see copy of mail label list. List shows address corrections - 9 pages.)
 - Interested parties (see copy of mail label list provided by WDEQ - 7 pages).
 - Proof of mailing: AMBI Mail & Marketing receipt showing 494 public notices mailed on November 1, 2012.
- Affidavit of Publication from the Casper Star Tribune confirming that the Public Notice was published on October 30 and November 5, 2012.

Please let us know if there are questions regarding this documentation.

INBERG-MILLER ENGINEERS


Eric T. Graney, P.G.
Senior Vice President

ETG:dms:\casperdc1\projects\15203-ce\public notice\15203-ce public notice documentation ltr.docx

Enclosures as stated

c: Jim Skovard, Anchor Environmental



124 East Main Street
Riverton, WY 82801
307-856-8158
307-856-3851 (fax)
riverton@inberg-miller.com

1120 East "O" Street
Casper, WY 82601
307-677-0900
307-472-4402 (fax)
cassper@inberg-miller.com

350 Parley Boulevard
Cheyenne, WY 82007
307-635-0927
307-635-2713 (fax)
cheyenne@inberg-miller.com

428 Ahm Road
Powell, WY 82436
307-764-7170
307-764-7086 (fax)
powell@inberg-miller.com

189 West Flaming Horse Way
Green River, WY 82930
307-875-8394
307-875-4305 (fax)
greenriver@inberg-miller.com

MAYORS, COMMISSIONERS, Solid Waste Dist's

Honorable Jerry Petty
Town of Bar Nunn
4820 Wardwell Industrial Ave.
Casper, WY 82601

Honorable Phil Hinds
Town of Evansville
P. O. Drawer 158
Evansville, WY 82636

Honorable Linda Care
Town of Glenrock
P. O. Box 417
Glenrock, WY 82637

Honorable Guy Chapman
Town of Midwest
P. O. Box 190
Midwest, WY 82643

Honorable Kenyne Schlager
City of Casper
200 N. David St.
Casper, WY 82601

Converse County Commissioners
107 N. 5th St., Suite 114
Douglas, WY 82633

Natrona County Commissioners
200 N. Center St.
Casper, WY 82601

City of Casper Regional Solid Waste District
200 N. David St.
Casper, WY 82601

Glenrock Area Solid Waste District
P. O. Box 2126
Glenrock, WY 82637

MILES, DAVID K ET UX
308 S 6TH AV
CASPER, WY 82604

MILLER, BARBARA J
BOX 866
MILLS, WY 82644

MILLER, MYRON LEE
BOX 504
MILLS, WY 82644

MILLS, TOWN OF
BOX 789
MILLS, WY 82644

MORGAN, DIANA EVON
115 S 5TH AVE
CASPER, WY 82604

MOSER FARMS INC
5150 W YELLOWSTONE HWY
CASPER, WY 82604

MOSER, JAMES F TRUSTEE
1511 W 60TH ST
CASPER, WY 82601

MOYE, KERRY E ET UX
147 S 6TH AV
CASPER, WY 82604

MUGGENBURG, KRIS ET AL
300 N 4TH AVE
CASPER, WY 82604

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PACK, KATHRYN A ET AL
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CASPER, WY 82602

PARKE, DIANE MARY
BOX 523
MILLS, WY 82644

PARKE, SUSIE
BOX 1704
MILLS, WY 82644

PARKE, SUSIE JANE
BOX 1704
MILLS, WY 82644

PARKINSON, PHILIP E ET UX
BOX 1965
MILLS, WY 82644

PATTERSON UTI DRILLING CO
ATTN: MYSKA & VANDERVOORT LLC
200 S 10TH ST
RICHMOND, TX 77469

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BOX 50325
CASPER, WY 82605

PHILLIPS, JONATHAN E ET UX
144 N 7TH AV
CASPER, WY 82604

PLANET HOLDINGS LLC
1131 STAFFORD
CASPER, WY 82609

PLATT, KENNETH E ET UX
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CASPER, WY 82604

POND, JEAN M
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PORTER, JIM D ET AL
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POTTER, JAMES W ET UX
5146 OREGON TRL
CASPER, WY 82604



INBERG-MILLER ENGINEERS

Quality Solutions Through Teamwork

50.022

December 19, 2012

15203-CE



Patrick Troxel
WDEQ-SHWD
510 Meadow View Drive
Lander, WY 82520

RE: TECHNICAL REVIEW - PUBLIC NOTICE
ANCHOR ENVIRONMENTAL SOIL TREATMENT, TRANSFER, & RECYCLING FACILITY
SHWD FILE #50.022

Dear Patrick:

In accordance with the WDEQ letter dated October 25, 2013, regarding the Technical Review for the referenced project, we are providing documentation that we have compiled with the Public Notice requirements.

