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Department of Environmental Quality

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

IN THE MATTER OF THE APPEAL OF)
NOTICE OF VIOLATION AND ORDER) **DOCKET No. 17-2201A**
ISSUED TO DELTON TINSLEY)
)

**DEPARTMENT OF ENVIRONMENTAL QUALITY'S
RESPONSIVE BRIEFING**

The State of Wyoming, Department of Environmental Quality (Department), through its undersigned counsel, hereby files a responsive brief as directed by the Environmental Quality Council's *Order for Hearing and Response Order* in this matter, dated July 17, 2017.

On June 23, 2017, the Department issued Mr. Delton Tinsley a Notice of Violation and Order (NOVO), alleging that Mr. Tinsley has violated multiple sections of the Environmental Quality Act (the Act), Wyoming Air Quality Standards and Regulations (Air Quality Rules), and Wyoming Water Quality Rules and Regulations (Water Quality Rules). The Department alleged that Mr. Tinsley improperly demolished a building containing asbestos and improperly buried waste containing asbestos. NOVO at 1. The NOVO ordered Mr. Tinsley to schedule the removal of asbestos-contaminated soil from the demolition site, keep the demolition site wet to avoid

fugitive dust, notify the Wyoming Asbestos Program (the Program) of a soil removal plan, and contact Bob Doctor of the Department to create a plan to protect waste at the burial site. NOVO at 5.

Mr. Tinsley filed a timely request for a hearing on June 30, 2017, and amended his request for a hearing on July 10, 2017. *Amended Petition/Request for Hearing with the Env'tl. Quality Council (Amended Petition)* at 1-2. In his amended request, Mr. Tinsley did not contest any of the specific facts alleged by the Department or any of the violations alleged by the Department. *See generally Amended Petition*. Rather, Mr. Tinsley requested a hearing “for the purpose of verifying the facts” the Department asserted in the NOVO and “in order to stay the Order.” *Amended Petition* at 2. Mr. Tinsley has not explained how his understanding of the facts or law differs from the Department’s allegations.

Because Mr. Tinsley has not contested any of the facts alleged in the NOVO, the Department is unable in this briefing to respond to or refute any contrary facts Mr. Tinsley may assert. Accordingly, the Department only briefly restates the relevant facts as alleged in the NOVO. In March 2016, a cursory inspection at 81 East Whalen Street in Guernsey, Wyoming (the “demolition site”) revealed that asbestos was present in a building located on the site. In April 2017, Mr. Tinsley acquired the demolition site; Mr. Tinsley owned the site at 599 Highway 26 in Wheatland, Wyoming (the “burial site”) at all times relevant to this matter. NOVO at 1. Mr. Tinsley proceeded to demolish the building at the demolition site without having it properly inspected by a trained inspector, notifying the Program, removing asbestos-containing material, or hiring a properly-trained person to supervise the demolition. NOVO at 1. Mr. Tinsley then buried the asbestos-contaminated demolition waste at the burial site, which was not a permitted disposal facility, without properly handling the waste. NOVO at 1-2. The burial site includes ephemeral

drainages that drain to the North Platte River. NOVO at 2. At no time did Mr. Tinsley apply for or receive a permit to discharge pollutants into a water of the State, nor did Mr. Tinsley apply for or receive a permit to place solid waste into a surface water of the State. NOVO at 4. Furthermore, Mr. Tinsley did not apply for or receive a permit to dispose of solid waste. NOVO at 2.

Mr. Tinsley also has not contested the applicability of any of the laws that the Department alleges he has violated. The Department alleges that Mr. Tinsley's mishandling of asbestos-containing material violated multiple provisions of the Environmental Quality Act and regulations promulgated under the Act. The Air Quality Rules prescribe requirements for owners and operators of facilities undergoing renovation and demolition which contain asbestos, several of which the Department alleges Mr. Tinsley violated. Air Quality Rules, ch. 3, § 8. Further, the Department alleges that Mr. Tinsley violated the Act and the Water Quality Rules by adding pollution or waste into surface waters of the state without a permit. Wyo. Stat. Ann. § 35-11-103(c)(i), (ii), (vi), (vii); Wyo. Stat. Ann. § 35-11-301(a)(i); Water Quality Rules, ch. 1, § 14. The Department also alleges that Mr. Tinsley disposed of solid waste without a permit, also in violation of the Act. Wyo. Stat. Ann. § 35-11-502(a)(i).

CONCLUSION

The Department requests that the Council uphold the Notice of Violation and Order, dated June 23, 2017, in all respects to allow remediation work to begin.

Dated this 10th day of August, 2017.



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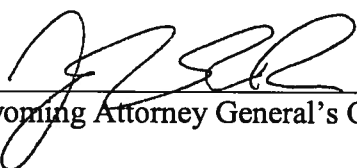
CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2017, a copy of the foregoing document was filed electronically with the Wyoming Environmental Quality Council's online docket system and copies were served electronically via that system on the following:

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