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BEFORE THE WATER AND WASTE ADVISORY BOARD
STATE OF WYOMING

HEARING TO DISCUSS GROUNDWATER MONITORING GRANT PROGRAM
UPDATE AND MONITORING REIMBURSEMENT PROGRAM

TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings in the above-entitled matter before the Water and Waste Advisory Board, commencing on the 15th day of October 2010 at 9:10 a.m. at the Wyoming Oil and Gas Commission Hearing Room, 2211 King Boulevard, Casper, Wyoming, Mr. Bill Welles presiding with Board members Marjorie Bedessem, Lorie Cahn and David Applegate. Also present was Mr. Mike Jennings.

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P R O C E E D I N G S

(Hearing proceedings commenced 9:10 a.m.,
October 15, 2010.)

CHAIRMAN WELLES: Welcome to the Water and
Waste Advisory Board meeting. We have two agenda items
today. We'll start with the Solid and Hazardous Waste
Division. And I will at this time turn it over to Mike
Jennings, and we'll get started.

MR. JENNINGS: Thank you, Mr. Chairman.
And good morning to all of you. If everybody has their
agenda in front of them, the one specifically, it will
say final agenda for October 15th, 2010 Water and Waste
Advisory Board meeting. That's the one I'll be working
off of.

CHAIRMAN WELLES: One item of business.
Having missed the last meeting, I forgot that we're
supposed to introduce ourselves. I'm Bill Welles,
chairman, from Buffalo, representing agriculture.

MS. CAHN: Lorie Cahn from Teton County,
representing the public at large.

MS. BEDESSEM: Marjorie Bedessem from
Albany County, public at large.

MR. APPLGATE: Dave Applegate from
Casper, representing industry.

CHAIRMAN WELLES: And let the record show

1 that we're missing one board member. Tim Chestnut is not
2 here.

3 MR. JENNINGS: Okay. Thank you,
4 Mr. Chairman.

5 If you'll work off of the agenda, then, the
6 first item on there for full reimbursement recommendation
7 would be for the City of Green River. And this was for
8 Step 1 work plan development. And in this instance, the
9 Department was recommending full reimbursement to a total
10 of \$934. And as in the past, if you wanted to just
11 separate this one out and make a motion on this one
12 before we move on to the others, let you decide that.

13 CHAIRMAN WELLES: Yes.

14 MS. BEDESSEM: I move that we approve full
15 reimbursement for the City of Green River in the amount
16 of \$934.

17 MS. CAHN: I second.

18 CHAIRMAN WELLES: Motion has been made.
19 All those in favor.

20 (All members vote aye.)

21 CHAIRMAN WELLES: Opposed?

22 (No response.)

23 CHAIRMAN WELLES: None. Motion passes for
24 the City of Green River on the full reimbursement.

25 MR. JENNINGS: Thank you, Mr. Chairman.

1 Then in the next part of the agenda for partial
2 reimbursement recommended, first one on the list is for
3 City of Green River. And if you want me to dispense with
4 details, if you've gone over this stuff, I can simply
5 bring them up. Obviously if you have questions, please
6 ask, and I'll do my best to answer them.

7 But for Green River Step 2, the Department is
8 recommending \$39,854.66 on the reimbursement. Does
9 anyone have any questions on that?

10 CHAIRMAN WELLES: No questions.

11 MR. JENNINGS: Do you want to do these
12 separately?

13 CHAIRMAN WELLES: I think we'll do them
14 all.

15 MR. JENNINGS: Do the whole shooting
16 match? Okay.

17 The next one after that is for the Town of
18 Hanna, the Old Site landfill. We've had a number of
19 deductions on this one, to a total of about \$10,000 less
20 than the Town of Hanna asked for. And none of the
21 deductions were due to what we considered unreasonable
22 charges, work delays, ineligible step charges that were
23 included in the application. And today we've had no
24 comment from the Town yet.

25 Do any of the board members have any questions

1 on this one?

