

THE STATE OF WYOMING



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August 8, 2006

**RE: Petition to Amend Wyoming Water Quality Rule Chapter 2, Appendix H
Docket No. 05-3102**

Dear Interested Parties:

As you are aware, the Environmental Quality Council (EQC) made a decision on July 17th, 2006 to proceed with a citizen's petition for rulemaking concerning Chapter 2 of the Water Quality Rules under the Administrative Procedures Act. It has come to our attention that there may well be considerable confusion on the rulemaking process for citizen's rulemaking. The purpose of this letter is to outline the process we intend to use in this case.

First let me explain the motion that was adopted by the EQC and which forms the basis of the rulemaking at hand. Initially the EQC accepted a Powder River Basin Resource Council (PRBRC) petition to initiate rulemaking in February. In April, Wyoming's Attorney General, Pat Crank (AG), issued a formal opinion pertaining to this petition. In May, PRBRC filed a document titled "Petitioners First Status Report" offering alternative language to accommodate the concerns articulated by Attorney General Crank. Incidentally, each of these documents is available for your review on the EQC website, <http://deq.state.wy.us/eqc/index.asp>. The specific reference number for this rulemaking is **05-3102**.

The EQC met in July to consider a motion to dismiss the PRBRC petition as well as the new language put forth in the "Status Report" which the EQC considered as a proposed amendment to the original petition. The request to dismiss was denied. The EQC moved to proceed to rulemaking on the amended language in the original petition.

As of this writing, the EQC has not scheduled a date for the public hearing on these rules. There are a number of contested and rulemaking cases already on the EQC calendar. This case will be set at the first opportunity. Public notice of the date and location for the hearing will be published, mailed to the WQD and EQC mailing lists, and posted on the EQC website 45 days in advance of the hearing. The posting and publication of notice for this hearing will be done by the Water Quality Division. In addition to publication of notice, a notification will be sent to the WQD mailing list and the EQC mailing lists. These rules will not go through the advisory board process as there has been a thorough vetting of these rules at two previous public meetings.

At the public hearing, citizens who brought the petition will have the opportunity to explain the rule package, to provide witnesses and/or technical experts to explain and support the rule change. They should recap the need for the rule and explain how this rule change will solve the environmental issue that was identified. Specifically, the citizens will want to look at 35-11-302(a)(vi)(A through E), which states five items that need to be considered when promulgating water quality rules. It is these five criteria that the EQC will also be using to evaluate the rule language. They are:

- (A) The character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected;
- (B) The social and economic value of the source of pollution;
- (C) The priority of location in the area involved;
- (D) The technical practicability and economic reasonableness of reducing or eliminating the source of pollution; and
- (E) The effect upon the environment.

Public testimony will be taken by any interested parties who wish to comment on the rule. In rulemaking an analysis of public comment may be prepared by the Environmental Quality Council as an additional tool to review the proposed changes.

The role of the Water Quality Division is to provide their technical and professional expertise to the EQC during the hearing and as questions arise. The EQC appreciates the Water Quality Division's opinion on the rule and certainly will ask for it during the public hearing.

There have been questions concerning the jurisdiction of the EQC on this matter. As mentioned above, the Attorney General has issued an opinion on that topic which is attached. The EQC had additional questions for the AG's office which were discussed in a closed session under attorney-client privilege on May 11, 2006. A letter dated July 12, 2006 was issued by the AG in private correspondence to the EQC subsequently. Upon further review, the EQC has decided this letter provides valuable guidance pertinent to this rulemaking that would benefit all parties involved. Accordingly, we have attached this letter for your use. If there are changes to the rules as a result of this process, it is required that these rules are within the jurisdiction of the EQC's authority. We believe the Attorney General's guidance will help everyone understand those boundaries.

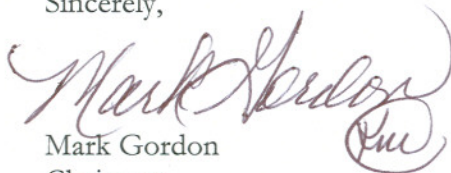
If changes to the rules occur, the rules will go through a process that is dictated by statute and the Secretary of State's office before the rules become law. The rules must be signed by the Governor and filed with the Secretary of State's office as the final step in the process.

We hope this clarifies the process that we have begun. There are many challenges involved and the proposed rules are far from being approved at this time. The citizen's petition has demonstrated an environmental concern that the EQC has chosen to consider for potential rulemaking. The decision made on July 17, 2006 only reconfirmed the rulemaking process begun in February. It does not assure that any changes will be made to Chapter 2 of the Water Quality Rules. It only guarantees that the issue will receive further scrutiny and discussion by the EQC and all parties that participate. The EQC encourages your participation as the views of the public are invaluable to us as we move forward.

As referenced above, the two documents issued from the AG's office this year are enclosed. In addition, we have also attached an informal AG opinion dated June 17, 2003 which pertains to rulemaking. By attaching these documents, we intend provide some guidance to the rulemaking process as it applies to citizen petitions as well as access to the complete background of this case.

Thank you for your interest in this matter. Again please remember to view the EQC website at <http://deq.state.wy.us/eqc/index.asp> for additional materials and information on this rulemaking.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Gordon". The signature is written in a cursive style with a large, looping flourish at the end.

Mark Gordon
Chairman

cc: Bridget Hill
Mike Barrash
John Wagner
John Corra