

RESOLUTION NO. # 7
Series of 2005

RESOLUTION DENYING SPECIAL REVIEW USE PERMIT #SRU 04-009 TWIN
LANDFILL

THAT WHEREAS, Twin Landfill Corporation of Fremont County (hereafter "Applicant") has made application for an amendment to the existing Certificate of Designation and Special Review Use Permit, file SRU 97-12, pursuant to 8.2 of the Zoning Resolution of Fremont County to allow alum sludge disposal in the existing landfill and to allow for the disposal of asbestos in designated areas, which application has been designated as file # **SRU 04-009 Twin Landfill**; and

WHEREAS, a notice containing the specific request, proposed use, date, time, location, telephone number of the Fremont County Department of Planning and Zoning (hereafter "Department"), and a site plan and vicinity map were mailed at least fourteen (14) days prior to the date of the public hearing, by certified mail, return receipt to the Department, to all property owners within five hundred (500) feet of the boundaries of the subject parcel and to appropriate reviewing agencies; and

WHEREAS, a notice containing the specific request, proposed use, date, time, location, and telephone number of the Department where additional information may be obtained, was posted on the property for at least fourteen (14) continuous days prior to the public hearing; and

WHEREAS, a notice of the public hearing was published by the Department, in a newspaper of general circulation in Fremont County, at least fourteen (14) days prior to the public hearing, and which contained the specific request, time and place of the public hearing, and an explanation of the proposed use and its location; and

WHEREAS, the Board held a public hearing concerning said application on February 22, 2005 at which time public comments and evidence were considered, including all materials contained as part of the application and which were in the Department's file concerning the application; and

WHEREAS, it appears that the amendment to existing Special Review Use Permit SRU 97-12 is not appropriate or acceptable;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Fremont County that the application for amendment to Special Review Use Permit SRU 97-12 should be DENIED and in support of such denial, the Board makes the following findings:

1. The Board's findings concerning the Application apply both to the request for acceptance of alum sludge and asbestos, unless the specific finding states otherwise.

2. The Board is persuaded that Twin Landfill Corporation has demonstrated either an inability or unwillingness to anticipate potential health risks surrounding the acceptance of asbestos and/or alum sludge and address the same in its Application. A risk assessment study was not conducted and Les Liman, representing the Applicant, indicated that such a study was not performed because it was cost-prohibitive. The Applicant noted in its Application that once the asbestos is in the landfill, there is no further risk, however this conclusory statement is unsupported by any scientific or other evidence.

3. The Board notes that Twin Landfill Corporation has historically demonstrated a lack of responsibility in its handling of the coal fly ash at the Phantom Landfill. Particularly, the Colorado Department of Public Health and Environment (CDPHE) has noted on several occasions, following inspections of the landfill, that blowing dust from fly ash has posed a problem because of the way the ash was being handled on site. Liman's remarks at the public hearing noted that fly ash is a difficult material to handle. The Board notes that asbestos and alum sludge both require special handling and are also difficult materials to handle. The Board notes that both asbestos and alum sludge pose significant health risks when airborne. Given the historical problems with the fly ash, the Board is not confident that the Landfill is capable of handling difficult materials.

4. Windy conditions occur regularly at the Twin Landfill site, posing a problem for handling materials that are a public health risk when airborne. There are residential properties that lie downwind of the site that would be adversely affected in the event that asbestos or radioactive dust was carried in the wind. It is undisputed that wind and dust have caused significant problems for the landfill since its inception.

5. The Board is concerned about the incomplete Application submitted for its consideration. This demonstrates lack of attention to detail, which is the quality that is essential to effective handling of asbestos and alum sludge. Examples of the incompleteness of the Application include, but are not limited to:

- a. Lack of a thorough plan and procedures for emergency spills and other situations;
- b. Inconsistencies between the Application reviewed by the State and the Application submitted for consideration by the County;
- c. Lack of a risk assessment study;
- d. Failure to clearly differentiate the issues surrounding the handling of asbestos versus the handling of alum sludge;
- e. The intent of the Applicant in handling the alum sludge as stated in the September 16, 2004 letter to the CDPHE is inconsistent with the requirements set forth in the approval letter dated October 6, 2004. No resolution of these inconsistencies was offered by Applicant.

6. Transportation of asbestos material to the landfill poses a risk to the residents of Fremont County. Applicant states that the generator of the material retains responsibility for the material, even after disposal in the landfill. The Board is not convinced that the transportation of asbestos material, both from originations within and without the county is monitored or regulated in any reliable manner, to prevent material from escaping while in transit or in the event of an emergency spill or other similar accident. Approval of this request will undoubtedly result in an increase in the amount of asbestos material hauled through the county.

7. The Board is concerned with the lack of clear direction from CDPHE concerning the health and safety protocols for the residual placement of alum sludge. Additionally, the Board is concerned that the CDPHE will issue only limited approval (one year) without having a site-specific risk assessment study performed.

8. Based on the limited information available, the Board finds that the Application fails to comply with certain recommendations from the CDPHE for the handling of alum sludge, in that the alum sludge will be disposed within the disposal area of the public, will be stockpiled for a period of time, will not be covered during stockpiling. Additionally, there is no evidence before the Board to support a finding that the time period for stockpiling of the alum sludge will be no longer than necessary.

9. The Board is mindful of and concerned with the recommendation for denial from the Department of Planning and Zoning, based on staff review of the application. The Board adopts as its findings the problems identified by the Department of Planning and Zoning concerning the unloading and covering of the asbestos in an area located at least 300 feet away from persons or traffic, the stated intent of the Applicant to train only one person in the handling of the material which results in a procedural and protocol breach if asbestos is brought to the landfill when the trained individual is absent, and the reliance of the Applicant upon the statements and representations of the hauler concerning the load, rather than relying on inspections of the load brought to the Landfill (Applicant anticipates random checks only). To the extent the Department's recommendations and comments supporting denial are consistent with the findings set forth herein, the Board adopts such recommendations and comments.

10. The Board is mindful of the lack of public support for this Application. Aside from comments from the City of Canon City and others with direct interest in asbestos or sludge disposal, no citizens or entities have expressed support for the landfill's acceptance of alum sludge or asbestos. The Board requests and receives public comment to address the needs and concerns of the community and approval of the Application would be inconsistent with such needs and concerns.

BE IT FURTHER RESOLVED, that this formal resolution denying Applicant's request for Amendment shall be the final, appealable decision by the Board of Commissioners for Fremont County, effective on the date adopted and signed by the Board.

The Fremont County Zoning Resolution allows the Applicant to resubmit an application for special review use permit, or amendment thereto if there is valid new evidence or a substantial change in conditions of the original application. (Zoning Resolution, Section 8) The Board hereby states and clarifies that under such provision, the new evidence must be evidence that could not have been discovered in the exercise of reasonable diligence and produced at the time of the initial application; the new evidence must be material to an issue before the Board and finally, the Applicant should establish that the new evidence, if considered by the Board, would probably change the decision reached by the Board.

Commissioner Mike Stiehl moved the adoption of the foregoing Resolution with a second by Commissioner Ed Norden. The resolution was approved by a unanimous vote.