- Copy of finalized Public Notice for all mailings and publication in the Casper Star Tribune.
- Public Notice's sent via First Class Mail or Certified Mail
 - Solid Waste Districts, Mayors, and County Commissions within 50 miles of transfer station (see copy of mail label list - 1 page).
 - Property owners within one-half mile of transfer station (see copy of mail label list. List shows address corrections - 9 pages.)
 - Interested parties (see copy of mail label list provided by WDEQ - 7 pages).
 - Proof of mailing: AMB Mail & Marketing receipt showing 494 public notices mailed on November 7, 2013.
- Affidavit of Publication from the Casper Star Tribune confirming that the Public Notice was published on November 11 & 19, 2013.
- Affidavit of personal deliver of the Permit Applications to Natrona County Library and Natrona County Clerks Office.

Please let us know if there are questions regarding this documentation.

INBERG-MILLER ENGINEERS

Thad M. Hunter P.E.
Civil Engineer

TMH:ETG:cno:\15203-ce public notice technical\15203-ce public notice documentation ltr.docx

Enclosures as stated

c: Jim Skovard, Anchor Environmental



124 Blue Water Street
Riverton, WY 82501
307-850-6130
307-850-3061 (fax)
rlivert@inberg-miller.com

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307-472-4402 (fax)
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950 Forsyth Boulevard
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307-636-2713 (fax)
cheyenne@inberg-miller.com

428 Alan Road
Powell, WY 82435
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307-764-7000 (fax)
pcwork@inberg-miller.com






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November 22, 2013

Department of Environmental Quality
122 West 25th Street
Cheyenne, WY 82002


Dear Mr. Parfitt,

The Town of Mills recently received notification of the final stages of the permit for Anchor Environmental. It was brought to our attention that this type of plant wanted to open its doors on the edge of our Town last July. We were against it then and we still don't want the waste treatment plant in Mills. We expressed our concerns to the county commissioners then and we have the same objections now.

The Town of Mills is currently working with the County and City of Casper to establish our growth boundaries and this solid waste plant is not something we want anywhere close to our Town and its residences for many reasons.

The Mayor and Council would like the DEQ to take the time to come to Mills, address the council and the citizens, as this is a matter that cannot go unaddressed for many reasons.

I look forward to hearing from you so that I can get a meeting organized for our concerned citizens, council, Mayor and town employees to attend.

