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**IN THE NINTH JUDICIAL DISTRICT COURT
IN AND FOR TETON COUNTY, STATE OF WYOMING**

PROTECT OUR WATER JACKSON HOLE)	
)	
Petitioner,)	
)	
v.)	Civil No. 18806
)	
WYOMING DEPARTMENT OF)	
ENVIRONMENTAL QUALITY)	
)	
Respondent.)	

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY MOTION TO
DISMISS PETITION AND MEMORANDUM IN SUPPORT**

Comes now, the Wyoming Department of Environmental Quality (Department), through the Attorney General's Office, to ask this Court to dismiss Petitioner's appeal of the Department's decision to issue a Notice of Coverage under the Small Wastewater Facility General Permit, Permit Number 2022-274 (Wastewater Permit). The Court should dismiss this appeal for the following reasons:

- A. Petitioner failed to exhaust its administrative remedies because Petitioner's appeal of the Wastewater Permit is still pending before the Environmental Quality Council;
- B. Petitioner's claims are moot because the Department revoked the Wastewater Permit following the filing of this appeal;
- C. Petitioner's claims regarding potential, future permitting decisions by the Department are not fit for judicial review; and
- D. Petitioner's claims to compel removal of existing wastewater system infrastructure are barred by sovereign immunity because the Petitioner failed to comply with the required statutory process.

Petitioner's counsel has been consulted on this motion and indicated that Petitioner opposes the Motion.

BACKGROUND

In May of 2022, Mountain Ventures (referred to as "Basecamp" by Petitioner) began working with the Department to seek a permit for its new onsite wastewater system improvement project at their Teton Village Resort to serve thirteen "glamping" sites. (R. at 0009; Zygmunt Aff. ¶4). On October 6th, 2022, the Department issued a Notice of Coverage under the Small Wastewater Facility General Permit, Permit Number 2022-274. (R. at 0001; Zygmunt Aff. ¶4). On November 22, 2022, Petitioner filed an *Appeal of Notification of Coverage – Permit No. 2022-274*, appealing the Department's decision to issue the Wastewater Permit, to the Environmental Quality Council. (R. at 0507-0513).

That appeal is still pending before the Council. (R. at 0521-0549). Six days after Petitioner filed its appeal with the Council, Petitioner filed a similar appeal of the Wastewater Permit with this Court. (*See generally* Pet' for Review of Agency Action and Request for Stay Under Rule 12.05).

In its two appeals, Petitioner alleges that the general permit under which the Department granted the Wastewater Permit was expired at the time the Department issued the Notice of Coverage. (*See generally* R. at 0509; Pet' at 3). If the general permit is not expired, Petitioner also alleges the Department failed to comply with the terms of the general permit and violated the Wyoming Environmental Quality Act and rules and regulations promulgated under the Act by issuing the Wastewater Permit. (R. at 0510; Pet' at 3-4).

Following the filing of this appeal, the Department Water Quality Administrator reviewed the work of field staff and determined that the October 6, 2022, Notice of Coverage had in fact been incorrectly issued under an expired general permit. (Zygmunt Aff. ¶ 6). The general permit under which the Wastewater Permit was granted coverage was issued on June 19, 2017. (R. at 0033). Per the terms of the general permit, it expired on June 19, 2023, almost four months before the issuance of coverage for the Wastewater Permit was granted by the Department on October 6, 2022. (R. at 0033). As a result of the Administrator's review, on December 7, 2022, the Department revoked its October 6, 2022, Notice of Coverage, regarding the Wastewater Permit. (Zygmunt Aff. ¶ 7; R. at 0537). The Department stated in its Notice of Coverage Revocation letter that

construction of the small wastewater facility needed to stop until appropriate permit coverage is in place. (R. at 0537). At this time, there is no Department permit issued for the small wastewater system being constructed by Mountain Ventures. (Zygmunt Aff. ¶8).

