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FILED

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Ms. Sara Flitner
Hearing Officer, Environmental Quality Council
122 West 25th Street
Herschler Bldg., Rm. 1714
Cheyenne, Wyoming 82002

Terri A. Lorenzon, Director
Environmental Quality Council

RE: Docket No. 05-3102: Rulemaking, Chapter 2 Appendix H

Dear Ms. Flitner:

Devon Energy Production Company, L.P. ("Devon") appreciates the opportunity to comment on the amendments proposed to the Department of Environmental Quality ("DEQ") Water Quality Rules, Chapter 2, Appendix H. Devon produces oil and natural gas throughout the state of Wyoming, including a significant amount of coal bed natural gas ("CBNG") from the Powder River Basin.

Devon is a participant in the INDUSTRY RESPONDENTS COMMENTS TO PETITIONERS' PROPOSED APPENDICES "H" AND "I" AS PUBLIC NOTICED FOR THE JANUARY 17-18, 2007 RULEMAKING HEARING and the INDUSTRY RESPONDENTS' SUPPLEMENTAL COMMENTS TO RECORD JANUARY 17-18, 2007 RULEMAKING HEARING filed by a group of interested Wyoming oil and gas producers. Devon is also a member of the Petroleum Association of Wyoming ("PAW"). By these comments, we join in the comments and presentations submitted by both groups and wholly incorporate them here, as well as Devon's previous comments in this matter. In addition, Devon asks the Council to consider the following comments and requests that they be made a part of the record in this matter.

I. The proposed rules, as written, ban all discharges

Despite the Petitioners' claims to the contrary, the current version of the proposed rules prohibit CBNG water discharges. This is because the rules prevent DEQ from issuing any permits for the discharge of water from CBNG production unless an applicant can prove that the discharge does not meet the statutory definition of "pollution," which has been inserted in the proposed rules at Appendix I, Section (a)(iii). However, DEQ and the Petitioners contend that water discharges do meet the definition of pollution in all circumstances except where the water is distilled. Consequently, the rules require CBNG producers to prove a regulatory impossibility.

In fact, if the water being discharged was distilled to the point of purity -- containing no chemical or chemical compound -- a discharge permit would not be necessary. Under Wyoming's Environmental Quality Act ("EQA"), if produced water could meet the standards set out in Appendix I, Section (a)(iii),

January 29, 2007

Devon Energy Production Company, L.P.

Re: Docket No. 05-3102: Rulemaking, Chapter 2 Appendix H

Page 2 of 3

CBNG producers could arguably discharge as much water as the waters of the state could carry *without* a permit. This is because the EQA does not prohibit the discharge of *pollution* without a permit, not the discharge of pure water. WYO. STAT. § 35-11-301.

We realize that the EQC has heard hours of testimony and read hundreds of comments from individuals, including landowners and oil and gas company employees, consultants, and attorneys, who are concerned about the devastating impact these rules would have. We also recognize that some members of the council have stated that it is not their intent to shut down the industry. However, DEQ, the agency who would be charged with administering this rule, believes that the language must be read to prohibit all discharges. The Petitioners have provided nothing to alleviate the fears of those who testified at the hearing and submitted written comments.

II. The credible data standard is not appropriate

The EQA specifically defines the term “credible data” to be “scientifically valid chemical, physical and biological monitoring data collected under an accepted sampling and analysis plan, including quality control, quality assurance procedures and available historical data.” WYO. STAT. § 35-11-103(c)(xix). The only place where the EQA provides that credible data must be used is in WYO. STAT. § 35-11-302(b). This statute specifically recognizes that obtaining “credible data” in ephemeral or intermittent watercourses is difficult, if not impossible.

The administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations and standards to promote the purposes of this act. The rules, regulations and standards shall prescribe:

(i) **A schedule for the use of credible data in designating uses of surface water** consistent with the requirements of the Federal Water Pollution Control Act (33 U.S.C. sections 1251 through 1387). **The use of credible data shall include consideration of soils, geology, hydrology, geomorphology, climate, stream succession and human influence on the environment. The exception to the use of credible data may be in instances of ephemeral or intermittent water bodies where chemical or biological sampling is not practical or feasible;**

(ii) The use of credible data in determining water body's attainment of designated uses. **The exception to the use of credible data may be in instances where numeric standards are exceeded, or in ephemeral or intermittent water bodies where chemical or biological sampling is not practical or feasible.**

The “credible data” standard does not apply in any other context than in stream classification, as DEQ representatives testified on January 18, 2007. Several EQC members also expressed concern. Even Petitioners acknowledge that a full set of data may not be possible, saying “granted they don’t have to use a complete set of data. But not using a complete set of data doesn’t mean using no data.” Unedited Realtime Rough Draft Transcript, EQC Hearing, January 18, 2007. Yet, the petitioners use a term

January 29, 2007

Devon Energy Production Company, L.P.

Re: Docket No. 05-3102: Rulemaking, Chapter 2 Appendix H

Page 3 of 3

which again takes the extreme, requiring the a full set of data necessary for *stream classification*, rather than defining the partial set of data that they may be demanding.¹

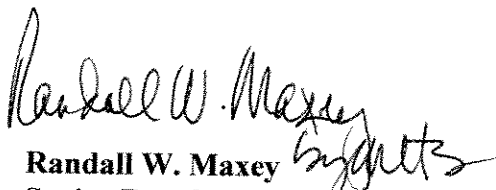
Furthermore, not only does this new “credible data” standard apply to determining the amorphous “unacceptable” impacts to water quality, it also requires proof of the water’s use in agriculture or wildlife propagation. Here, the petitioners also claim that the rule does not really mean what it says, but that they are just looking for a landowner to say they are using the water. Such a statement, however, does not meet the definition of “credible data.” Rather, to meet the “credible data” standard would require a significant intrusion into the privacy of landowners who use the water. We do not believe our landowners would want to disclose the location and quantity of wildlife that are using the water from the streams and reservoirs located on their property.

CONCLUSION

In conclusion, Devon urges the Council to summarily reject the rules proposed by the Petitioners. The rules propose to ban all CBNG water discharges in the state, which is certainly not the appropriate response to the complaints of the Petitioners. Despite the Petitioners latest claims that this is not their intent, they have failed identify language that would actually address their issues without harming the thousands of individuals who benefit from the water discharges and natural gas production. As was stated in testimony at the January 17 and 18 hearing: the Petitioners have a remedy if they or their property have been damaged. However, those that would be hurt by this rule do not have a remedy for the loss of benefits they will experience if this rule is enacted.

Thank you for the opportunity to submit our comments. Please do not hesitate to contact me should you have questions or require additional information.

Sincerely,


Randall W. Maxey
Senior Regulatory Specialist

¹ In addition, this comment implies that DEQ makes permitting decisions without any data, which is simply not true.