

FILED

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL JUN 01 2015
STATE OF WYOMING**

Jim Ruby, Executive Secretary
Environmental Quality Council

IN RE COLLINS CAR WASH)
1021 Russell Avenue) EQC Docket No. 15-5206A
Worland, WY 82401)

DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION TO DISMISS WITH
PREJUDICE

Respondent Wyoming Department of Environmental Quality (Department), by and through its undersigned counsel, and pursuant to Chapter 2, Sections 3 and 14 of the Department's Rules of Practice and Procedure (Rules) and Wyo. R. Civ. P. 12(b)(6), hereby moves the Environmental Quality Council (Council) to dismiss Collins Car Wash's Petition for a Contested Case.

BACKGROUND

Mr. Chetan Patel owns the Collins Car Wash located at 841 West Collins, Casper, Wyoming. This facility contains underground storage tanks, which have been in temporarily out-of-use status since February 22, 2000.

On March 13, 2015, the Department issued Notice of Violation and Order No. 5539-15 to Mr. Patel as the owner of the Collins Car Wash. The Department alleged three violations of the Environmental Quality Act (Act) and the Wyoming Water Quality Rules and Regulations (WWQRR). First, Mr. Patel failed to pay his tank fees for 2015. Wyoming Statute Annotated § 35-11-1425 requires all owners of underground storage tanks to pay a fee of two hundred dollars for each tank they own by January 1 of each year. This money is deposited into the corrective action account, which is then used for remediation of underground storage tank sites around the

state. Wyo. Stat. Ann. § 35-11-1424. As of the date of this filing, Mr. Patel has satisfied his obligation to pay tank fees for 2015.

Second, the Department alleged that Mr. Patel failed to drain and cap piping connecting the tanks to the pumps in violation of WWQRR Chapter 17, Section 30(b). Once a tank has been temporarily out-of-use for more than 6 months, the tank's owner or operator must "[d]rain, cap, and secure all other connected piping, pumps, manways, and ancillary equipment." WWQRR Chapter 17, Section 30(b). Inspection reports from Department personnel indicate that the pipe connecting the storage tanks to the fuel pumps is still connected.

Lastly, the Department alleged that Mr. Patel failed to maintain a Class A and Class B operator's license as required by WWQRR Chapter 17, Section 46(a), (b). In order to obtain a Class A or B operator's license, an owner or operator of a storage tank must take the appropriate International Code Council test and submit the passing results to the Department. This license is the minimum requirement to ensure that an owner or operator is competent to run a storage tank facility.

On March 27, 2015, Petitioner Collins Car Wash requested a contested case hearing on the Notice of Violation and Order. Petitioner's request consisted of a one page letter from his attorney, making a blanket request for a hearing without much more. The Department, pursuant to a Response Order issued by the Council, responded to the request for a contested case hearing on April 27, 2015.

ARGUMENT

Chapter 1, Section 3(c)(iii) of the Rules states that a petition for a contested case hearing shall set forth "A statement in ordinary, but concise language of the facts on which the request or protest is based, including whenever possible particular reference to the statutes, rules or orders

that the Applicant or Protestant alleges have been violated.” As of the date of this filing, Petitioner has failed to comply with this provision of the Rules. The request for hearing filed by Petitioner states a blanket request for a contested case hearing. This request alleges no facts, includes no citation to applicable statutes, rules, or orders, and asserts no grounds on which the Council may hold a contested case. Accordingly, the Council should dismiss the Petitioner’s request for a contested case hearing for failure to state a claim upon which relief can be granted.

CONCLUSION

WHEREFORE, Respondent Department of Environmental Quality requests the Council enter an Order dismissing the request for a contested case with prejudice and providing such other and further relief as the Council deems appropriate. A proposed Order is attached to this Motion.

DATED this 1st day of June, 2015.



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CERTIFICATE OF SERVICE

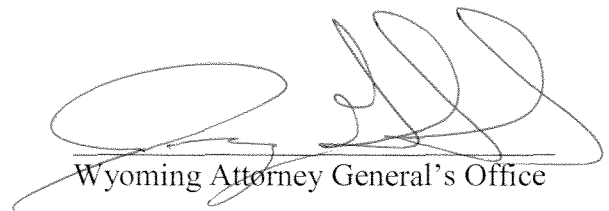
I hereby certify that on this 1st day of June, 2015, a true and correct copy of the foregoing *Department of Environmental Quality's Motion to Dismiss With Prejudice* was served by electronic mail to the following:

Todd Parfitt
Director, DEQ
todd.parfitt@wyo.gov

Luke Esch
SHWD Administrator
luke.eschl@wyo.gov

and by depositing copies of the same in the United States mail, postage prepaid, and addressed to the following:

Philip E. Abromats, P.C.
750 U.S. Highway 14
Greybull, WY 82426



Wyoming Attorney General's Office