

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN RE BIG VALLEY AND CROSSED)
ARROWS IMPROVEMENT DISTRICT) **DOCKET 16-3601**
)
) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **AND ORDER**

I. APPEARANCES

On September 28, 2016, the parties Big Valley and Crossed Arrows Improvement District (BVCA or District) and the Wyoming Department of Environmental Quality (DEQ) appeared before the Environmental Quality Council for a contested case hearing in Cheyenne, Wyoming. Present for the Council was Hearing Officer Tim Flitner, Chairman Dr. Dave Bagley, Vice-Chairman Meghan Lally, and Council members Megan Degenfelder, Rich Fairservis, Aaron Clark, and Nick Agopian.

Present at the hearing for DEQ was Eva La, Assistant Attorney General. The District was present and was represented by a member of the District, Wayne McBroom. The District appeared at the hearing by phone.

Present and testifying on behalf of DEQ was Kathy Shreve. Present and testifying for the District was Wayne McBroom. The parties stipulated to the admission into evidence of District exhibits 1 through 13 and DEQ exhibits 1 through 18, excluding DEQ exhibit 17.

The Council, having heard and considered all the evidence in this case and being fully advised, pursuant to the Wyoming Administrative Procedure Act, Wyo. Stat. Ann. § 16-3-110, unanimously (7-0) finds and concludes as follows:

II. JURISDICTION

This case arises from a Notice of Violation and Order, Docket Number 5430-14 (NOV and Order), issued by DEQ to the District under Wyo. Stat. Ann. § 35-11-701(c)(i) for operating a septic system without an Underground Injection Control permit and for discharges of raw sewage into a drainage area that flows into the Greybull River thereby threatening to enter surface waters of the State. The District objected to the issuance of the NOV and Order and requested a hearing before the Council under Wyo. Stat. Ann. § 35-11-701(c)(ii). That statute provides that the person named in the NOV and Order has ten days to request a hearing before the Council, and if they request a hearing, the NOV and Order is stayed pending the Council's final determination.

Under Wyo. Stat. Ann. § 35-11-701(c)(iii), the Council, after a hearing, is required to affirm, modify, or rescind the NOV and Order.

Accordingly, this matter is properly before the Council and the Council has jurisdiction over this matter and the parties.

III. STATEMENT OF THE CASE/ISSUES AND CONTENTIONS

The District is contesting DEQ's issuance of the NOV and Order for operating a septic system without an Underground Injection Control permit and for discharges to the surface which threaten to enter surface waters of the State, which are violations of Wyoming Water Quality Rules and Regulations and the Wyoming Environmental Quality Act. Wyoming Statutes § 35-11-301(a)(i) provides that no person, except when authorized by a permit issued pursuant to the provisions of the Wyoming Environmental Quality Act shall cause, threaten, or allow the discharge of any pollution or wastes into the waters of the State. Wyoming Statutes § 35-11-

301(a)(iii) further provides that no person, except when authorized by a permit, shall construct, install, modify, or operate any sewerage system, treatment works, disposal system, or other facility capable of causing or contributing pollution.

The District does not dispute that the septic system at issue is unpermitted, defective, and is discharging raw sewage. The District is only contending that it is not responsible for the septic system because it is not the owner of the system. Therefore, the sole issue before the Council is whether the District owns the septic system and is the responsible party.

IV. FINDINGS OF FACT

1. On March 18, 2003, the Board of County Commissioners of Park County approved a petition for the formation of the Big Valley and Crossed Arrows Improvement District. *DEQ Exh. 1.*

2. The District services the residents of the Big Valley Subdivision which is within the District. *DEQ Exh. 7.*

3. On October 6, 2003, the District adopted its rules, regulations, and by-laws governing it. Those by-laws in the section titled “OWNERSHIP AND CONTROL” stated that “[t]he water and sewer system of the **BIG VALLEY AND CROSSED ARROWS IMPROVEMENT DISTRICT shall be owned by the District.**” *DEQ Exh. 3 (emphasis added).*

4. These by-laws under the section titled “PURPOSE” also stated that “the object and **purpose of the water and sewer system shall be to supply the District with potable water for the use of the inhabitants thereof, and for the removal of sewage, when available.**” *DEQ Exh. 3 (emphasis added).*

5. The by-laws also addressed billing the District members for water and sewer and stated that “[u]ntil paid, delinquent **water and sewer charges** shall constitute a perpetual lien on and against the property served.” *DEQ Exh. 3 (emphasis added)*.

