

FILED

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

APR 06 2015

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE)
ADMINISTRATIVE ORDER ON CONSENT)
ISSUED TO TETON COUNTY FOR)
THE HORSETHIEF CANYON LANDFILL)

Docket No. 5566-15

ADMINISTRATIVE ORDER ON CONSENT

House Bill 0066, commonly referred to as the Cease and Transfer bill, was enacted by the Wyoming legislature in the 2013 general session. Under this bill, Wyoming Statutes (W.S.) 35-11-528 through W.S. 35-11-532 were enacted enabling municipal solid waste (MSW) facility operators to receive funds to assist in the building of MSW transfer stations and for closure of small landfills. To be eligible for funding, operators must enter into a Memorandum of Agreement (MOA) with the Wyoming Department of Environmental Quality (DEQ), Solid and Hazardous Waste Division (SHWD); implement and revise the community's solid waste management plan; cease disposal of all MSW streams at the closing facility; and conform with applicable statutes (cited above).

The MOA requires the operator to enter into an Administrative Order on Consent (AOC) with the DEQ within 180 days from the effective date of the MOA. The AOC is an agreement between the DEQ and Teton County (County) issued for the purpose of establishing a schedule for the County to take specified actions to maintain compliance with solid waste regulations and with the MSW Cease and Transfer Program requirements.

Therefore, pursuant to W.S. 35-11-501 and W.S. 35-11-528 through 35-11-532, the DEQ is issuing this AOC, with the County's concurrence, to establish the following schedule which requires the County to take specified actions to ensure compliance with applicable regulatory requirements.

WHEREFORE IT IS HEREBY ORDERED THAT:

1. No later than April 1, 2015, the County shall submit a permit application for a MSW transfer station to the DEQ. The permit application shall contain a project schedule including the following items:
 - a. Contract Documents submitted to DEQ staff for approval
 - b. All permits, easements, rights of way, approved or finalized/signed
 - c. Publish call for bids approved by DEQ staff
 - d. Construction start date
 - e. Substantial completion date
 - f. Construction end date
2. In the event that DEQ/SHWD determines that any item(s) in the submitted transfer station permit application are incomplete or technically inadequate, DEQ/SHWD will notify the County of the deficiencies in writing. The County shall submit revisions necessary to address any identified deficiencies within thirty (30) days of receipt of the letter identifying the deficiencies.
3. Disposal of all waste at the Horsethief Canyon Landfill shall cease by November 1, 2017 unless an alternate date is approved in writing by the Administrator.
4. No later than December 31, 2019, the County shall complete the installation of all intermediate and final cover over all disposal units in accordance with the approved closure permit.
5. The County agrees to submit a closure permit application for the Horsethief Canyon Landfill no later than April 1, 2015. The closure permit shall include a schedule for completion of all closure activities. DEQ will review the closure permit application in accordance with solid waste rules and regulations Chapters 1, 2, and 7.

6. The County is authorized to operate the landfill in accordance with the existing permit application through February 1, 2016 unless an alternate date is approved in writing by the Administrator.
7. The County agrees to complete closure activities as described in the approved closure permit.
8. The County agrees to conform to all requirements of W.S. 35-11-532.
9. The County shall notify DEQ of any changes, irregularities and or problems encountered while carrying out the terms of this agreement. These may include but are not limited to: change orders, contract interpretation issues, withholding liens and scheduling alterations. All change orders shall be approved in writing by DEQ before implementation.
10. The County agrees not to advertise the project for bids until plans and specifications (including but not limited to engineer's cost estimate, with bid extensions and detailed cost estimates, which should include estimated costs of major components for the project) have been approved by DEQ.
11. Within one (1) year of receipt of Cease and Transfer project funds, the County shall begin the project. The County shall complete construction in accordance with the schedule in the permit issued by the DEQ. The County shall receive written approval from DEQ before implementing changes which delay the project schedule.
12. In the event the County is unable to draw all funds from the State Land and Investment Board (SLIB) for the transfer station project by July 1, 2017, (see SLIB Loan Agreement with The County) the County may request an extension from the Office of State Lands and Investments (OSLI) and/or DEQ, at least ninety (90) days prior to this date.
13. In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the County shall stop, or cause to be stopped, construction activities, notify the superintendent of the State Historical Preservation Office and the DEQ of such unearthing, and follow all applicable state and federal laws and regulations governing such occurrences.
14. The DEQ shall file this AOC with the Wyoming Environmental Quality Council (EQC) after all parties execute the AOC.
15. This AOC is issued with the County's consent, therefore the County will not file a request for hearing before the EQC to contest the validity of its terms under W.S. 35-11-701(c)(ii). However, the County reserves the right to request a hearing before the EQC to contest the later enforcement of terms of this order.
16. The effective date of this AOC is the date the final signature is attached.
17. Neither the County nor DEQ shall have any claim against the other for attorneys' fees or other costs incurred throughout the process outlined above, including costs incurred in the preparation of this AOC. Each party shall bear its own attorney fees and costs, if any, incurred through the date that both parties sign this AOC. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
18. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this AOC shall not be construed to create such status. The rights, duties, and obligations contained in this AOC shall operate only between the parties to this AOC and shall inure solely to the benefit of the parties to this AOC. The parties to this AOC intend and expressly agree that only parties signatory to this AOC shall have any legal or equitable right to seek to enforce this AOC, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this AOC, or to bring an action for the breach of this AOC.

19. The State of Wyoming and the DEQ do not waive sovereign immunity by entering into this AOC and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other state law.
20. Either party may request changes to this AOC. Any changes, modifications, revisions, or amendments to this AOC that are mutually agreed upon by the parties shall be incorporated by written instrument, executed, and signed by all parties to this AOC. DEQ will then submit the changes, modifications, revisions, or amendments to the EQC for approval.
21. The laws of the State of Wyoming shall govern the construction, interpretation, and enforcement of this AOC. The Courts of the State of Wyoming shall have jurisdiction over this AOC and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
22. Should any portion of this AOC be judicially determined to be illegal or unenforceable, the remainder of the AOC shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
23. Each party represents that they are authorized to enter into this AOC, agree to comply with and to be bound by the terms of this AOC, and further agree that they will not contest the basis or validity of this AOC. This AOC shall become binding upon the parties once executed by all parties.

Authority

The signatories certify that they are duly authorized to bind their respective Parties to this Administrative Order on Consent.

WE HEREBY CONSENT to the provisions of this Administrative Order on Consent:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 3/24, 2015 By: Todd Parfitt
 Todd Parfitt, Director
 Department of Environmental Quality

Date: 3/29, 2015 By: Luke Esch
 Luke Esch, Administrator
 Solid and Hazardous Waste Division

FOR THE TETON COUNTY BOARD OF COUNTY COMMISSIONERS:

Date: 3/17, 2015 By: Melissa Turley
 Melissa Turley, Chair
 Teton County Commission

ATTEST:

Date: 3/17, 2015 By: Sherry Daigle
 Sherry Daigle
 Teton County Clerk



