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2011 Report to Wyoming on Water Industry Needs, Solid Waste Planning, and Infrastructure

In 2007, our report to Wyoming concentrated on the need for increased communication between agencies, metering, rates (sustainability) and increased enforcement by the agencies. In 2008 our focus was on regionalization, rates (sustainability), water loss (conservation), technical assistance, operator retention, recruitment, and public health. In 2009 we continued our focus on sustainability and in 2010 we wrote on enforcement, regionalization and solid waste issues.

This year – *Interagency coordination and how the last 4 years are affected.*

Each year WARWS field technicians make in excess of 2,000 on-site technical assistance visits to Wyoming's 450+ community water systems, wastewater systems and solid waste facilities. Meeting with town councils, district managers, joint power boards, licensed water and wastewater operators and federal and state regulatory agencies produces a wealth of information on the status of Wyoming's water industry and waters affect on Wyoming. We provide our state's licensed operators with over 10,000 man-hours of continuing education, as well as nearly 2,000 man-hours of management training for councils and boards annually.

As we all know, Wyoming is a headwater state. Any issues within the water, wastewater, and solid waste industries may become everyone down stream's problems as well.

Construction jurisdictions -

Federal and state agencies are created with specific purposes in mind, and jurisdictional boundaries are set by statute. **Many agency responsibilities spill over to other agencies, creating the possibility of items falling through jurisdictional cracks.**

When EPA and DEQ accept applications and issue permits for new water or wastewater systems to be constructed by private developers, state statute requires that the Public Service Commission (PSC) regulate utility rates for these private systems. As far as WARWS knows, there is no mechanism in the DEQ rules or policies that would require them to inform the PSC to add the new system to the list of entities they are responsible for regulating water or utility rates.

When WARWS first became aware of this issue in 2008, the PSC had only a handful of systems on their lists, while EPA and DEQ lists exceeded 65 systems. I am not sure if the PSC list and the DEQ list have been reconciled as yet.

We also believe more coordination between agencies needs to take place, tying funding to project completion items. WWDC funding new well projects, that include abandonment of old wells, should trigger coordination between WWDC and the SEO to insure that the abandonment portion of the project is completed before final payments are made.

Funding and jurisdictional issues –

In addition to private financing vehicles (banks) available to municipalities and special districts, public works projects can be financed through USDA Rural Development, DEQ State Revolving Loan Fund (SRF), State Land and Investment Board (SLIB), Water Development Commission (WWDC), Wyoming Business Council (WBC), and/or the state legislature. Each of these groups has specific requirements for applications, which add a lot of time and cost to the application process for communities. **Some consistency between all the funding agencies would seem to be a goal to work towards in reducing time delays and unnecessary costs in the application process.**

Another issue that can arise in the funding process is how some of these projects fall under various jurisdictions for oversight. The State Engineers Office (SEO) is responsible for monitoring and regulating water rights and quantities in Wyoming. The DEQ is responsible for regulating construction of water projects, while EPA is responsible for water quality in Wyoming.

A common flaw we see in the oversight aspect is that many communities, or systems, believe the funding agency is overseeing technical aspects of their project. **With the exception of the USDA RD, no other funding agency provides technical analysis or oversight on state funded projects, other than cursory review of the project and contracts.**

Although we note that a state funded tank storage project has developed massive issues (global site failure), and the engineer on the project had inserted a “hold harmless” clause in the contract, complicating corrective action, even a cursory review should have protected the taxpayers money in discovering the lack of geotechnical analysis of the site. As I have told the community and others involved in this legal issue, \$1.69 and that hold harmless clause will get you a cup of coffee at a diner.

We may need to create processes where our state funding agencies, WWDC, SLIB, SRF, WBC, perform engineering and project oversight responsibilities, or insist that each project have a project engineer who answers to the community and performs the oversight of the construction engineer and contractors.

All too often we hear that the “state agency approved the project” and hence the community believes oversight has been completed. This is not the case, the state is simply funding the project, the community (who typically has no one who can perform professional oversight) is responsible for the project and for determining the need and solution presented for funding.