6. The by-laws were reconfirmed by the District’s board on February 2, 2004, and subsequently filed with the Park County Clerk on March 18, 2004. *DEQ Exh. 3*.

7. District members were billed for water and sewer by the District. *Transcript - Shreve testimony, p. 38*.

8. Following the formation of the District, on October 28, 2003, Vision Quest Estates executed a Quitclaim Deed, Assignment of Rights to the District selling to the District “The well house and equipment located on Lot 19, Big Valley Subdivision; according to the plat recorded in Book “C” of Plats at page 160, records of Park County, State of Wyoming. The **water and sewer lines serving those lots in the Big Valley and Crossed Arrows Improvement District** [and] [e]asements and rights of way for utility and access in the Big Valley and Crossed Arrows Improvement District[.]” *DEQ Exh. 2 (emphasis added)*.

9. The Quitclaim Deed also transferred to the District “**all improvements thereon and appurtenances thereto and all other rights to the property relative to water, sewer, roadways or other improvements it may have, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Wyoming.**” *DEQ Exh. 2 (emphasis added)*.

10. The septic system and leach field at issue in this case is located on Lots 3 and 4 of the Big Valley Subdivision which is within the District. *DEQ Exh. 7; Transcript - Shreve testimony, p. 21*.

11. The Quitclaim Deed did not transfer ownership of any of the lots in the Big Valley Subdivision to the District. *DEQ Exh. 2.*

12. After the Quitclaim Deed, on July 1, 2008, Glen and Terry Moore entered into a mortgage with Vision Quest Estates for Lots 3 and 4, Big Valley Subdivision. *DEQ Exh. 4; Transcript - Shreve testimony, p. 32.*

13. The mortgage, under the section “Reservation of easement”, states that “Lender [Vision Quest Estates] or its assigns (specifically, Big Valley and Crossed Arrows Improvement District) reserves an easement to access and work on any utilities (i.e. water or sewer) on both Big Valley Lots 3 and 4 in their entirety.” The mortgage further states “Grantor understands that Big Valley Lot 4 has a leach field that services the Crossed Arrows Subdivision. Grantor [Glen and Terry Moore] assumes responsibility for working with the Big Valley and Crossed Arrows Improvement District or any other entity for any and all issues relating to the functionality, maintenance and operation of the leach field.” *DEQ Exh. 4.*

14. On August 31, 2010, the District amended its by-laws. The amended by-laws no longer contain a reference to the sewer system—they only reference the water system. These by-laws were filed with the Park County Clerk on September 9, 2010. *DEQ Exhs. 6, 10; Transcript – Shreve testimony, pp. 29-36.*

15. On November 12, 2010, Vision Quest Estates conveyed by Warranty Deed to Glen and Terry Moore “Lots 3 and 4 of the Big Valley Subdivision according to the Plat recorded in Book “C” of Plats, page 160, according to the records of the County Clerk and Recorder of Park County, State of Wyoming. Together with all improvements thereon and appurtenances thereto, as is where is; but [s]ubject to all reservations and exceptions contained in

patents from the United States and the State of Wyoming or of record, restrictive covenants of record, property taxes for 2011 and subsequent years and all easements and rights of way legally established or of record[.]” *BVCA Exh. 11*.

16. On January 5, 2015, Terry Moore executed a Quitclaim Deed that transferred any and all interest that she had in Lots 3 and 4 of Big Valley Subdivision to Glen Moore. *BVCA Exh. 12*.

17. Sometime in 2012, Kathy Shreve, an environmental program principal of DEQ, learned that there might be a problem with the District’s septic system located on Lots 3 and 4 of the Big Valley Subdivision. *Transcript – Shreve testimony, pp. 19-20*.

18. Ms. Shreve subsequently conducted a physical inspection of the septic system on July 12, 2013. *DEQ Exh. 15; Transcript – Shreve testimony, p. 23*.

19. The septic system is unpermitted. *Transcript – Shreve testimony, p. 44*.

20. During her inspection, Ms. Shreve discovered that raw sewage was surfacing and flowing out of the leach field and down a nearby drainage. She also noticed that the sewage had a strong odor, was flowing from the leach field area into a dry drainage area, and was saturating that area. The drainage area flows into the Greybull River. *DEQ Exhs. 7, 15, 16; Transcript – Shreve testimony, pp. 23-24*.