Regards,


Lisa Whetstone
Mills Town Clerk
lwhetstone@millswy.com
307-234-6679

DEPARTMENT
OF

DEC 5 2013

ENVIRONMENTAL
QUALITY

704 Fourth Street
P.O. Box 789
Mills, Wyoming 82644
Phone: 307-234-6679
Fax: 307-234-6528



704 Fourth Street
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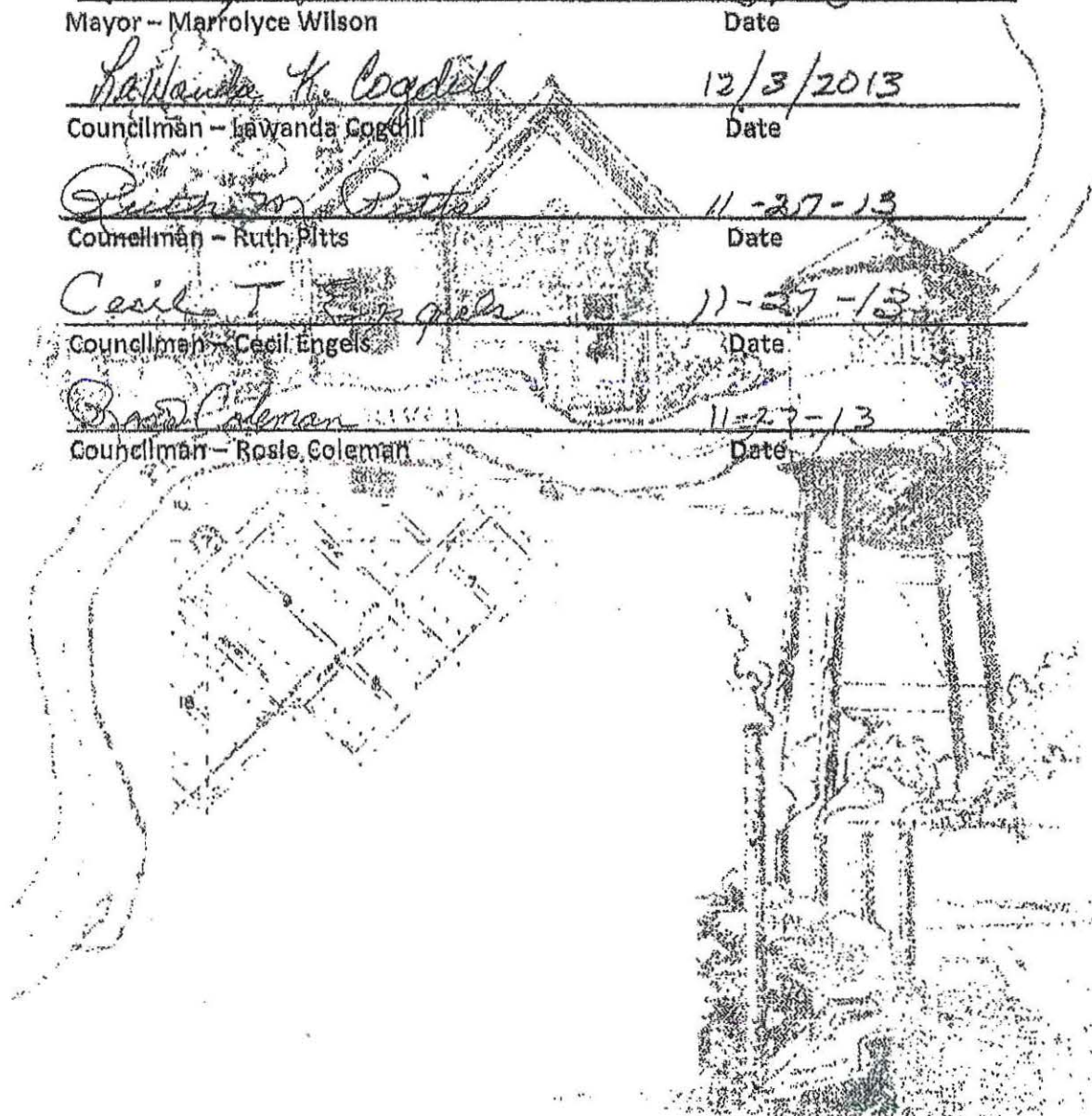
Marrolyce Wilson 11-27-13
Mayor - Marrolyce Wilson Date