We believe regional systems can address many of the issues facing individual small systems, increasing regulation, population, operator shortages, water quality and quantity to name a few. We understand the jurisdictional arguments and management arguments, but the time has come. We support the legislature’s efforts on the Gillette regional system and encourage additional studies for other areas of concern.

Due to our sparse population, state government must be prepared to not only help with construction funding for these regional systems, but also might have to provide perpetual maintenance/operational funds as well. Sustainability will be an issue.

Managements must continue to implement conservation strategies, develop maintenance, betterment, and replacement plans all based on adequate rate structures that provide needed funding to achieve these minimum standards. **In short, systems must be self-sustaining so state funds can address projects that exceed a system's financial resources.**

As we stated last year, we are pleased to hear the Wyoming Water Development Commission, Department of Environmental Quality, and the Wyoming Business Council all discussing community funding for projects that include judging whether the community has addressed its needs internally. Have they installed meters, evaluated rates, evaluated taxing authority, investigated water loss amounts, and addressed maintenance and operational needs?

We continue to find in our travels that many elected officials are not equipped with the necessary knowledge of the operational responsibilities and liabilities they accept as system owners. The new rules for responsibilities for system owners, we hope, will force more governing officials to at least find out where the water plant in their community is! The more our state funding agencies ask questions about the system, the more the elected officials and/or managements must learn in order to address the funding concerns. Attendance at training classes conducted by groups such as WARWS, WWQ-PCA, and WAM to meet the education of elected officials and managements is dismal. **Management and Board Training should be addressed as part of the funding cycle.**

Solid Waste Planning and Implementation –

The results from landfill testing has substantiated what we all feared, our landfills are leaking and contaminating our water supplies. We must all brace for the costs of cleanup if we want to continue to enjoy clean, SAFE drinking water. The legislature has provided an initial down payment of \$15 million to start the process of closing, capping, and beginning the remediation of contaminated landfills. By all accounts this will be a \$250 million project over the next several years. Ongoing remediation will only add to this cost going forward.

Putting off addressing the current leaking landfills and not addressing the need for new regional lined landfills is only dooming our children and grandchildren to contaminated water requiring large sums for treatment and cleanup. We encourage communities to investigate all strategies for solid waste management, some of which have been in place in surrounding states for the last 20 years.

Meeting the requirement of Subtitle D of the Resource Conservation and Recovery Act (RCRA) is expensive, but the long-term costs of not meeting the requirements will plague generations. The clean-up from decades of poorly designed, located, and managed landfills in many of our smaller communities threatens Wyoming greatly. State agencies and the legislature need to hold fast and not let the fear of expense lessen the need to do solid waste planning AND IMPLEMENTATION correctly or we will not be able to sustain product quality.

The state may need to address waste pits currently exempt from federal or state solid waste regulations in areas of energy development. Many of these waste sites may be contributing to shallow drinking water

aquifer contamination. The energy industry may be money ahead to voluntarily start lining these waste pits or truck waste to approved landfills. In the long run, the energy industry would probably be money ahead to line or truck vs incurring the legal fees to combat environmental concerns by various groups.

Conclusion –

As we stated last year, no avenue can or will be successful if careful analysis and planning is not done to maximize our financial resources, utilize matching funds from federal or private sources to address aging infrastructure, aging professional workforce, and connectivity. Planning must balance the needs of energy development with community growth, affordable housing, land and water uses to position Wyoming as a destination for any company or family while keeping our “Forever West” lifestyle.

Specifically, Wyoming must continue to address: Board and management training, existing infrastructure improvements, system rate structures, coordination of funding sources, retention and recruitment of professional staff, and extend the need for certified operators or system training to all public water and wastewater systems. Wyoming must reconcile energy needs with community resources, further develop multi-jurisdictional communication between state agencies, develop public education programs for solid waste planning, encourage solid waste reduction and recycling, and continue to address source water and groundwater protection strategies.

We are encouraged that the Governor has identified many of these same jurisdictional cracks, and is in the process of developing his strategy for “sub cabinet groups”. We applaud his efforts and are available to help these sub cabinet groups identify the gaps based on our constant interaction with communities and special districts on a daily basis.

We are available to answer questions regarding this report and/or participate in solution discussions.

Respectfully,

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