

June 15, 16 2016 Minutes
For the Environmental Quality Council

Dr. David Bagley, chairman of the EQC called the meeting to order on June 15, 2016 at 9:00 a.m. The meeting was held at 125 W. College Drive, Strausner Hall, Room 217, Casper WY 82601. Present from the Council were Rich Fairservis, Tim Flitner, Meghan Lally, Aaron Clark, and Megan Degenfelder, Nick Agopian was absent. Also present were Jim Ruby, Executive Officer, and Joe Girardin, Paralegal.

The Council first held a public hearing in Docket 16-3101 a Water Quality Division rulemaking pertaining to Chapters 15 and 25 of the WQD of the DEQ. The hearing officer for the matter was Vice Chair Meghan Lally. Present from the DEQ was the Water Quality Administrator Kevin Frederick, Seth Tourney, and Gina Thompson. The DEQ presented the rule package and the changes in the rules. No one appeared in support, opposition or in a neutral capacity on the rule package.

Councilman Fairservis moved the approval of the rule package and the statement of principal reasons. Councilman Clark seconded the motion. Voting Aye was Fairservis, Clark, Bagley, Lally, Degenfelder and Flitner. Councilman Agopian was absent.

The next item on the agenda was a public hearing in Docket 16-3102 a Water Quality Division rulemaking pertaining to Chapter 24. The hearing officer was Councilwoman Degenfelder. Present on behalf of the DEQ was the Water Quality Administrator Kevin Frederick, Gina Thompson, and a former employee of the Division Laura Ladd now employed at Hewlitt and Associates. No one appeared in support, opposition or in a neutral capacity regarding the rule package.

Councilman Clark moved to approve the rule package and the statement of principal reasons. The motion was seconded by Councilwoman Lally. Voting aye, Clark, Bagley, Lally, Degenfelder, Fairservis and Flitner. Councilman Agopian was absent.

Following the public hearing the Council approved the March 2, 2016 minutes. Councilman Clark moved to approve the minutes and Councilwoman Degenfelder seconded. All members present voted aye. Councilman Agopian was absent.

Councilman Fairservis then moved the approval of the March 15, 2016 minutes. Councilwoman Degenfelder seconded. All members present voted aye. Councilman Agopian was absent.

The council took action on the consent agenda. Councilman Fairservis moved to approve the NOV and Order in the matter of In Re Mark Richardson Docket 16-5201 Failure to have licensed Class A and Class B Storage Tank Operators located at the Hiland Bright Spot in Hiland Wy. The motion was seconded by Councilwoman Degenfelder. Voting Aye were Clark, Fairservis, Flitner, Bagley, Lally, Degenfelder. No one voted nay and Councilman Agopian was absent.

Councilman Clark moved to approve the Order approving the Administrative Order on Consent in In Re Upper Platte River Solid Waste Disposal District Docket 16-5906 Administrative Order on

Consent to open Transfer station and close small landfill. Councilman Flitner seconded the motion.

Voting Aye were Clark, Flitner, Lally, Degenfelder, Fairservis and Bagley. No one voted nay and Agopian was absent.

Councilman Fairservis moved to approve the bond forfeiture in In Re Patriot Energy Resources LLC Docket 16-3501 Patriot Energy Resources purchased numerous CBM wells and from previous developers. Patriot was granted the transfer of those CBM wells and posted a bond for them. The CBM wells have been idle for 2 years or more and Patriot has not taken any steps to reclaim the reservoirs associated with those wells and the bond. DEQ has filed the necessary paperwork to forfeit the bond. Councilman Clark seconded the motion. Voting Aye were Flitner, Fairservis, Lally, Degenfelder, Bagley and Clark. No one voted nay and Agopian was absent.

Councilwoman Lally moved to approve the Order of Dismissal for In Re RST, Docket number 16-4801. Councilman Flitner seconded the motion. Voting Aye were Clark, Bagley, Lally, Degenfelder, Fairservis and Flitner. No one voted nay and Agopian was absent.

The Council recessed at 11:30 until 1:30.

The Council reconvened at 1:30 on June 15, 2016.

Councilman Clark was the hearing officer in Docket 16-1601 and he opened the hearing on two motions filed by Brook Mine. Present on behalf of the petitioner Brook Mine LLC was Isaac Sutphin, and Tom Sansonetti. Present on behalf of Big Horn Coal Company/Lighthouse Resources Inc. was Lynnette Boomgaarden and present for the Padlock Ranch was Haultain Corbett.

The first motion heard was the Motion to Confirm Jurisdiction. Upon conclusion of the hearing Councilman Flitner moved to grant the motion to confirm jurisdiction. Councilwoman Lally seconded the motion. Voting Aye were Bagley, Degenfelder, Lally, Flitner, Fairservis and Clark. No one voted nay and Agopian was absent.

Next the Council heard oral arguments on the Motion to strike the Affirmative Defense of the Surface Owner concerning the posting of bond. Upon the conclusion of the hearing Councilwoman Degenfelder moved to grant the motion to strike an affirmative defense. The motion was seconded by Flitner. No one voted Aye. Voting Nay were Flitner, Fairservis, Lally, Degenfelder, Bagley and Clark. Agopian was absent.

The final matter in the Brook mine matter was to discuss the questions that the Council would like to have Director Todd Parfitt of the DEQ provide some advice pursuant to Wyo. Rev. Statute 35-11-109(a) (x). Councilman Bagley moved to submit the following 5 questions to Director Parfitt for his advice.