2 MR. APPELATE: I don't.

3 MS. BEDESSEM: I'm just curious. When you
4 contact the Towns with your review, how long then do they
5 have before we have a board meeting to respond to you?

6 MR. JENNINGS: I try to get the
7 information to them as quickly as possible. But I also
8 keep in mind that getting the money back to them as
9 quickly as possible is also highly desirable. In this
10 particular instance, they got it several weeks in
11 advance. But I did speak with the town clerk last week.
12 There's another application in this same packet that went
13 to them. And I try to alert them in advance, say be
14 aware of this. It's coming. And if you do have any
15 comments, please get them back to me as quickly as
16 possible.

17 I also inform the Town that if there were any
18 issues as far as if there's some invoicing they were
19 missing that I did some deductions on, if they can
20 produce that information at a later date, I'd be more
21 than happy to take a look at that for reimbursement.

22 MR. APPELATE: So they're not precluded
23 from coming back later?

24 MR. JENNINGS: No, they are not.

25 MS. BEDESSEM: Thank you very much.

1 MR. JENNINGS: You're welcome.

2 If there are no further questions on that one,
3 Town of Rock River, this was brought up at the last board
4 meeting. But because we didn't have a sufficient number
5 of the board present, we had to table it for this
6 meeting. And this is a Step 2 field work reimbursement
7 application. And we just had a minor deduction on that
8 one.

9 MS. CAHN: Excuse me a second. I thought
10 we got clarification after the meeting that as long as
11 you have a quorum present, that -- and it doesn't
12 matter -- once you have a quorum present for the meeting,
13 you can conduct business. And then once you have a vote,
14 as long as you have a majority voting on something, you
15 don't have to have a -- we don't have to have three
16 people to approve something. So there were three of us
17 present, as I recall. And Marge had to abstain, so we
18 had two that could vote. And we approved it. And we
19 found out, I thought, after meeting that that was okay.
20 Am I incorrect?

21 MR. JENNINGS: My apologies if I didn't
22 make that real clear in my correspondence after the fact.
23 We checked with a number of sources, including the
24 Attorney General's Office. And basically, the way that
25 it's stated is you have to have a majority of the board,

1 not the board present. And that's why, unfortunately, we
2 had to basically kick it forward to this meeting.

3 MS. CAHN: So we didn't -- I'm incorrect?
4 We did not vote on it the last meeting?

5 MR. JENNINGS: We had essentially -- as I
6 recall, we had voted on it, if, indeed, it was okay to do
7 that. But as we found out in our discussions with the
8 Attorney General's Office, we couldn't do that, and so we
9 kicked it forward to this meeting.

10 MS. CAHN: For the record, could you state
11 what the rules are so we know for the next time?

12 MR. JENNINGS: Absolutely. My
13 understanding was, based on what we researched and what
14 we were told, is that you have to have a majority of the
15 board, in other words, three -- you have to have three
16 aye votes to pass a resolution on this. It is not based
17 on a quorum. It's based on the five actual members.

18 MS. CAHN: Thank you for clarifying that.

19 MR. JENNINGS: You're welcome.

20 MS. BEDESSEM: And as we're discussing
21 right now these as a group, can we take out Item C and
22 vote on that separately?

23 CHAIRMAN WELLES: Yeah. We'll have to do
24 that.

25 MR. JENNINGS: You bet.

1 Next one, Town of Hanna Old Site landfill, this
2 is for Step 3 first and second quarter. There were some
3 15 percent markups on some items that, again, per our
4 grant reimbursement criteria, we don't allow.

5 Any questions on that one?

6 MR. APPELATE: I have no questions.

7 MS. BEDESSEM: No questions.

8 CHAIRMAN WELLES: No questions.

9 MR. JENNINGS: Mr. Chairman, the next item
10 is for the Town of Pine Bluffs. This is also for Step 3
11 sampling and analysis for third and fourth quarters. A
12 minor reduction for mileage rates in excess of the IRS
13 rate in effect at the time.