Lawanda K. Coghill 12/3/2013
Councilman - Lawanda Coghill Date

Ruth Pitts 11-27-13
Councilman - Ruth Pitts Date

Cecil T. Engels 11-27-13
Councilman - Cecil Engels Date

Rosie Coleman 11-27-13
Councilman - Rosie Coleman Date



Permitted Commercial Oil Disposal Facilities

County	Name of Facility	Operator	Contact Name	Phone Number	Mailing Address	
Campbell	McBeth Pit	Jim's Water Service	Jim Rodgers	307-682-4051	P.O. Box 2290	Gillette, WY 82716
Campbell	Kissicks Disposal Pit	Kissicks Water Service	Jo Kissicks	307-682-9026	P.O. Box 46	Rozet, WY 82401
Campbell	Pumpkin Buttes	WestWater	John Todd	303-888-2833	P.O. Box 670	Windsor, CO 80550
Campbell	Holler SWD 1-11 Pit	Jim Gray	Jeff Gray	307-682-2706	12301 N. Highway 59	Gillette, WY 82716
Carbon	Mexican Flats	Devon Energy	Brent Wilson	307-383-3000	P.O. Box 129	Baggs, WY 82321
Carbon	Samson Resources	Samson Resources	Matt Sanchez	303-222-0967	Two West Second Street	Tulsa, OK 74103-3103
Carbon	Stateline Energy - Wamsutter	Stateline Energy	John Todd	303-888-2833	P.O. Box 670	Windsor, CO 80550
Carbon	Southern Cross	Southern Cross	Keith Haack	307-380-8277	P.O. Box 94	Baggs, WY 82321
Converse	Werner Ranch	Jim's Water Service	Doug Robertson	307-351-8475	P.O. Box 61	Douglas, WY 82633
Converse	Cannon Land and Livestock	Jim's Water Service	Doug Robertson	307-351-8475	P.O. Box 61	Douglas, WY 82633
Converse	North Bill Disposal	North Bill Disposal	Jack Amen	307-358-1885	P.O. Box 403	Douglas, WY 82633
Converse	Ross Recovery	Ross Recovery	Ryan Igo	307-358-4905	P.O. Box 1311	Douglas, WY 82633
Johnson	Parkman Reservoir	High Plains Resources	Dennis Lawrence	307-684-9475	P.O. Box 370	Buffalo, WY 82834
Johnson	Linch Pit	Sierra Construction Company	Ron Linch	307-437-6319	P.O. Box 210	Linch, WY 82640
Laramie	Silo Field	R360 - Niobrara	Colton Ellingford	307-679-5804	P.O. Box 1117	Kemmerer, WY 83101
Lincoln	Moxa Arch North	BP America Production Co.	Douglas Birbeck	307-872-9210	P.O. Box 130	Granger, WY 82934
Sublette	Anticline Disposal	Anticline Disposal	Jesse Eubanks	307-360-3390	P.O. Box 273	Boulder, WY 82923
Sublette	Calpet - LaBarge	R360	Colton Ellingford	307-679-5804	P.O. Box 1117	Kemmerer, WY 83101
Sublette	McGinnis	ExxonMobile	Larry R. Corff	307-276-6652	PO Box 366	LaBarge, WY 83123
Sweetwater	Sweetwater Disposal (formerly Hyland)	Jim's Water Service	Randy Elliot	307-682-4051	P.O. Box 2290	Gillette, WY 82716
Sweetwater	North Wamsutter Pond	BP America Production Co.	Jack Engstrom	307-328-3700	P.O. Box 157	Wamsutter, WY 82336
Sweetwater	R&G/Shute Creek	R360	Colton Ellingford	307-679-5804	P.O. Box 1117	Kemmerer, WY 83101
Sweetwater	South Wamsutter Pond	BP America Production Co.	Jack Engstrom	307-328-3789	P.O. Box 157	Wamsutter, WY 82336
Sweetwater	Moxa Arch South	BP America Production Co.	Douglas Birbeck	307-872-9210	P.O. Box 130	Granger, WY 82934
Sweetwater	Jolley Ranch Company	Jolley Ranch Company	Sally Jolley	307-389-4419	P.O. Box 97	Wamsutter, WY 82336
Sweetwater	Red Desert	Red Desert Water Reclamation	Brian Blevins	303-886-7969	HC 31, Box 4	Rawlins, WY 82301
Sweetwater	Polar Bear	Polar Bear Water Treatment	John Boysen	307-742-5651	715 Grand Avenue	Laramie, WY 82070
Uinta	Calpet - Evanston	R360	Colton Ellingford	307-679-5804	P.O. Box 1117	Kemmerer, WY 83101
Uinta	D&B Disposal Systems	D&B Disposal Systems	Rhonda Ruckie	307-782-3799	P.O. Box 148	Mountain View, WY 82939
Washakie	Oilfield Disposal Services	Oilfield Disposal Services, Inc.	Reuben Tarver	307-689-6275	P.O. Box 668	Worland, WY 82401

Revised:

24-Oct-13

DEQ Exhibit 30

EQC No. 13-5802

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**Managers
- Jack
Amen &
Zachary
Amen**

**Company
Address -
Mailing – P.O
Box 403,
Douglas, WY
82633**



**Company
Address –
Physical – 4100
Hwy 59
Company Phone
– 307-358-1885**



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**North
Bill
Disposal,
LLC** is
an
oilfield
fluids
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