ARGUMENT

Petitioner not only attacks the Department's issuance of the Wastewater Permit, it also attempts to inhibit the Department's future permitting decisions and to compel removal of any installed wastewater system infrastructure. Petitioner's attacks on the Wastewater Permit fail because the Petitioner failed to exhaust its administrative remedies and, even if it had, the issue is moot—the Department has already revoked the Wastewater Permit. Further, the Department's future permitting decisions are not fit for judicial review and the Petitioner's claims to compel removal of existing wastewater system infrastructure are barred by sovereign immunity.

A. Petitioner failed to exhaust its administrative remedies as required by law.

Petitioner filed a petition for review of the Department's decision to issue the Wastewater Permit pursuant to Rule 12 of the Wyoming Rules of Appellate Procedure, Wyoming Statute § 35-11-1001(a) and Wyoming Statute § 16-3-114. (*Pet'r's Pet' for Review of Agency Action*, page 1). By law, Petitioner must exhaust its administrative remedies through the Environmental Quality Council before it may petition this Court for a review of agency action. Wyo. Stat. Ann. §§ 35-11-1001 and 16-3-114; *Rissler & McMurry Co. v. State*, 917 P.2d 1157, 1161 (Wyo. 1996).

i. This Court lacks jurisdiction until Petitioner has exhausted its administrative remedies.

Petitioner failed to exhaust its administrative remedies because Petitioner's concurrent appeal of the Department's decision to issue the Wastewater Permit is still pending before the Environmental Quality Council. Petitioner must exhaust that appeal before this Court has jurisdiction.

The exhaustion doctrine applies where, "an agency alone has been granted or found to possess exclusive jurisdiction over the case." *Rissler & McMurry Co.* at 1161. A person is, "not entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *People v. Fremont Energy Corp.*, 651 P.2d 802, 811 (Wyo. 1982) (citing *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938)). The purpose of the doctrine of exhaustion is to, "avoid premature interruption of the administrative process where the agency has been created to apply a statute in the first instance." (*Id.*) (citing *McKart v. U.S.*, 395 U.S. 185, 193 (1969)). "The decision to decline jurisdiction because a party has failed to exhaust its administrative remedies is vested within the sound discretion of the district court." *Rissler & McMurry Co. v. State*, 917 P.2d 1157, 1160 (Wyo. 1996) (citing *Glover v. State*, 860 P.2d 1169, 1171 (Wyo. 1993)).

The Legislature tasked the Environment Quality Council with jurisdiction over applying the Environmental Quality Act in the first instance. The Council, "shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the [D]epartment [. . .]." Wyo. Stat. Ann. § 35-11-112(a).

Specifically regarding appeals such as the Petitioner's challenge of the Wastewater permit, the Council shall, "conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit." Wyo. Stat. Ann. § 35-11-112(a)(iv). Such hearings shall be conducted in accordance with the Wyoming Administrative Procedures Act as a contested case. Wyo. Stat. Ann § 35-11-112(f).

Both the Administrative Procedure Act and the Environmental Quality Act, under which Petitioner filed its administrative review, require a final agency decision by the Council prior to appeal. Wyo. Stat. Ann. §§ 35-11-1001(a) and 16-3-114; *see also Rissler & McMurry Co.* at 1161. The Wyoming Administrative Procedure Act states, "subject to the requirements that administrative remedies be exhausted and in the absence of any statutory or common-law provision precluding or limiting judicial review, any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, [. . .] is entitled to judicial review [. . .]." Wyo. Stat. Ann. § 16-3-114. Likewise, the Environmental Quality Act permits an aggrieved party to file a petition for review, "after entry of the order or other final action complained of pursuant to the provisions of the Wyoming Administrative Procedure Act." Wyo. Stat. Ann. §§ 35-11-1001(a).

In *Rissler & McMurry Co. v. State*, the Wyoming Supreme Court recognized the requirement to have a final decision by the Environmental Quality Council prior to an appeal to district court. *Id.* at 1161-1162. The Court specifically stated, "that until [the Council's] determination has been rendered, the courts do not have jurisdiction under §

35-11-1001(b) to make a decision on a compensatory taking action or entertain an appeal from the denial of an application for a permit under §16-3-114 and W.R.A.P. 12”.