14 Any questions on that one?

15 MS. CAHN: No.

16 CHAIRMAN WELLES: No questions.

17 MR. JENNINGS: Last one on the list is for
18 the Town of Elk Mountain. And this is also for Step 3
19 sampling and analysis. Staff determined that they needed
20 to do an extra round of sampling, so that's why this is
21 actually for fourth and fifth quarter sampling and
22 analysis. And again, there was a minor reduction based
23 on an excessive mileage rate.

24 Are there any questions on that one?

25 CHAIRMAN WELLES: No questions.

1 MR. JENNINGS: And, Mr. Chairman, I
2 forgot, and I wanted to mention it, that on the Item B,
3 under partial reimbursement for the Town of Hanna, for
4 the Old Site landfill, just for your edification, there
5 was an additional \$6,000 charge, approximately \$6,000
6 charge, in the application which went back to Step 1 work
7 plan development. The original submittal on that one was
8 approximately for \$20,000. And this one then came in
9 with their field work application. The average cost of a
10 work plan in this program has been approximately just a
11 smidge over \$4,000. And we felt that \$6,000 on top of
12 the original 20,000 was excessive. And on that basis, we
13 were not going to recommend reimbursement on that one.

14 However, if you'll -- in the comments on that
15 one, I actually have the total. If, indeed, the board
16 was interested in reimbursing on that one, I do have that
17 total for you. But at this point, because of what we
18 considered the excessive charges for that, we were not
19 going to recommend reimbursement for the additional
20 \$6,000 work plan development.

21 MR. APPLGATE: So have you had
22 conversation with them? Was the scope different,
23 possibly?

24 MR. JENNINGS: They're very much aware of
25 it. Again, they were given the information. They were

1 given the comments. And in a conversation I had with the
2 Town clerk from Hanna last week, she indicated that she'd
3 gone through some of this stuff, and they have not
4 responded.

5 MR. APPELEGATE: So you compared it to the
6 average. Have there been other work plans that have cost
7 that much?

8 MR. JENNINGS: There was one other that
9 was very expensive, but it was a very complicated, lots
10 of wells. It was still high, but basically, there was a
11 lot, lot of work involved with that one. For this one
12 here, it was basically for seven wells. The average has
13 been typically three wells per facility. And the
14 original reimbursement we gave them back on their initial
15 submittal was about \$9,000. And again, these charges
16 came in after the fact, and we just thought it was,
17 frankly, excessive.

18 MR. APPELEGATE: Just for clarity, this was
19 for the development of the work plan?

20 MR. JENNINGS: Yeah. None of the field
21 work, no sampling and analysis. It's simply the plan
22 upon which then you base your drilling program.

23 MR. APPELEGATE: Because you would expect
24 sometimes during execution that you would run into things
25 that might cause a project to become higher, drilling

1 difficulties. But this is during just the development of
2 the plan?

3 MR. JENNINGS: Yeah, strictly the plan.
4 You bet.

5 CHAIRMAN WELLES: So am I correct in
6 understanding that, of the \$6,000 that they requested,
7 they got zero?

8 MR. JENNINGS: Exactly. At least that is
9 our recommendation.

10 MS. CAHN: So is the board going to need
11 to approve a zero reimbursement or not?

12 MR. JENNINGS: No. Like I say, that was
13 our recommendation that you're looking at on this. If
14 you agree with us, that's fine. I added -- on the
15 comment section, I added that in simply that if you
16 decided that, indeed, you wished to recommend that, you
17 could do so. So I put those totals in there.

18 MR. APPLGATE: The only thing that kind
19 of strikes me is the community might be getting punished
20 for what might have been a problem with their consultant.
21 It's after the fact, they've incurred that cost, and now
22 we're telling them they're not going to be reimbursed
23 because they employed a consultant that perhaps spent too
24 much money in developing the plan.

25 MS. BEDESSEM: Don't they provide a cost

1 estimate to get the work plan approved?

