

FILED

APR 08 1993

Terri A. Lorenzon, Attorney
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

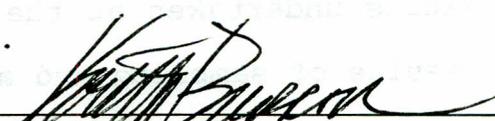
IN THE MATTER OF THE NOTICE OF)	
VIOLATION AND ORDER ISSUED TO:)	
Pennant Well Service)	
2140 N. Seven Mile Road)	
P.O. Drawer 969)	
Mills, WY 82644)	Docket No. 2369-92
and)	
C. Richard Stevenson)	
1710 Security Life Building)	
1616 Glenarm Place)	
Denver, Colorado 80202)	

RESPONSIVE PLEADING

COMES NOW the Department of Environmental Quality, Water Quality Division (DEQ\WQD), by and through the Attorney General's Office, and hereby submits its responsive pleading, as required by Chapter II, Section 1 of the Department of Environmental Quality Rules of Practice and Procedure.

The DEQ\WQD asserts that it is without sufficient information to adequately respond to the protestants petition for appeal to the Environmental Quality Council, on the grounds that the petition does not state the substantive basis on which the appeal is taken, other than to state that compliance is too expensive. The DEQ\WQD is without sufficient information about the protestant to admit or deny the truth of this statement.

DATED THIS 6th DAY OF APRIL, 1993.



 KEITH BURRON
 ASSISTANT ATTORNEY GENERAL
 123 CAPITOL BUILDING
 CHEYENNE, WY 82002
 (307\777-7781

CERTIFICATE OF SERVICE

I, Keith Burron do hereby certify that on this 6th day of April, 1993, I served a true, full and correct copy of the foregoing Responsive pleading by the U.S. Mail, postage prepaid, to all parties and the Environmental Quality Council, addressed as follows:

C.R. Stevenson, President
Pennant Well Service
1616 Glenarm Place, Suite 1710
Denver, CO 80202

Pennant Well Service
2140 N. Seven Mile Road
P.O. Drawer 969
Mills, WY 82644

Terri Lorenzon, Esq.
Environmental Quality Council
2301 Central Ave, Rm. 407
Cheyenne, WY 82002



 KEITH BURRON

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Denver, Colorado 80202)

**LIST OF WITNESSES AND EXHIBITS AND
SUMMATION OF FACTS AND LEGAL ISSUES**

COMES NOW the Department of Environmental Quality, Water Quality Division (DEQ\WQD) and hereby submits its list of witnesses and exhibits and summation of facts and legal issues in the above-captioned matter, pursuant to the Order of the Hearing Examiner filed March 23, 1993.

LIST OF WITNESSES:

1. The DEQ\WQD will call **Robert Lucht**, P.E., UIC Program Supervisor for the DEQ\WQD, 122 W. 25th St, Herschler Building, Cheyenne, WY 82002, 307\777-7781. Mr. Lucht will testify as both a fact and an expert witness. He will testify to regulatory activities undertaken at the Pennant site, his observations, and the results of sampling and analytical data collected. Mr. Lucht will also present evidence relating to the impacts of the activities occurring at the Pennant site and give his opinions and conclusions relating to the adverse impacts to the environment occasioned by the discharges from the industrial drainfield at the site. Finally, Mr. Lucht will testify to the necessity for compliance with the Order and the appropriateness of the relief requested.

2. The DEQ\WQD may call **Jake Strohman**, P.E., Groundwater Program Manager for the DEQ\WQD, 122 West 25th St., Herschler Building, Cheyenne, WY 82002, 307\777-7781. If necessary, Mr. Strohman may testify to the regulatory scheme under which the industrial drainfield at the Pennant site was permitted, the nature and necessity for this administrative action and other facts relating to the regulation of these type of systems.

LIST OF EXHIBITS:

The DEQ\WQD may introduce the following exhibits:

1. An enlarged aerial photograph showing the site.
2. An enlarged chart listing the results of chemical analysis performed on samples taken from the industrial septic system at the Pennant site.
3. A computer model chart depicting the potential contaminant plumes resulting from the discharge of total phenolics from the Pennant industrial septic tank.
4. A computer model chart depicting the potential contaminant plumes resulting from the discharge of dichlorobenzene from the Pennant industrial septic tank.
5. A computer model chart depicting the potential contaminant plumes resulting from the discharge of total petroleum hydrocarbons from the Pennant industrial septic tank.
6. Relevant portions of the federal register listing the maximum contaminant level for listed chemical constituents.

SUMMATION OF FACTS:

The protestant constructed an industrial septic system on its property in 1981. The system was installed under a permit to construct issued by the DEQ\WQD. The DEQ\WQD permit did not regulate the operation of the system. In 1991, representatives of the DEQ sampled the standing water in the septic tank. The results of the sampling indicate that discharges from the industrial septic system is contamination groundwater in excess of state water quality standards. After determining that the industrial septic system was discharging in excess of water quality standards, the DEQ\WQD issued the protestant a Notice of Violation and Order, aimed at determining the nature and extent of the water quality problems caused by the operation of the system.

The protestant has appealed the Notice of Violation and Order to the environmental quality council and requested a hearing. To date, the grounds for the appeal have not been set forth, with the exception of an assertion by the protestant that compliance with the Order would be cost prohibitive.

SUMMATION OF LEGAL ISSUES:

The legal issue raised in this appeal to the environmental quality council revolves around the power of the DEQ\WQD to require a point source of pollution to install monitoring equipment and conduct sampling to determine the extent to which the point source is affecting or altering the environment. Based upon the following state statutes and water quality rules and regulations, the state asserts that it has both the power and the duty to require the steps set forth in the order:

1. W.S. 35-11-109 (a)(iv) provides that the director **shall** "prepare and require permittees to prepare reports and install, use and maintain any monitoring equipment or methods reasonably necessary for compliance with the provisions of this act...."

2. W.S. 35-11-110(a)(vii) provides that the water quality administrator may require the owner or operator of any point source to install, use and maintain monitoring equipment and sample effluents and discharges.

3. Chapter VIII of the water quality rules and regulations sets the relevant water quality standards for groundwater. The results of the sampling conducted by the DEQ\WQD indicate that these standards are being violated by the operation of the industrial septic system.

The principal legal issue then, may be framed as follows:

Whether the DEQ\WQD may require a permittee to install, use and maintain monitoring equipment where cause exists to believe that the permittee's operations are causing or may be causing a violation of groundwater standards.

DATED THIS 6th DAY OF APRIL, 1993.



KEITH BURRON
ASSISTANT ATTORNEY GENERAL
123 CAPITOL BUILDING
CHEYENNE, WY 82002
307\777-7781

CERTIFICATE OF SERVICE

I, Keith Burron do hereby certify that on this 6th day of April, 1993, I served a true, full and correct copy of the foregoing List of Witnesses and Exhibits and Summation of Facts and Legal Issues by the U.S. Mail, postage prepaid, to all parties and the Environmental Quality Council, addressed as follows:

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