21. Based on the condition of the leach field, the system had been leaking for some time. *DEQ Exhs. 15, 16; Transcript – Shreve testimony, p. 24*.

22. The sewage was leaking from either the laterals or the pipes that were feeding the leach field. *DEQ Exhs. 15, 16; Transcript – Shreve testimony, p. 24*.

23. A leaking septic system is a human health issue because raw sewage carries E. coli and Listeria. *Transcript – Shreve testimony, p. 26.*

24. The leach field where the leaks were located was not fenced off—any person could access the area. *Transcript – Shreve testimony, p. 26.*

25. Following her inspection, Ms. Shreve investigated who owned the land and the leach field. *Transcript - Shreve testimony, p. 27.*

26. As part of her investigation, Ms. Shreve reviewed several documents, including the 2003 and 2010 District by-laws, the 2003 Quitclaim Deed to the District, and the 2008 Mortgage from the Moore’s to Vision Quest Estates. After her investigation, Ms. Shreve determined that the District owned the septic system on Lots 3 and 4 and was the responsible party for remedying the violations. *Transcript - Shreve testimony, pp. 27-39.*

27. Ms. Shreve worked with the District to remedy the septic system and correct the violations, however, the District failed to do so because it alleged that it did not own the system, and therefore, was not responsible for the system and the alleged violations. *Transcript - Shreve testimony, pp. 28-29.*

28. Based upon Ms. Shreve’s investigation and inspection, on May 26, 2016, DEQ issued the NOV and Order to the District. *DEQ Exh. 7; Transcript – Shreve testimony, pp. 19-20.*

29. The NOV and Order stated that the District was in violation of Wyo. Stat. Ann. § 35-11-301(a)(i), (iii), and Wyoming Water Quality Rules and Regulations, Chapter 27, Section 6(g)(i). *DEQ Exh. 7.*

V. CONCLUSIONS OF LAW

A. Principles of Law

30. Paragraphs 1 through 29 of the findings of fact are fully incorporated herein.

31. This matter is properly before the Council upon the District's appeal from DEQ's NOV and Order under Wyo. Stat. Ann. § 35-11-701(c)(ii). That statute provides that the person named in the NOV and Order has ten days to request a hearing before the Council, and if they request a hearing, the NOV and Order is stayed pending the Council's final determination.

32. Wyoming Statutes § 35-11-301 provides that:

(a) No person, except when authorized by a permit issued pursuant to the provisions of this act, shall:

(i) Cause, threaten or allow the discharge of any pollution or wastes into the waters of the state;

(ii) Alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state;

(iii) Construct, install, modify or operate any sewerage system, treatment works, disposal system or other facility, . . . capable of causing or contributing to pollution[.]

33. Wyoming Statutes § 35-11-701(c)(i) provides that in any case of failure to correct or remedy an alleged violation, the director of DEQ shall cause a written notice to be issued and served on the person alleged to be responsible.

34. The Council shall affirm, modify or rescind a notice of violation and order. Wyo. Stat. Ann. § 35-11-701(c)(iii).

35. The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof. *JM v. Department of*

Family Services, 922 P.2d 219, 221 (Wyo. 1996). The normal standard of proof in administrative hearings is the preponderance of the evidence standard. *Id.* at 223.

36. In this case, DEQ is the proponent of the order and has the burden of proof and the standard of proof is the preponderance of the evidence.

B. Applications of Principles of Law

37 The Council finds and concludes that it has jurisdiction over this matter and the parties.

38. Under this appeal, the Council is required to determine whether the District is the responsible party for the unpermitted septic system located on Lots 3 and 4 of the Big Valley Subdivision in Park County, State of Wyoming.

39. The Council finds and concludes that based upon the testimony and exhibits provided during the contested case, DEQ has proven by a preponderance of the evidence, that the District is the owner and responsible party for the unpermitted septic system.

40. Although the District claims that it is not the owner of the septic system, the 2003 by-laws and 2003 Quitclaim Deed prove otherwise. Those documents prove by a preponderance of the evidence that the District owns the septic system on Lots 3 and 4 that serves the Big Valley Subdivision within the District. In addition, the 2008 Mortgage recognizes this fact.