Although the Court in *Rissler* was interpreting subsection (b) of § 35-11-1001 while Petitioner’s appeal falls under subsection (a), application of the Court’s interpretation remains the same. Petitioner must exhaust its appeal before the Environmental Quality Council before this Court has jurisdiction to hear an appeal.

ii. Without an administrative record, the Court cannot make a decision in this matter.

Because the petitioner failed to exhaust its administrative remedies, the Court does not possess a complete administrative record upon which it could base a decision. In order to make a decision under the Administrative Procedure Act, this Court, “shall review the whole record or those parts of it cited by a party [. . .].” Wyo. Stat. Ann. § 16-3-114(c). Both the Rules of Appellate Procedure and the Wyoming Administrative Procedure Act state that the record in a contested case consists of:

- (i) All formal or informal notices, pleadings, motions and intermediate rulings;
- (ii) Evidence received or considered including matters officially noticed;
- (iii) Questions and offers of proof, objections and ruling thereon;
- (iv) Any proposed findings and exceptions thereto;
- (v) Any opinion, findings, decisions or order of the agency and any report by the officer presiding at the hearing.

(W.R.A.P 12.07; Wyo. Stat. Ann. § 16-3-107(o)). With the administrative appeal still pending before the Environmental Quality Council, the administrative record is incomplete. Evidence has not been put on before the Council and formal pleadings are still being filed with the Council. (R. at 0521). Currently, a motion to dismiss for mootness is pending before the Council. (R. at 0525-0532). Without the complete administrative record required by law, this Court cannot make a determination on the Department's decision to grant the Wastewater Permit.

Furthermore, Petitioner's request to put on evidence is improper at this time because the contested case process requires the Environmental Quality Council to be the finder of fact. The administrative agency is the equivalent of a trial court and the role of this Court is that of an appellate review. *Matter of State Bank Charter Application of Sec. Bank, Buffalo*, 606 P.2d 296, 300 (Wyo. 1980); *see also* Rule 12.09 W.R.A.P.. The administrative agency is the, "trier of fact and has the duty to weigh the evidence and determine the credibility of evidence." *Id Newman v. State ex rel. Wyoming Workers' Safety and Compensation Division*, 49 P.3d 163, 173 (Wyo. 2002) (*citing Mekss v Wyoming Girls' School, State of Wyoming*, 813 P.3d 185 (Wyo. 1991) and *Gilmore v. Oil and Gas Conservation Comm'n*, 642 P.2d 773 (Wyo. 1982)). In this instance, the Environmental Quality Council must hear any evidence Petitioner wishes to present. In addition, on appeal, Petitioner is limited to the issues raised before the administrative agency. *Matter of State Bank Charter Application of Sec. Bank, Buffalo*, at 300.

Without a contested case before the Council, it is premature for this Court to hold a Rule 12.08 hearing. Rule 12.08 only provides for the taking of additional evidence in certain circumstances in an appeal of a contested case. Petitioner must make a showing to the satisfaction of the Court that additional evidence is material, and there was good cause for failing to present the evidence in the proceeding before the agency. W.R.A.P. Rule 12.08. Petitioner's request for a Rule 12.08 hearing before any evidence has been put on before the Council evades the established process. Cases examining the admission of evidence under Rule 12.08 contend with the issue of supplementing the administrative record after the contested case has been held – not supplementing the administrative record without ever holding a required contested case. *Matter of State Bank Charter Application of Sec. Bank, Buffalo*, at 299-301; *Frank v. State by and Through Wyoming Bd. of Dental Examiners*, 965, P.2d 674 (Wyo. 1998). Further, without any evidence presented to the administrative agency, there are no issues for this Court to even review upon appeal.

