



# 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 24, 2007

# FILED

JAN 25 2007

Mr. Mark Gordon, Chairman  
Wyoming Environmental Quality Council  
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 purpose of this letter is to emphasize and clarify the position of the DEQ with regards to the above petition. This letter is being written following our participation in the Council's January 17 & 18 public hearing on the petition.

I wish to make four points:

- I appreciate the Council's decision on delaying action on the stock and wildlife limits pending completion of Dr. Raisbeck's work. I think that was the proper and prudent course of action.
- I continue to believe that the petition would have the effect of prohibiting the surface discharge of produced water from coal bed methane (CBM) operations. While the petitioners state that is not their intent, the language in the petition is clear and unambiguous. It would require that an application for CBM discharge show "that the produced water shall not cause alteration of the physical, chemical, or biological properties of any waters of the state". No discharger can meet this requirement. If a discharger could meet this requirement, no permit would be needed.
- Regulation of water quantity by the DEQ has been proposed in Senate File 0055. The Senate Minerals Committee heard testimony on that bill and voted the bill down on January 19, 2007. Members of that committee indicated they were voting against the bill primarily because the Coal Bed Methane Task Force was addressing the issue and the recommendations from that task force are not due until late 2007. I would suggest that the Council follow the lead of the Minerals Committee and await the recommendations of the CBM Task Force.

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- The petition creates a somewhat ambiguous requirement for the submission of credible data that is not necessary. A full discussion of this issue is covered in the attached memo from Bill DiRienzo.

### **Summary**

You have taken an incredible amount of testimony regarding this rule making and will expend a significant amount of energy in your response. I suggest that you carefully review the Administrative Procedures Act and any rules adopted pursuant to that act and consult the Attorney General as how best to proceed.

Unless it is the Council's intent to prohibit surface discharge of CBM water to the surface, the proposed rule is unworkable. It may very well be appropriate to postpone rule making until the Coal Bed Methane Task Force has evaluated the statutory and regulatory gaps that, in my opinion, are the root cause of the issues you are trying to resolve. I anticipate that statutory changes and/or recommended rule making regarding CBM discharges will be the outcome of the Task Force's work.

Sincerely,



John V. Corra

Director

Attachment: DiRienzo Memo

cc: EQC Members  
WQD Administrator John Wagner  
Bill DiRienzo, WYPDES Permit Manager  
Terri Lorenzon, EQC Director  
Mike Barrash, Sr. Asst. Attorney General



## Memo

**To:** John Corra, DEQ Director

**Through:** John Wagner, WQD Administrator

**From:** Bill DiRienzo, WYPDES Manager

**Date:** January 22, 2007

**Subject:** Credible Data Issue with Regards to PRBRC Petition

In addition to the requirements provided in Chapter 2, Section 5, the petition would require a permit applicant to submit "credible data" establishing that the discharge: 1.) shall be good enough to support agricultural uses and be actually put to such use; 2.) quantity shall not cause unacceptable water quality; and 3) shall not constitute "pollution" as defined in the statute. The concept of "credible data" as defined in the statute is not applicable for the purposes of the petition. The Environmental Quality Act defines "credible data" (*WS 35-11-103 (xix)*) and also prescribes its use for the purpose of designating uses of surface water and assessing the attainment of those designated uses (*35-11-302 (b)*). Both sections of the statute were created to resolve issues associated with federal requirements to identify impaired waters and establish Total Maximum Daily Loads (TMDLs) for the pollutants of concern on those impaired waters. These statutory credible data requirements have no meaning in the context of permit applications or reporting which is the purpose of the petition.

Chapter 2, Section 5 already contains sufficient data requirements and authorities for the proper administration of the discharge permitting program. Data quality assurance measures are addressed in Section 5 (c)(i)(P) and are intended to conform to the federal methods and procedures provided in 40 CFR part 136. Additional detail regarding the necessary data relative to agricultural water quality is contained in the Agricultural Use Protection Policy that is currently proposed as a new appendix H in Chapter 1 of the Water Quality Rules and Regulations. That policy is intended to ensure that permitted discharges are of good enough quality to support agricultural uses as described in Chapter 1, Section 20.

The regulation of discharge quantity in relation to its effect on water quality is an important consideration in CBM permitting. The agency currently addresses erosion and stream stability on a watershed scale in ongoing efforts to develop watershed-based general permits. In each watershed, channel capacity studies are developed to answer the question of how much additional water can be discharged without significant structural damage to the receiving stream systems. Based on an analysis of these studies, permit conditions are developed to manage the volume and timing of discharges along with the establishment of monitoring sites and mitigation requirements. Additionally, an assimilative capacity policy is being developed to address the cumulative loading of salt and sodium to the main stem rivers in the CBM development area. Our ability to address these complicated issues is not hampered by a lack of authority to require the submission of necessary data on permit applications. We believe that authority already exists in the regulations. The petition simply creates a somewhat ambiguous requirement for the submission of credible data that is not necessary.