41. The Council recognizes that it heard testimony about and was presented with other deeds and documents that the District claims calls into question whether it owns the septic system. However, the Council finds and concludes that those documents do not outweigh the 2003 District by-laws, 2003 Quitclaim Deed, and the 2008 Mortgage which prove by a preponderance of the evidence that the District owns the septic system and is the responsible

party. The 2010 amended by-laws do not change the District's responsibility as owner of the septic system.

42. The Council further finds and concludes that the District's septic system is unpermitted and is in violation of Wyoming Water Quality Rules and Regulations and the Wyoming Environmental Quality Act as stated in the NOV and Order.

VI. ORDER

IT IS HEREBY ORDERED that Notice of Violation and Order Docket Number 5430-14, dated May 26, 2016, issued by Todd Parfitt, Director of DEQ is affirmed in its entirety. The NOV and Order is attached hereto.

IT IS FURTHER ORDERED that the District is required to fully comply with the NOV and Order as written and that the time sensitive deadlines that were to run from the date of the NOV and Order now run from the date these Findings of Fact, Conclusions of Law, and Order are signed.

ENTERED this 11/17/16 day of November, 2016.



Tim Flitner, Hearing Examiner
Environmental Quality Council

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF)
 VIOLATION AND ORDER ISSUED TO:)
)
 Big Valley Crossed Arrows Improvement District))
 Attn: Mr. Auggie McBroom)
 P.O. Box 33)
 Meeteetse, WY 82433)

DOCKET NUMBER 5430-14

NOTICE OF VIOLATION AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. **Big Valley Crossed Arrows Improvement District (BVCA)** residences discharge more than 2,000 gallons per day of domestic wastes into an unpermitted septic system. This facility has been assigned a facility number in the Underground Injection Control (UIC) GEM database for tracking purposes.

Permit Number	Facility Number	Injection Wells
Unpermitted	WYS-029-00219	Class V Septic System

2. The BVCA septic system is located on Lots 3 and 4 of the Big Valley Subdivision, near the intersection of Saddle Hill Road and Arrowhead Drive north of the town of Meeteetse. Originally, the subdivision was developed by Vision Quest Estates, and included the community septic system (leachfield) located on Lots 3 and 4. The subdivision was sold, and on October 28, 2003, Vision Quest Estates filed a quitclaim deed that assigned all “water and sewer lines serving those lots in the Big Valley and Crossed Arrows Improvement District” and “all improvements thereon and appurtenances thereto and all other rights to the property relative to water, sewer, roadways or other improvements” to the Big Valley and Crossed Arrows Improvement District.

Lots 3 and 4 of the Big Valley Subdivision are private property owned by Glen and Terry Moore. The Moores purchased the property on July 1, 2008, and their mortgage for the property includes an easement “Lender or its assigns (specifically Big Valley Crossed Arrows Improvement District) reserves an easement to access and work on any utilities (i.e. water or sewer) on both Big Valley Lots 3 and 4 in their entirety.”

3. On July 12, 2013, the BVCA septic system was inspected by Wyoming Department of Environmental Quality (WDEQ) Staff (Kathy Shreve and James O’Connor). Raw

sewage was observed surfacing and flowing out of the leachfield area down a nearby drainage. This facility has had several (June 10, 1991, September 10, 1992, December 7, 1995, May 15, 1996, September 17, 2004, and May 23, 2012) past reported instances of raw sewage surfacing and flowing out of the leachfield area. The drainage area flows into the Greybull River. The raw sewage from BVCA therefore has the potential to enter the Greybull River.