1. What is the status of the Brook Mine permit review including all steps needed to finalize approval?
2. Are there any parts of the mine plan which DEQ has determined to be incomplete or inadequate?
3. Is consent from the landowners the only deficiency DEQ has identified with the current

reclamation plan or have other parts/requirements been determined to be incomplete or inadequate?

4. Can future public comments received by DEQ result in material changes to either the current mine plan or the current reclamation plan?

5. When will DEQ determine the reclamation bond and surface owner protection bond requirements for this application and when is the applicant required to submit the bond?

Director Parfitt is to provide his advice no later than 5:00 p.m. on 13th day of July, 2016.

The motion was seconded by Councilman Flitner. The Council discussed the questions and at 3:23 p.m. Councilwoman Lally moved to go into Executive Session to receive legal advice. Councilwoman Degenfelder seconded the motion. All members present voted aye on the motion. Councilman Agopian was absent. At 3:47 p.m. Councilman Flitner moved to leave Executive Session. Councilman Fairservis seconded the motion. All members present voted aye. Councilman Agopian was absent.

Upon leaving the Executive Session the motion to submit the questions was further considered by the Council and the parties were given the opportunity to comment.

All of the parties stated that they did not have any objection to any of the questions. The question was called. Voting Aye were Flitner, Fairservis, Lally, Degenfelder, Bagley and Clark. Councilman Agopian was absent.

At 4:00 p.m. Chairman Bagley recessed the meeting until 9:00 a.m. June 16, 2016.

At 9:00 a.m. June 16, 2016 the Council reconvened their meeting at 125 W. College Drive, Strausner Hall, Room 217, Casper WY 82601. Present from the Council were Rich Fairservis, Tim Flitner, Meghan Lally, Dr. Dave Bagley, and Megan Degenfelder, Nick Agopian was absent. Also present were Jim Ruby, Executive Officer, and Joe Girardin, Paralegal. Present on behalf of the petitioner Good Bentonite Company, LLC was Heather Jacobson. Present on behalf of the Department of Environmental Quality is Andrew Kuhlmann.

Councilman Fairservis opened the hearing in Docket 16-4601, In Re Bentonite Mine No 624 Good. The Council first took up the Motion to Dismiss filed by the Department of Environmental Quality. The parties were each given 10 minutes to present their arguments on the motion. At the close of the hearing at 9:15 a.m. Councilman Clark moved to go into Executive Session for legal advice. Councilman Flitner seconded the motion. Voting Aye were Clark, Flitner, Fairservis, Lally, Degenfelder and Bagley. Agopian was absent.

At 9:24 a.m. Councilman Flitner moved to exit Executive Session. The motion was seconded by Councilman Clark. Voting Aye were Clark, Flitner, Fairservis, Lally, Degenfelder and Bagley. Agopian was absent.

Upon reconvening in open session Councilwoman Degenfelder moved to grant the Motion to Dismiss. Chairman Bagley seconded the motion. No one voted aye. Voting Nay were Flitner, Clark, Lally, Degenfelder, Bagley and Fairservis. Councilman Agopian was absent.

After the vote on the motion to dismiss Councilman Fairservis asked the parties if there was any objection to the Petitioner's motion to amend the pleadings to change the name of the petitioner from Good Bentonite LLC to Brian Good. The respondent, DEQ, consented to the amendment of the pleadings. Councilman Clark moved to grant the motion to amend the pleadings. Councilwoman Lally seconded the motion. Voting Aye were Flitner, Clark, Lally, Degenfelder, Bagley and Fairservis. Councilman Agopian was absent.

The final motion to be argued was the DEQ motion to exclude expert witnesses. Because the Petitioner had not designated any expert witnesses the DEQ was instructed to raise any objection regarding expert testimony at the time it appeared that any testimony by Good witnesses could be considered expert testimony and the Council would take up the objection at that time.

Upon conclusion of the motion hearings the Council took evidence in the final hearing of the Good matter. Testifying on behalf of the Petitioner was Brian Good and Shawn Gustafson. Testifying on behalf of the DEQ was Brian Wood and Alan Edwards. After the testimony and receipt of the exhibits the hearing was closed.

Chairman Bagley moved that the bond for Permit 624 be set at \$169,000.00 total for a one year period from the date of the Order. The motion was seconded by Councilman Clark. The Council discussed the motion. Chairman Bagley explained that he calculated the bond as the \$154,000.00 calculated by the engineer for Good and the contingency bond of 10% for the one year. Councilman Flitner stated that he felt the testimony demonstrated that DEQ had overreached. That they did not have any sound evidence to demonstrate that the bond amount they set was correct. There was discussion held that the motion should contain language to direct Mr. Good to apply for revisions to the permit with the one year period.

At 3:51 Chairman Bagley moved to enter Executive Session for legal advice. The motion was seconded by Degenfelder. All of the members present voted Aye. Councilman Agopian was absent. At 4:16 Chairman Bagley moved to exit Executive Session. Degenfelder seconded the motion. All members present voted Aye. Councilman Agopian was absent.

After the Council reconvened in open session the council voted on the Bagley motion to set the total bond at \$169,000.00. Voting Aye were Flitner, Clark, Lally, Degenfelder, Bagley and Fairservis. No one voted nay and Councilman Agopian was absent.

Chairman Bagley directed the Council Executive Officer to carry the final item on the agenda, discussion of draft disclosure of possible conflict, over to the next meeting of the Council.

At 4:30 p.m. Councilman Fairservis moved to adjourn the June 15, 16, 2016 meeting. The motion was seconded by Degenfelder. All members present voted Aye. Councilman Agopian was absent.

Dated this 17 day of August, 2016

Paul M. Boyle
Chairman

A. Lawrence
Secretary