2 MR. JENNINGS: Yes. And as I recall, when
3 the original billing came in on this one for the first
4 submittal for the Step 1 work plan development, we did
5 have some comments, as I recall, to the effect that that
6 was a lot of money. And there were a lot of deductions
7 we took out of that initial one for some work which,
8 frankly, was unrelated to what we felt they should have
9 been doing. And then after the fact, some additional
10 billing came in. And most of it, near as I can tell, was
11 for clerical work, office work, printing stuff up, to the
12 tune of \$6,000. And we just felt at that point we've
13 already reimbursed you for Step 1 work plan development,
14 and this was simply over the top.

15 MR. APPELATE: So what's the nature --
16 when you communicate to them and tell them it's too much,
17 is that a written communication to them?

18 MR. JENNINGS: Absolutely.

19 MR. APPELATE: So they have the
20 opportunity to come back and --

21 MR. JENNINGS: Absolutely. What you see
22 in your package, you'll have a comment section that goes
23 with your packet. They receive the identical information
24 that you do, including the supporting information. And I
25 also have a cover letter that goes to them that also lets

1 them know that if you have any questions or comments
2 regarding the reimbursement, to give me a call.

3 CHAIRMAN WELLES: So your final
4 recommendation was zero?

5 MR. JENNINGS: For that particular part of
6 this application, yes.

7 MS. BEDESSEM: As part of Item B? That's
8 part of the 10,000 or so deduction?

9 MR. JENNINGS: Exactly. It's part of that
10 that you see deducted, yes.

11 CHAIRMAN WELLES: Any other questions?

12 MS. BEDESSEM: No.

13 MR. APPELATE: So we need to take out the
14 one --

15 MS. BEDESSEM: Right. C.

16 MR. APPELATE: C. So I make a motion we
17 approve the partial reimbursement recommendations, with
18 the exception of Town of Rock River, and that we consider
19 that under a separate motion.

20 MS. BEDESSEM: I second it.

21 CHAIRMAN WELLES: All those in favor.

22 (All members vote aye.)

23 CHAIRMAN WELLES: None opposed. So those
24 items, A, B, D, E and F, are approved.

25 And then now we'll go to the Town of Rock

1 River, which is paragraph C.

2 MS. CAHN: I move that we accept DEQ's
3 recommendation for partial reimbursement for Town of Rock
4 River.

5 MR. APPELATE: I second.

6 CHAIRMAN WELLES: We have a motion. All
7 those in favor.

8 MR. APPELATE: Aye.

9 MS. CAHN: Aye.

10 CHAIRMAN WELLES: Aye. And one
11 abstention.

12 MR. JENNINGS: Thank you, Mr. Chairman.

13 The last page, just again to kind of bring you
14 up to speed on where we're at with the funds, work plan
15 grants to date, just a little over \$170,000; field
16 investigation grants, 2.2 million; and sampling and
17 analysis, about 125,000. Total grants to date, about two
18 and a half million dollars and a little under five and a
19 half million left over.

20 As far as the work completion status at the
21 bottom, we're still getting stuff coming in. But the
22 work plans requested -- excuse me -- work plans received,
23 we've got about 94 percent of those have come in now. Of
24 those approval, 92 percent. There's just a few
25 outstanding. Drilling reports, that's coming along quite

1 nicely. 82 percent have been received. And of those,
2 we've got about a 68 percent approval. But there are a
3 lot of them that are pending right now in the works.
4 It's coming along very well.

5 We've also found there are any number of
6 facilities where we're having to go back in based on the
7 information that we have received, and we're having to
8 put in some additional wells. And again, we let all of
9 these folks know that, yes, this is still eligible work.
10 And we're also applying a little bit more sampling and
11 analysis depending upon certain situations in the field.
12 And again, we're very good about letting folks know that
13 it is still eligible for work as long as the -- for
14 reimbursement as long as the money's here.

15 Any questions about that?

16 CHAIRMAN WELLES: Do you have -- sorry.
17 Go ahead.

18 MR. APPLGATE: Work plans requested -- I
19 know you've answered this before, but you have to refresh
20 my memory. Work plans requested from 104 out of 115.
21 The other eleven landfills, what's the status of those?

22 MR. JENNINGS: For the vast majority of
23 those, ownership was -- we were unable to determine
24 specifically whose facility it had been.

