

Montana Department of Environmental Quality
Waste Management and Remediation Division
Waste and Underground Tank Management Bureau
Solid Waste Section

**Response to Public Comments Received for the
Proposed Land Application Site - B&B Pumping**

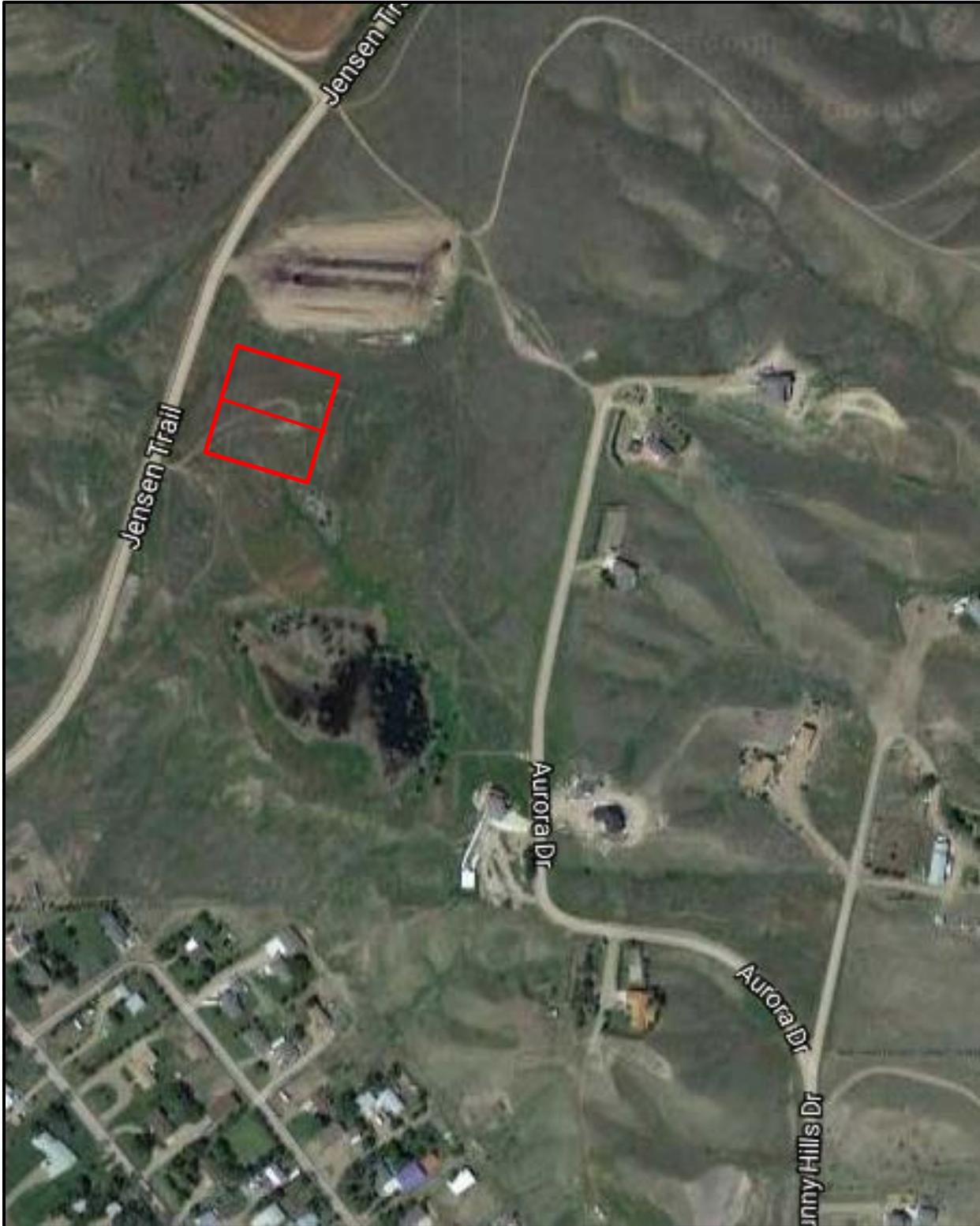
February 22, 2017

Mr. Bryce Lawrence of B&B Pumping submitted an application for a new land application site in Valley County. B&B Pumping proposes to land apply septage, portable toilet waste, sump pumpings, and graywater on the S+J Cattle LLC property in Valley county located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 33, T29N, R39E. The S+J Cattle property has approximately 2 acres available for land application (see Figure 1). Land application will occur at this site at a limited rate only on an "as-needed" basis.