For the reasons stated above, Petitioner must exhaust its administrative remedies before this court has jurisdiction. Failure to exhaust those remedies not only removes this Court's jurisdiction, but deprives the Court of an administrative record to review. As such, this Court should dismiss the present action for Petitioner's failure to exhaust administrative remedies.

B. The Petitioner's appeal of the Department's permitting decision is moot.

This appeal, as well as the appeal before the Environmental Quality Council, is moot because the issue before this Court no longer presents a live controversy. Further, no exception to the mootness doctrine applies.

i. Petitioner's appeal of the Department's decision to grant the Wastewater Permit no longer presents a live controversy.

Petitioner's appeal of the Department's decision to grant the Wastewater Permit no longer presents a live controversy because the Department has already revoked the Wastewater Permit. An action should be dismissed, "when, pending appeal, an event occurs which renders a cause moot and makes a determination of the issues unnecessary." *Gulf Oil Corp. v. Wyo. Oil and Gas Conservation Comm'n*, 693 P.2d 227, 233 (Wyo. 1985). An issue becomes moot when there is no longer a "live controversy with respect to which the court can give meaningful relief." *CL v. ML*, 2015 WY 80, ¶ 22, 351 P.3d 272, 279 (Wyo. 2015) (quoting *White v. Shane Edeburn Constr., LLC*, 2012 WY 118, ¶ 13, 285 P.3d 949, 953 (Wyo. 2012)). The dismissal of moot cases promotes judicial economy and prevents a court from rendering advisory opinions. *Shisler v. Town of Jackson*, 890 P.2d 555, 558 (Wyo. 1995); *Reiman Corp. v. City of Cheyenne*, 838 P.2d 1182, 1187 (Wyo. 1992); *N. Arapaho Tribe v. State (In re SNK)*, 2003 WY 141, ¶ 23, 78 P.3d 1032, 1038 (Wyo. 2003).

Petitioner's claims arise from the Department's decision to grant the Wastewater Permit to Mountain Ventures under the Small Wastewater Facility General Permit. State statute describes the remedies available to the Petitioner through an appeal of the

Department's permitting decision. The Environmental Quality Council may, "order that any permit [. . .] be granted, denied, suspended, revoked or modified." Wyo. Stat. Ann. § 35-11-112(c)(ii). Under the Environmental Quality Act, Petitioner's remedies are limited to suspension, revocation, or modification of the Wastewater Permit. The Department has already revoked the Wastewater Permit, which also makes suspension or modification impossible. As a result, the Council, and subsequently this Court, can no longer grant the Petitioner any meaningful relief. There is no longer any controversy for the Court to decide and this matter is moot.

ii. No mootness exceptions apply to Petitioner's appeal of the Department's decision to grant the Wastewater Permit.

Generally, moot cases must be dismissed. However, the Wyoming Supreme Court recognizes three exceptions where the Court will hear moot issues in limited circumstances: (1) where the issue is "one of great public importance;" (2) where deciding the issue is "necessary to provide guidance to state agencies and lower courts;" or (3) where the "controversy is capable of repetition yet evading review." *Cir. Ct. of the Eighth Jud. Dist. v. Lee Newspapers*, 2014 WY 101, ¶ 12, 332 P.3d 523, 528 (Wyo. 2014) (quoting *Operation Save Am. v. City of Jackson*, 2012 WY 51, ¶¶ 22-23, 275 P.3d 438, 448-49 (Wyo. 2012)). None of these exception apply to the appeal in this matter.

The Court applies the "great public importance" exception with "strict standards," assessing the importance of an issue objectively and not in reference to the "judge's own beliefs and philosophies." *Operation Save. Am.*, ¶ 25, 275 P.3d at 449 (quoting *Jolley v. State Loan and Inv. Bd.*, 2002 WY 7, ¶ 10, 38 P.3d 1073, 1078 (Wyo. 2002)). Generally,

the Court recognizes great public importance in cases involving questions of fundamental constitutional rights. *See, e.g., Lee Newspapers*, ¶ 13, 332 P.3d at 528 (First Amendment free speech and “the constitutionally protected right to discuss governmental affairs”); *DB v. State (In re CRA)*, 2016 WY 24, ¶ 30, 368 P.3d 294, 301 (Wyo. 2016) (parental rights); *RM v. Washakie Cty. Sch. Dist. No. 1 (In re RM)*, 2004 WY 162, ¶ 8, 102 P.3d 868, 871 (Wyo. 2004) (fundamental right to education). Here, the Department’s granting of a permit for a single, small wastewater system does not objectively affect an issue of great public importance.