25 MR. APPLGATE: So what is the status or

1 what is considered to be the path forward for those
2 eleven landfills?

3 MR. JENNINGS: Right now our efforts are
4 basically working on what we've got. And those are
5 certainly on our radar. But simply for the purpose of
6 reimbursement and/or getting wells in without being able
7 to actually say this was your facility makes it a little
8 complicated. We haven't forgotten about them. But as
9 far as a specific action yet, we haven't determined what
10 we're going to do with them.

11 MR. APPELATE: So I assume -- and I think
12 WDEQ is going to be interacting with the legislature on
13 this program. Is that fair to say?

14 MR. JENNINGS: Yes.

15 MR. APPELATE: So one of your
16 recommendations would be that the use of the remaining
17 funds that you have is to possibly have WDEQ investigate
18 the landfills?

19 MR. JENNINGS: We have looked at that,
20 yes. That's one of the options we considered.

21 MR. APPELATE: On the work plans 98 out
22 of 104, do you expect to receive work plans from the six?

23 MR. JENNINGS: I'm not sure. There's a
24 part of me that's a little bit skeptical. There's a few
25 folks who I just don't believe are going to submit work

1 plans.

2 MR. APPLGATE: So would WDEQ be making
3 some sort of recommendation --

4 MR. JENNINGS: Yes.

5 MR. APPLGATE: -- to the legislature on
6 those six sites?

7 MR. JENNINGS: Yep.

8 MR. APPLGATE: So there's really
9 seventeen landfills that right now look like they won't
10 be --

11 MR. JENNINGS: At this point, yeah, there
12 are in the program.

13 MR. APPLGATE: And again, refresh my
14 memory. The general extent of the monitoring, all of
15 these landfills will have had how much groundwater
16 monitoring associated with them?

17 MR. JENNINGS: We needed four quarters of
18 sampling and analysis to make a statistical determination
19 as to whether or not there were any impacts. However,
20 for those facilities where there was no groundwater
21 encountered, obviously if you don't have any groundwater,
22 there's not much you can do with it.

23 MR. APPLGATE: So what is happening --
24 you know, for groundwater remediation, once you've
25 established a monitoring program, it's very beneficial to

1 continue monitoring because many of these landfills are
2 probably undergoing natural attenuation. Has there been
3 any consideration given to -- are any of these
4 communities, have they been encouraged to continue to do
5 annual monitoring, semiannual monitoring? It seems to me
6 we've collected this round of data, and now we have
7 infrastructure in the ground to monitor what's happening.
8 And maybe there's a gap in the program. Is that
9 happening or not happening?

10 MR. JENNINGS: If I understand you
11 correctly, we have -- first of all, we need the four
12 quarters so we could do the statistical determination.
13 And at that point, then that information went into the
14 report to the legislature. And we are essentially
15 working on a path forward as in to try to determine --
16 it's going to be a site-specific thing, as far as, what
17 kind of impacts did we find? Does it merit additional
18 work? And we're still in the process of that. We
19 haven't made any actual determinations of, okay, who's
20 going to be required -- if any additional monitoring,
21 who's going to be required to do that? But we're
22 certainly looking at that.

23 MR. APPLGATE: I just would encourage you
24 to do that. Because what we've really done in this first
25 step is you've established a baseline. And I think it

1 would be very useful if that groundwater data was
2 continued to be collected, because my guess would be,
3 based on past experience and most of my career in
4 remediation-related work, is that many, if not most, of
5 those landfills are probably showing natural attenuation
6 for the organic contaminants. And that might be very
7 useful in decision-making. But again, maybe that's just
8 going to fall naturally out of the process with you guys.

9 MR. JENNINGS: Yeah. Believe me, we've
10 had discussions on that, and we're aware of how some of
11 those work out. But like I say, ultimately it comes down
12 to, okay, how much of the money is going to be left, and
13 what we can we use it for? And right now we're just in
14 the process of working with the legislature to get a path
15 forward on this. And we're looking at lots of options.