The Department of Environmental Quality (DEQ) published an Environmental Assessment (EA) of the proposal on November 10, 2016 and a 30-day public comment period was initiated. The comment period concluded on December 10, 2016.

DEQ received three written comments on the proposed land application site during the public comment period. Comments received that are outside the context of the regulatory purview of DEQ's Septic Tank Pumper (STP) Program are not addressed here. Comments with similar content that are within the scope of this proposed action have been summarized and combined for the purpose of providing an inclusive response to comparable issues. The response is provided in the context of the proposed license action, that is, whether or not the proposal meets the requirements of the STP laws and rules. If the proposal meets the minimum requirements of the laws and rules, the site must be approved by DEQ's STP Program. However, DEQ may impose additional license conditions or restrictions if necessary to protect human health and the environment.

Figure 1: Land Application Site Boundaries (outlined in red)



DEQ's responses to the comments received during the public comment period are as follows:

Comment 1:

The dumping of septage, portable toilet waste, sump pumpings, and greywater as close to the subdivision boundary as the applicant requests, constitutes a public nuisance as defined by Section 45-8-111 Montana Code Annotated (MCA).

Response 1:

According to Section 45-8-111(1), MCA, a public nuisance means "*a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons...*" Further, according to Section 27-30-101(1), MCA, a nuisance is defined as "*Anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.*" However, Section 27-30-101(2) states "*Nothing that is done or maintained under the express authority of a statute may be deemed a public or private nuisance.*"

DEQ's Solid Waste Section administers the Septage Disposal and Licensure Law (SDLL) of Title 75, Chapter 10, Part 12, and MCA. The SDLL authorizes DEQ to adopt rules governing septic tank pumpers, including establishing standards for land application. The statute establishing the standards for licensure and the procedures for land application is found in the Administrative Rules of Montana (ARM), Title 17, Chapter 50, Subchapter 8. DEQ's regulation of septic tank pumpers and the associated land application activities requires that all pumpers be licensed and all disposal sites must comply with the requirements of the regulations. Further, according to ARM 17.50.809(1), land application activities are prohibited within 500 feet of an occupied or inhabitable building. The regulations do not establish a setback from a subdivision or property boundary. Because DEQ regulates septic tank pumpers and disposal sites, land application is an activity that is maintained under the express authority of a statute, and therefore is not considered a public nuisance.

Comment 2:

The seasonal pond located to the southeast of the proposed dump site will become a downslope issue for the dumped material to congregate and cause nutrient loading.

Response 2:

The seasonal ponding area in the southeast portion of the property is located approximately 350 feet from the closest corner of the proposed land application site. According to ARM 17.50.809 (2), *a person may not apply pumpings to land within 150 feet of any state surface water, including ephemeral or intermittent drainages and wetlands.* The proposed land application site meets these requirements and therefore complies with state regulations. The pumper will maintain the required setback distance from this ponding area, disperse the wastes using a splash plate, and incorporate all wastes within six hours

of application to ensure there are no impacts to surface water. If any seasonal ponding areas migrate closer to the proposed land application site, the applicant must maintain a distance of at least 150 feet from surface water.

Comment 3:

Residents located southeast of the land application site are concerned that odors from the land application activity will be blown their direction due to the common wind from the northwest in the area.

Response 3:

With proper site management odors will be kept to a minimum. While there may be an odor while wastes are being land applied, these odors are typically confined to the immediate vicinity of the application area. DEQ staff has performed numerous inspections of land application sites when wastes were actively being applied and odors were only noted during the application and were only detectable within 10-20 feet of the application area. Winds are typical in the Glasgow area and will disperse odors resulting from land application activities quickly. Although DEQ does not regulate odors, the presence of odors outside the land application area could mean that wastes have been over-applied or not incorporated as required. Either DEQ and/or the local county sanitarian would respond to odor complaints to determine if wastes have not been properly managed on the site.

Comment 4:

A search through the Montana Cadastral site shows numerous S+J Cattle land holdings in Valley County that are far from residential areas. Can not the applicant use one of these areas for a land application site?

Response 4:

DEQ does not become involved in the initial selection of sites proposed for land application sites. Site selection is solely the responsibility of the applicant. The purpose of DEQ's EA was to determine if the location complies with the regulations.