4. The Department of Environmental Quality (DEQ) has no record of authorization allowing discharge of raw sewage at the ground surface or of issuing a permit for this facility.
5. Raw sewage contains "pollution" as defined in W.S. 35-11-103(c)(i).
6. The discharges referenced above threaten to enter "Waters of the State" as defined under W.S. 35-11-103(c)(vi).
7. By threatening to discharge pollution into Waters of the State, BVCA is in violation of W.S. 35-11-301(a)(i) which states that no person, except when authorized by a permit, shall cause, threaten, or allow the discharge of any pollution or wastes into the Waters of the State.
8. BVCA is also in violation of W.S. 35-11-301(a)(iii) which states that no person, except when authorized by a permit issued by the DEQ, shall construct, install, modify or operate any sewerage system, treatment works, disposal system or other facility, excluding uranium mill tailing facilities, capable of causing or contributing to pollution, except that no permit to operate shall be required for any publicly owned or controlled sewerage system, treatment works or disposal system.
9. BVCA operates an unpermitted Class V 5E3 UIC facility, which is in violation of Wyoming Water Quality Rules and Regulations, Chapter 27, Section 6(g)(i).
10. The UIC Program has communicated their concerns related to the failed BVCA septic system with the Big Valley Crossed Arrows Improvement District via letter dated July 25, 2012, and via several telephone calls. Letters (dated July 23, 2012) were also sent to all BVCA residents informing them of the failed septic system. In addition, a public meeting was held in Meeteetse on June 4, 2015 regarding DEQ concerns with the failed BVCA septic system; two (2) BVCA inhabitants attended.
11. This Notice is being sent to you pursuant to W.S. 35-11-701(c)(i), which requires that in any case of the failure to correct or remedy an alleged violation, the Director of DEQ shall cause a written notice to be issued and served on the person alleged to be responsible

ORDER

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY – STATE OF WYOMING

WHEREFORE IT IS HEREBY ORDERED THAT:

Upon receipt of this Order, BVCA shall:

1. Within ten (10) days the date of this Notice of Violation and Order, BVCA shall post signage in the area of the failed BVCA leachfield warning the general public to avoid contact with sewage present in the area at the BVCA leachfield.
2. Within twenty (20) days of the date of this Notice of Violation and Order, BVCA shall fence off the area surrounding the failed BVCA leachfield. Fencing shall be designed to prevent the general public or livestock from entering the leachfield area.
3. Within ninety (90) days of the date of this Notice of Violation and Order, BVCA shall provide to the UIC Program for their approval a plan and schedule to either repair the existing septic system, replace the existing septic system, or to properly close the existing system and use alternate means of sewage disposal. If BVCA chooses to repair or replace the existing septic system then the plan shall include, at a minimum, the following:
 - a. An engineering design report as specified in Wyoming Water Quality Rules and Regulations, Chapter 11, Sections 6 and 7.
 - b. Application for a Class V UIC permit as specified in Wyoming Water Quality Rules and Regulations Chapter 27, Section 6.
 - c. A construction schedule for repairing or replacing the septic system.
4. BVCA shall also arrange for an inspection of the permitted system by UIC Program personnel within fifteen (15) days of project completion.

If BVCA fails to comply with this Order, this matter shall be referred to the Wyoming Attorney General for further legal action.

This ORDER is final unless, not later than ten (10) days after the date this notice is received, it is appealed by filing two (2) written petitions for a hearing before the Environmental Quality Council. If a hearing is requested, the first petition shall be mailed to: Chairman, Wyoming Environmental Quality Council, Room 1714, Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming, 82002. The second petition shall be mailed to: Director, Wyoming

Department of Environmental Quality, 200 West 17th Street, 4th Floor, Cheyenne, Wyoming 82002. Both petitions must be sent via certified mail, return receipt requested.

NOTHING IN THIS ORDER shall be interpreted to in any way limit or contravene any other remedy available under the Environmental Quality Act, nor shall this ORDER be interpreted as being a condition precedent to any other enforcement action.

Ordered this 26th day of May, 2016.



Todd Parfitt
Director
Department of Environmental Quality



Kevin Frederick
Administrator
Water Quality Division

PLEASE DIRECT ALL INQUIRIES TO: Kathy Shreve, Environmental Program Principal, Wyoming DEQ WQD, 200 West 17th Street, 4th Floor, Cheyenne, Wyoming 82002. Telephone (307)-777-6682. E-mail kathy.shreve@wyo.gov.

- c: Wendy Cheung, EPA Region 8
Kimberly Pardue-Welch, EPA Region 8
Lily Barkau, WDEQ
Rich Cripe, WDEQ
John Passehl, WDEQ
Kathy Shreve, WDEQ (PDF copy only)
Connie Osborne, WDEQ (Paper copy only)
Landon Brown, WDEQ (PDF copy only)
IPS (for scanning) NOV Docket 5430-14
Chairman, Park County Commissioners, Park County Courthouse, 1002 Sheridan Ave.,
Cody, WY 82414