16 The one thing that I'm reasonably comfortable
17 with is, as far as any actions, they're going to be
18 site-specific. The report was more of a generalization
19 to try to get a feel for, okay, what kind of impacts are
20 we having on groundwater? But as far as treating the
21 individual facilities, we're going to have to take a
22 harder look at them as far as what kind of impacts did we
23 find, and what are our options?

24 MR. APPLGATE: Because I'm concerned that
25 the report itself, by simply stating that you have all

1 these landfills that have impacts, might overstate the
2 nature of the problem. Because I think we've known
3 probably for about 40 years that most landfills leak.
4 And I'm not sure that tells the whole story. The story
5 is about how close are they to drinking water sources?
6 How close are they to surface water sources? Is the
7 contamination decreasing due to natural water
8 attenuation? So I just think there's a lot more than
9 simply the idea that there's the presence of
10 contamination. I think you can assume probably at the
11 very beginning of the exercise.

12 MR. JENNINGS: Point well taken. Again,
13 for the purpose of giving the legislature a dollar
14 amount, which is one of the things they wanted, we wanted
15 to not underestimate any potential problem and let them
16 know that here is what we could be looking at. But
17 you're right. We're also very much aware of whether it's
18 receptors or the constituents in the contamination that
19 we're finding, and these will all go into any sort of
20 consideration as far as, do we just need a cap? Do we
21 just do monitored natural attenuation for what we have?
22 Do you actually have to conduct active groundwater
23 remediation? And you're right. There are a lot of
24 variables in there that, again, on a site-specific basis,
25 we're going to consider.

1 MR. APPELEGATE: So when do you interact
2 next with the legislature, and what will you be taking
3 forward to them? Is WDEQ developing a recommended path
4 forward, kind of a comprehensive path forward based on
5 that report?

6 MR. JENNINGS: The legislature has --
7 they've got what's called a special committee. And
8 they're actually meeting next Monday and Tuesday here in
9 Casper over at the ag extension building right next to
10 the fairgrounds, where they're also going to be looking
11 at a lot of these issues and trying to get additional
12 information.

13 MR. APPELEGATE: Will WDEQ be presenting to
14 them?

15 MR. JENNINGS: Yes.

16 MR. APPELEGATE: And are you presenting to
17 them a recommended path forward on a general approach for
18 this program?

19 MR. JENNINGS: Carl Anderson, our
20 administrator for Solid and Hazardous Waste, he's got a
21 presentation there. To be honest, I'm not sure exactly
22 what's within it. But I do know that we're having a
23 presentation. If you'd like, I can -- I do have an
24 agenda that they have. I'd be more than happy to supply
25 it to the board if you'd like to see it.

1 MR. APPLGATE: I'm interested in that.

2 CHAIRMAN WELLES: Yeah. I think that
3 would be a good thing. And those of us who can attend
4 will attend.

5 MS. CAHN: And after the meeting, perhaps
6 the slides that Carl Anderson uses to present, you can
7 mail those to us.

8 MR. JENNINGS: I'm not sure what Carl's
9 put together. But I'll get to you what I can,
10 absolutely.

11 CHAIRMAN WELLES: Just tell Carl we're
12 interested, and we want to be kept in the loop.

13 MR. JENNINGS: Will do, absolutely.

14 MR. APPLGATE: Thank you. I appreciate
15 it.

16 MR. JENNINGS: You're welcome.

17 CHAIRMAN WELLES: And thank you for your
18 good questions.

19 MR. JENNINGS: Is there anything else for
20 me?

21 CHAIRMAN WELLES: I don't think so.

22 Any other -- anything else from the board?

23 As far as the rest of the folks in the room,
24 this portion of our meeting still requires a signature.
25 So we'll take a five-minute break and then continue with

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C E R T I F I C A T E

I, RANDY A. HATLESTAD, a Registered Merit Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein constituting a full, true and correct transcript.

Dated this 1st day of November, 2010.



Randy A Hatlestad

RANDY A. HATLESTAD
Registered Merit Reporter