



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

January 5, 2007

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Mr. Mark Gordon
Chairman
Wyoming Environmental Quality Council
122 W. 25th St.
Herschler Bldg., Rm. 1714
Cheyenne, WY 82002

Terri A. Lorenzon, Director
Environmental Quality Council

RE: Citizen Petition for Rulemaking – Powder River Basin Resource Council et al – Revised Version – WQD Chapter 2

Dear Mr. Gordon:

The revised petition which you will hear on January 17-18, 2007 has two major parts. The first is contained in Appendix I item (a). This language would have the effect of prohibiting most, if not all coal bed methane (CBM) discharges to the surface.

The second part is contained in Appendix I, (b)(vii), items (B), (C), and (E) and is a proposal to alter the effluent limits for CBM produced water discharges.

The Water Quality Division's (WQD) advice to the Council on these two parts of the petition is as follows:

CBM Discharge Suitability (Appendix I(a))

The WQD opposed the original petition because the agency does not have the legal authority to regulate water quantity if there is no water quality basis for such regulation. That issue has been addressed in Appendix I(a)(ii) of the revised petition. That language recognizes that the agency has the authority and the duty to regulate water quantity when there is a connection to water quality. While the agency has no objection to the specific wording in (a)(ii), the section is not necessary. The agency always considers the effect of water quantity on water quality when drafting permits for discharge to the surface.

The agency's primary concern with the revised petition begins with Appendix I(a)(iii). The petitioners have taken the definition of "pollution" from section 35-11-103(c)(i) of the Environmental Quality Act (EQA), put it in the regulation, and have essentially stated that no CBM operator can discharge effluent which meets the definition of "pollution" or would cause "pollution" in the receiving stream.



This was clearly not the intent of the authors of the EQA. Sections 35-11-301(a) and (a)(i) of the EQA state that there can be no discharge of pollution “except when authorized by a permit issued pursuant to the provisions of this act”. Section 302(a)(ii) of the EQA requires the establishment of effluent standards and limitations specifying the maximum amounts of pollution that may be discharged. The primary purpose of the EQA is to require the DEQ to control environmental degradation by establishing permitting rules, regulations, processes, guidance and policy that allow “pollution” or changes to the environment to occur, but within clear and defined boundaries. Section 35-11-302(a)(vi) of the EQA states that the agency is to consider the “facts and circumstances bearing upon the reasonableness of the pollution”. It is clear from these various sections of the EQA that it is not the intent to prohibit every discharge or activity which meets the definition of “pollution”, but to adequately control such discharges.

The language in the revised petition would prohibit any CBM discharge if there were any physical, chemical, or biological alterations to the receiving water caused by the discharge. The petition goes on to state that no discharge may cause the release of any “chemical or chemical compound” (only distilled water meets this definition). There is probably no case where a CBM discharge would be able to meet all of the conditions of this section of the proposed rule. It is a standard to which no other industry or type of discharger is being held.

Finally, it should be noted that there is at least one proposed bill (Senate File 55) being considered in the current legislative session which attempts to address the discharge quantity issue. If the ultimate purpose of the revised petition is to address the issue of damage from excess discharge quantity, it may be prudent for the Council to delay any rule making in this area pending the outcome of deliberations on that bill.

Effluent Limits (Appendix I(b)):

The WQD recommends that the Council not take action on this portion of the petition for three reasons:

1. WQD has entered into a contract with Dr. Raisbeck at the University of Wyoming to conduct a through literature search on the issue of water quality for stock and wildlife watering (suitability for stock and wildlife watering is the basis for the produced water effluent limits). A copy of the scope of work for that contract has been provided to the Council and, as you are aware, the project is scheduled for completion by July 1, 2007. It is the position of the WQD that it would be premature for the Council to change effluent limits, which have been in effect for thirty years, when a rigorous and through evaluation of the issue is only six months from completion. Upon completion of Dr. Raisbeck’s report, it is the intention of the WQD to discuss with the Council whether the report includes information which should result in proposed changes to produced water effluent limits by the agency.
2. WQD has concern that the petition would set different limitations for produced water from conventional oil and gas versus produced water from CBM. The basis

for the limits is suitability for stock and wildlife watering and the use is the same whether the water originates from conventional oil and gas or from CBM production. Why would water at 5,000 mg/l be suitable if it came out of the end of a conventional produced water pipe and not suitable if it came out of the end of a CBM pipe? It should also be noted that this is not strictly a geographic issue. There are 347 currently active conventional produced water discharge permits in the greater Powder River Basin (PRB), and there may be many CBM discharges outside of the PRB in the future.

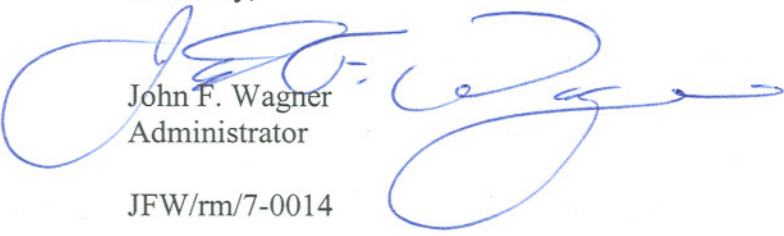
3. The justification for changes to the effluent limits, which was provided in the original petition, was limited to just a few scientific literature references. If the Council is going to make changes which would be of such major significance to Wyoming producers and landowners, those changes should be based on a complete and thorough literature review and go through the full rulemaking process.

Summary

The WQD recommends that the proposed revised petition not be approved. However, the agency does recognize the importance of evaluating the adequacy of the water quality criteria for stock and wildlife watering and suggests that this issue be discussed with the Council when Dr. Raisbeck's report is complete.

Please note that should the Council adopt part (a) of Appendix I in its current form, it would essentially prohibit CBM discharges to the surface and there is probably no need for the remainder of the Appendix.

Sincerely,


John F. Wagner
Administrator

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cc: EQC Members
DEQ Director John Corra
EQC Director Terri Lorenzon
Sr. Asst. Attorney General Mike Barrash
Bill DiRienzo, WQD Cheyenne