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MAR 03 1995

Terri A. Lorenzon, Attorney
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF A REQUEST)
FOR A VARIANCE BY THE TOWN OF) DOCKET NO. 2374-92
SUNDANCE)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Environmental Quality Council held a public hearing in the above-entitled matter on April 5, 1994 at the City Hall Council Chambers, 213 Main Street, Sundance, Wyoming. John C. Darrington, a member of the Environmental Quality Council served as the Hearing Examiner. Also present was Terri A. Lorenzon, the attorney for the Environmental Quality Council. The Town of Sundance was present and represented by their attorney, Mark Hughes, the State of Wyoming Department of Environmental Quality, Solid & Hazardous Waste Division was present and represented by Mike Barrash, Senior Assistant Attorney General. Also representing the Town of Sundance were Mayor James Miller, and Council member Bob Baxter.

The Environmental Quality Council met on a public meeting on June 24, 1994 at Room 1299 of the Herschler Building, Cheyenne, Wyoming, and having considered the record in this matter and the arguments of the parties, the Council finds and concludes as follows.

1. The Town of Sundance (Town) is applying for a sanitary landfill permit to expand its existing landfill and extend the life of the landfill for 20-30 years. For purposes of this document, the current landfill operation and the proposed expansion of the landfill will be referred to as "the landfill".

2. The landfill does not meet the location standards specified in §§ 35-11-502(c)(i)-(iv), W.S. 1977 As Amended. These standards state that "except upon a variance from paragraphs (i) through (iv) of this subsection granted by the environmental quality council after public hearing and upon written findings that the variance will not injure or threaten to injure the public health, safety or welfare, shall locate or construct a solid waste management disposal facility larger than one (1) acre within:

(i) One (1) mile of the boundaries of an incorporated city or town;

(ii) One (1) mile of a public school except with the written consent of the school district board of trustees or one (1) mile of an occupied dwelling house except with the written consent of the owner;

(iii) One-half (1/2) mile of the center line of the right-of-way of a state or federal highway unless screened from view as approved by the department; or

(iv) One-half (1/2) mile of a water well permitted or certificated for domestic or stock watering purposes except with written consent of the owner of the permit or certificate."

3. The Town's application for a variance contains a map of the landfill with a one (1) mile radius drawn around the landfill and with indications of all occupied dwellings, the corporate limits of the Town, and water wells inside the one (1) mile radius.

4. The landfill is within 1 mile of the incorporated limits of Sundance.

5. One stock water well south of the landfill is located within one-half (1/2) mile of the landfill, and one domestic water well north of the landfill may be within one-half (1/2) mile of the landfill.

6. Hydrogeology studies for the landfill indicate that the landfill will not impact

groundwater in the Town or the area surrounding the landfill.

7. Water is provided to the town by 2 deep, hardrock wells in the Madison or Minnelusa Formations. The wells are between 800 and 1200 feet deep with a production formation in excess of 800 feet deep, and one well is approximately 3 miles west of the landfill and the second well is 5-6 miles north of the landfill.

8. Wells within 1 mile of the landfill are shallow wells producing from the Spearfish sandstone formation. Test holes drilled at the landfill site encountered hardrock at a depth of approximately 12 feet and further drilling showed that the rock was solid to a depth of at least 60 feet. The evidence indicated that fracturing in the sandstone formation does not exist and the potential for fluid movement from the landfill is minimal.

9. The gradient of the groundwater at the site of the landfill is southeast to northwest. The Town will place wells to monitor the impacts of the landfill with one well located northwest of the landfill and 3-4 wells located west and southwest of the landfill. No monitoring is planned to the east or southeast of the landfill due to the geology and the groundwater gradient.

10. Immediately west of the landfill is the Town's wastewater treatment system. Sewerage lagoons are located west of the landfill and on the side of a non-perennial stream opposite from the landfill. Three monitoring wells are located east of the lagoons and on the same side of the stream as the lagoons. These wells are placed to monitor impacts from the lagoons. The wastewater system was located at this site in 1953 when the Town purchased the property for waste disposal purposes.

11. The evidence showed that there are occupied dwellings within one (1) mile of the landfill with some of the dwellings located within the northeast portion of the corporate limits of the Town and some dwellings located southwest of the landfill.

12. The evidence showed that the Town researched well permit records and inspected the 1 one mile area around the landfill to locate water wells and then notified all affected landowners within the one (1) mile radius of the landfill. The Town requested an indication of consent or nonconsent to the variance. No objections to the landfill were received by the Town.

13. Reclamation at the landfill will be completed as cells are filled and capped. The only unreclaimed land that will be exposed is at the active cells and soil stockpiles.

14. The evidence showed the landfill is within one-half (1/2) mile of the center line of U.S. Interstate 90, a federal highway, and the landfill is visible from this highway.

15. The Town is constructing a shelter belt or visual screen between the landfill expansion area and the Interstate highway which will partially block the view of the landfill from the Interstate. It is impossible to completely screen the landfill from view due to the topography. A fence will also be constructed that will contain any dispersion of trash.

16. Access to the landfill is at the southeast corner of the landfill and a road that is currently used for access will continue to be used by the public. This road is adequate for public access and it is not anticipated that the level of traffic will increase as the Town does not project major population growth in the area.

17. The Town investigated alternate locations for the landfill as part of its waste disposal planning, and it was the recommendation of the Town Council that the landfill be expanded at its present location because it is a dry area at a high elevation. Property to the south of the landfill is productive agricultural property; the land to the east of the landfill is mountainous; and the land to the north has surface water present.