With regard to the second mootness exception, the Court has “ruled on matters, otherwise moot, where [it] deemed it necessary to provide guidance to state agencies and to produce uniformity in the decisions of the district courts.” *Operation Save. Am.*, ¶ 22, 275 P.3d at 448. The Court has utilized the second exception to ensure uniform application of a statute, to establish evidentiary standards and notice requirements for licensing boards, and to guide juvenile courts on the effect of consent decrees. *Lee Newspapers*, ¶ 14, 332 P.3d at 528; *Penny v. State ex rel. Wyo. Mental Health Professions Licensing Bd.*, 2005 WY 117, ¶ 4, 120 P.3d 152, 157 (Wyo. 2005); *CY v. State (In re DJS-Y)*, 2017 WY 54, ¶ 11, 394 P.3d 467, 470 (Wyo. 2017). This exception applies where a decision will have “broad application beyond the specific facts of [the] case.” *Penny*, ¶ 4, 120 P.3d at 157; *see also Wyo. Dep’t of Revenue & Taxation v. Andrews*, 671 P.2d 1239, 1245 (Wyo. 1983). In this case, Petitioner’s claims relate to the

Wastewater Permit with no broader application. Any decision would not have broad application beyond the facts of the permit at issue.

Finally, where the “controversy is capable of repetition yet evading review,” two requirements must be met. “First, the duration of the challenged action must be too short for completion of litigation prior to its cessation or expiration. Second, there must be a reasonable expectation that the same complaining party will be subjected to the same action again.” *Operation Save Am.*, ¶ 30, 275 P.3d at 450 (citation omitted). This exception often applies in cases involving temporary restraining orders or other temporary legal statuses, such as temporary guardianships, where the challenged action is of limited duration. *See Id.* (citing *In re Guardianship of MEO*, 138 P.3d 1145 (Wyo. 2006) and *Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 209 (Tex. 1981)). Neither requirement is met in this case because the Department’s permitting decision are clearly subject to review.

The Department does not dispute that it may issue a future permit related to the same, or similar, wastewater system. However, any future permitting decision will be subject to both an administrative and judicial appeal process. Wyo. Stat. Ann. §§ 35-11-1001(a) and 16-3-114. Any future permit cannot evade review. That permitting decision, if it is made, will be its own, independent action which must be to the mootness doctrine apply and the pending appeal of the Department’s decision to issue the Wastewater Permit should be dismissed as moot.

C. Petitioner's claims regarding the Department's potential permitting decisions in the future are not fit for judicial review.

Petitioner desires to put on evidence before this Court related to the existing wastewater system infrastructure, the predicate factual determinations used by the Department to originally permit the infrastructure, and whether such infrastructure is "permissible" through the issuance of a potential future permit by the Department. *Pet'r Resp. and Request for Rule 12.08 Hearing*, ¶¶ 11 through 15; R. at 0545. For an issue to be fit for judicial review, the issue must be ripe for review and Petitioner must have standing. *Moose Hollow Holdings, LLC v. Teton County Board of County Commissioners*, 396 P.3d 1027, 1033 (Wyo. 2017). Until the Department makes a decision on a potential, future permit, however, such claims are not fit for judicial review at this time.

i. Petitioner's claims regarding the Department's potential permitting decisions in the future are not ripe for review.