Comment 5:

The EA shows the setback distance between the western edge of the proposed land application site and the road, but does not show the setbacks between the eastern boundary of the site and the property line.

Response 5:

The setback requirements (ARM 17.50.809) prohibit:

- Land application within 500 feet of any occupied or inhabitable building.
- Land application within 150 feet of any state surface water, including ephemeral or intermittent drainages and wetlands.
- Land application within 100 feet of any state, federal, county, or city-maintained highway or road.
- Land application within 100 feet of a drinking water supply.

- Land application to land with slopes greater than 6%.
- Land application where seasonally high ground water is 6 feet or less below ground surface.

As noted in the response to Comment 1, the regulations do not establish a minimum setback from property lines or subdivision boundaries, but only for inhabitable or occupied buildings. The area proposed for land application meets the setback requirements noted above.

Comment 6:

It is believed that the site does not contain pasture grass like the EA states and that no agricultural activities have taken place on this property for many years.

Response 6:

The rules do not require the harvesting of a crop or vegetation from the site, but rather that vegetation be grown that will utilize the nitrogen that has been applied during the land application process. As long as the Annual Application Rate for the site is not exceeded, the vegetation will utilize the nitrogen stored in the soil from the land application process and will benefit from it.

Comment 7:

Will B&B have a tractor and plow present at the site at all times, so as to do the plowing promptly?

Response 7:

The regulations do not require that equipment used to incorporate septage be present on site at all times, but only that septage be incorporated within 6 hours of land application.

Comment 8:

The caption for figure 4.2 and 4.3 indicate that the site is indicated by red lines, but no such lines are shown.

Response 8:

Figures 4.2 and 4.3 in the Final EA have been updated to correctly show the site outlined in red.

Comment 9:

Adjacent land owners are concerned about the potential decrease in property values due to the adjacent land application activities.

Response 9:

DEQ has found no evidence that indicates properties adjacent to land application sites have experienced diminishing property values due to land application activities. The activities

performed during land application mimic those of ranching and farming activities that are commonplace in Montana.

Comment 10:

There should be stakes or other indicators to remind B&B of the boundaries of the two dump sites to avoid unauthorized expansion of the dumping area.

Response 10:

Land application will be limited to only the areas approved by DEQ. B&B Pumping will establish the approved boundaries of the land application site with either flags, stakes, or rock cairns to ensure wastes are only applied within the approved areas. The site will not be used until the boundaries have been placed and approved by either DEQ or the local county sanitarian.

Comment 11:

Unattractive sights will be visible and possible vectors may be attracted until the site is plowed.

Response 11:

Land Application of septage will be applied using a mechanism to disperse the waste in a wide, thin, even layer at a beneficial rate. The regulations require all septage be incorporated within 6 hours of land application. While the area where land application has occurred may be visible from a distance, the type of material land applied will be indistinguishable.

Comment 12:

With only a two-strand barbed wire fence, dogs or other wildlife might be harmed by the application of septage to the area.

Response 12:

Grazing animals tend to avoid septage land application sites for multiple reasons; the presence of human scent and human activity. Based upon the size of the proposed land application site, the minimal volume of septage the site can accommodate, and the scent of human activity, wildlife will have sufficient acreage available of similar habitat in the vicinity to accommodate them if they are forced to relocate. Further, all non-putrescible litter must be removed and wastes incorporated within 6 hours of application. Removal of litter from the site will remove any attraction that domestic animals might have to the waste.

Comment 13:

What monitoring is the DEQ proposing to do for these proposed sites?

Response 13:

DEQ requires all licensed pumpers submit copies of their disposal records twice per year. These records are reviewed to ensure wastes are not over-applied. In addition, DEQ performs periodic, unannounced site inspections to verify each site is operated and maintained according to the regulations. DEQ and the Valley County Sanitarian may also perform inspections to determine the validity of a complaint resulting from land application activities at the site.

VIII. Conclusions and Recommendations

DEQ believes that it has thoroughly reviewed the permit application and supplemental materials for the land application of septage, portable toilet waste, and sump pumpings on the S+J Cattle property. DEQ has also reviewed and analyzed all written comments provided during the public comment period, as documented herein. Based on the review of all the materials and comments submitted, DEQ believes that approval of the land application site is protective of human health and the environment.