18. The evidence demonstrated that the Town has operated the landfill in a manner that protects the public health and welfare.

19. The Town has planned for the expansion of the landfill in public meetings and no opposition to the landfill was voiced during that process.

20. The Department of Environmental Quality reviewed the variance application and recommended the variance from the location standards be granted.

21. The technical information presented, the history of operations at the current facility, the plans for groundwater monitoring, and the plan to develop the visual screen for the landfill support the conclusion that the landfill will have a minimal impact on the environment and it will not impact the public health and welfare. Water sources and dwellings will not be adversely affected by the extension of the life of the landfill.
22. Prior to the hearing on the variance, notice was published of the opportunity for a hearing before DEQ and the opportunity to participate as a party to the hearing before the Council. Public notice was published in the Sundance times on March 13, 1994 and the Gillette News-Record on March 4, 1994. No comments or requests to participate were received by DEQ or the Council.
23. At the hearing, a consultant for the Town testified that he had mailed notice of the proposed expansion to affected landowners within a one mile radius of the landfill by certified mail. This letter asked each recipient to indicate approval of, or objection to, the variance by signing and returning a form to the consultant by January 30, 1992. This witness further testified that only one person had not responded to the letter and this person was considered as having not approved of the project. The record was left open at the conclusion of the hearing to receive copies of the certified receipts for notice to the landowners.
24. Subsequent to the hearing, the consultant notified the Council that the certified receipts could not be located and that eight affected landowners had not responded to the notice. On April 21, 1994, DEQ informed the eight landowners who had not responded to the Town's correspondence of the fact that the hearing had been held and the Council was scheduled to make a decision on the variance on June 24, 1994. In response to DEQ's letter, several comments were received.
25. Dennis and Marlene Edwards expressed their concerns with contamination as a result of infectious wastes going to the landfill, nuisance complaints about the landfill, and the impact of the landfill on tourism. The Edwards objected to the landfill expansion.
26. Terry and Joyce Speidel stated that they knew of the proposed expansion but had not voiced their concerns previously. The Speidels also expressed the belief that their property would lose value, that groundwater would be contaminated, and that the community needed to explore alternatives to land disposal such as recycling. They objected to the landfill.
27. Denis and Sheryl Klocker purchased their land in December 1993, almost a year after notice of the proposal was given. The Klockers said they were concerned about property values, aesthetics, groundwater contamination, and the lack of community recycling. The Klockers objected to the landfill.
28. Eleanor Phillips acknowledged she had received the letter from the Town's consultant and responded to the letter from DEQ through her attorney. Ms. Phillips objected to the expansion on the ground that her property value would decrease, water quality would be adversely impacted, the landfill does not have fire protection available, and timber resources on her property would be in jeopardy from a landfill fire. Ms. Phillips asked that her property be screened from the dump site area in all directions.
29. Late on June 23, 1994, Ms. Phillips sent a Motion to Remand and a second copy of her Notice of Objection to the Council's office by FAX transmission. The Motion was not received by the Council until after the June 24th meeting of the Council at which this matter was concluded. The Motion was not timely and therefore was not considered by the Council.
30. On April 18, 1994, DEQ filed a Motion to Supplement Record that asked the Council to supplement the record with the letters filed by the Klockers, Eleanor Phillips, the Speidels, and the Edwards. On June 24, 1994 the Council voted to grant the motion by unanimous vote.
31. Having reviewed the comments submitted by the Klockers, Ms. Phillips, the Edwards, and the Speidels, the Council finds that many of the concerns expressed are pertinent to the evaluation of the permit for the expanded landfill, rather than the variance. The permit for the expansion has not been completed and the public will have an opportunity to participate in the issuance of the permit to expand the landfill.

CONCLUSIONS

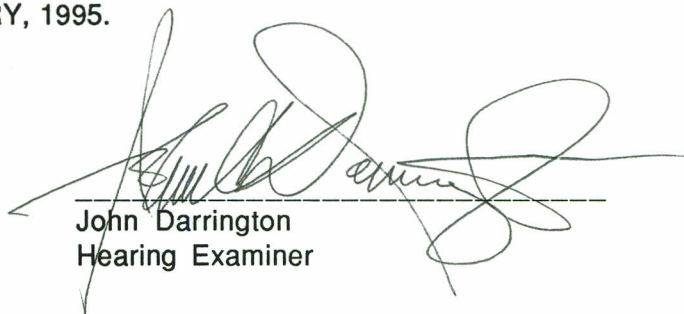
1. The Environmental Quality Council has jurisdiction over the subject matter of and the parties to this proceeding. §35-11-502.
2. The Town has met its burden to demonstrate that the variance from the location standards in §35-11-502 will not adversely impact the health and welfare of the public and the variance from the location standards will have minimal impacts on the environment.
3. The Town's application for a variance from the location standards referenced in §35-11-502 should be granted.
4. The Motion to Supplement the Record should be granted.

ORDER

IT IS ORDERED THAT the variance from the location standards contained in the Environmental Quality Act, §§35-11-502(c)(i)-(iv) for the Town of Sundance is granted.

IT IS FURTHER ORDERED THAT the Motion to Supplement the Record filed by the Department of Environmental Quality is granted.

DATED THIS 28th DAY OF FEBRUARY, 1995.



John Darrington
Hearing Examiner

CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 3rd day of March 1995, I served a copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

The Honorable James A. Miller
Mayor, Town of Sundance
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and also to the following persons via interoffice mail:

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