To evaluate whether an issue is ripe for review, a court looks to (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding judicial consideration. *Moose Hollow Holdings, LLC*, at 1033 (citing *Hoke v. Moyer*, 865 P.2d 624, 628 (Wyo. 1993)). The purpose of the ripeness doctrine is to prevent premature adjudication with respect to "abstract disagreements" over administrative policies and to, "protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Id.* (citing *Wyodak Res. Dev. Corp. v. Dep't of Revenue*, 387 P.3d 725, 739 (Wyo. 2017)).

First, the Director of the Department of Environmental Quality has the statutory authority for making initial permitting decisions. Wyo. Stat. Ann. § 35-11-109(a)(xiii). Those permitting decisions may then be appealed to the Environmental Quality Council. Wyo. Stat. Ann. § 35-11-112. If the initial permitting decision is appealed to the Council, the Council conducts a contested case and renders a final agency decision on the permit. *Id.* The final decision of the Council is then appealable to this Court. Wyo. Stat. Ann. § 35-11-1001(a); Wyo. Stat. Ann. § 16-3-114. Until a final permitting decision is rendered by the Council, there is not a final decision for this Court to review.

The Wyoming Supreme Court has looked at similar situations involving attempts to prematurely appeal agency decisions. The Wyoming Supreme Court held in *Moose Hollow Holdings, LLC* that a preliminary decision by a planning director was not fit for judicial review because, “a judicial decision at [that] stage would be premature and would interrupt the County’s process for evaluating development.” *Moose Hollow Holdings, LLC*, at 1035. The Court also noted that a preliminary decision without a final permit decision meant that the reviewing court would not know what conditions, if any, might be placed on a permit. *Id.*

Similarly, it is currently unknown what conditions, if any, the Department might place on an individual permit. While the Department mistakenly issued the Wastewater Permit in this case, any new permit application would need to be issued as an individual permit due to the expiration of the general permit. Any new permit application must be submitted and processed in accordance with the rules and regulations promulgated by the

Department. *See* Wyo. Stat. Ann. §§ 35-11-110(a)(v) and 302(a)(iii). While the previously constructed wastewater system infrastructure exists, there is no guarantee that the Department will issue a new permit to authorize discharges from the same or similar system. Nor is it known what conditions the Department may put in any potential, future permit. Until the Director issues a new permit, and Petitioner appeals that permit to the Council for a final agency decision, any issues related to any new permit issued to Mountain Ventures is not ripe for review by this Court.

Second, Petitioners will suffer no hardship by withholding judicial consideration at this time. Mountain Ventures has not discharged, and cannot discharge, from any wastewater system until the Department has issued a valid permit. Wyo. Stat. Ann. § 35-11-301. That is true even without the stay issued by this Court. If the Department issues a new permit to Mountain Ventures, Petitioner may appeal the Director's permitting decision to the Environmental Quality Council, and subsequently to this Court. At that point this Court would have a permit appeal ripe for judicial review.

ii. Petitioner lacks standing to appeal a permit that has not been issued.

In this instance, Petitioner does not have standing to bring an appeal of a permit that has not been issued. Standing for an appeal of an agency decision requires a party to be, "aggrieved or adversely affected in fact," by the agency action. Wyo. Stat. Ann. § 16-3-114(a). Petitioner must be able to show that it has a, "perceptible, rather than speculative, harm resulting from agency action." *Moose Hollow Holdings, LLC*, at 1033 (*citing Hoke v. Moyer*, 865 P.2d 624, 628 (Wyo. 1993)). "A future, contingent, or merely

speculative interest is ordinarily not sufficient.” *Id.* Petitioner’s claims are based on a speculative harm due to the Department potentially issuing a future permit. Petitioner presumes it will be aggrieved or adversely affected, but until a new permit is issued by the Department, Petitioner has not been aggrieved or adversely affected in fact.

D. Petitioner’s claims to compel removal of existing wastewater system infrastructure are barred by sovereign immunity because the Petitioner failed to comply with the required statutory process.

Petitioner seeks to compel removal of the already installed portions of the constructed, but not yet discharging, wastewater system. (R. at 0545; *Pet’r’s Response to Transmittal Notice*, ¶ 11). However, due to sovereign immunity, Petitioner may not bring suit against the Department for any remedies not allowed by statute. While the Environmental Quality Act authorizes citizen suits against the Department, with limitations, for alleged violations of the Environmental Quality Act, Petitioner has not properly brought such a suit against the Department. See Wyo. Stat. Ann. § 35-11-904.

The State of Wyoming and the Department have sovereign immunity. Art. 1, § 8, Wyo. Const.. “Suits may be brought against the state in such manner and in such courts as the legislature may by law direct.” *Id.* No suit can be brought against the State unless the Wyoming Legislature authorizes such a suit. *Worthington v. State*, 598 P.2d 796, 801 (Wyo. 1979). Wyoming Statute § 39-11-904 authorizes citizen suits against the Department, with limitations, for violations of the Environmental Quality Act. Any suits against governmental entities, however, must be brought in procedural compliance with the law providing consent for the suit. See *Cranston v. Weston County Weed and Pest*

Bd., 826 P.2d 251, 255 (Wyo. 1992) (examining procedural compliance with the Wyoming Governmental Claims Act).

Wyoming Statute § 35-11-904 provides that, “[A]ny person having an interest which is or may be adversely affected, may commence a civil action on his own behalf to compel compliance with this act [. . .] against any other person for alleged violations of any rule, regulation, order or permit issued pursuant to this act[.]” Wyo. Stat. Ann. §35-11-904. This section of law would allow Petitioner to bring an action against Mountain Ventures for its alleged violations of the Environmental Quality Act. The Act further provides that a mandamus action may be brought under Wyoming Statute §35-11-904 against the Department for, “alleged failure of the [D]epartment to perform any act or duty under this act which is not discretionary with the [D]epartment.” In such cases, however, the Act requires Petitioner to give the Department sixty-days’ notice and the action must be filed in the District Court for Laramie County. *Id.* at (b) and (c)(i).

Petitioner did not comply with the requirements of Wyoming Statute §35-11-904. Petitioner did not give the Department sixty days’ notice before filing suit, nor did it file suit in Laramie County, which is the statutory venue for such cases. As such, the Department has immunity from any claims Petitioner tries to now bring under Wyoming Statute § 35-11-904 to compel the Department to compel Mountain Ventures to remove the wastewater system. (R. at 0545; *Pet’r’s Response to Transmittal Notice*, ¶ 11). Instead, Petitioner is limited to the remedies available under the administrative appeal process, which is suspension, revocation, or modification of the now revoked Wastewater Permit. If Petitioner would like to assert claims against the Department for what it

believes is non-discretionary inaction, it may do so in Laramie County, following proper notice. Alternatively, Petitioner may bring suit against the owner of the wastewater system it believes to be in violation of State law pursuant to Wyoming Statute § 35-11-904 to seek removal of the septic system.

Petitioner appears to be attempting to circumvent Section 904 altogether by seeking remedies against Mountain Ventures through an appeal of the Department's permitting decision. The party in the best position to provide the remedy Petitioner seeks is not the Department, but rather is Mountain Ventures, who is the owner of the constructed septic system. Further, Petitioner has cited no provision of law that requires, or even provides authority for, the Department to order Mountain Ventures to remove the septic system. Petitioner's attempt to now bring a suit against the Department under Section 904 of the Environmental Quality Act should be dismissed.

CONCLUSION

For the foregoing reasons, the Department asks the Court to dismiss this matter.

Submitted this 2nd day of May, 2023.



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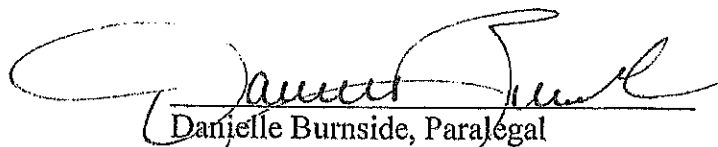
CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2023, a true and correct copy of the foregoing was mailed, postage prepaid to the following:

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