



OWNED AND OPERATED BY
WESTERN FUELS-WYOMING, INC.

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February 14, 2007

Mr. Mark Gordon, Chairman
Environmental Quality Council
Herschler Building - Rm 1/14
122 W. 25th Street
Cheyenne, WY 82002

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Terri A. Lorenzon, Director
Environmental Quality Council

Re: WQD Proposed Agriculture Use Protection Policy , Docket No. 06-3819

Dear Chairman Gordon,

Western Fuels-Wyoming, Inc. is the owner and operator of the Dry Fork Mine in Gillette, Wyoming. We are commenting today on the proposal before the Environmental Quality Council to approve the Agricultural Use Protection Policy as a Policy or Rule. It is our understanding that the EQC has four options before them today: approve this as a policy, approve it as a rule, approve it as a policy or rule with modifications, or disapprove of it altogether.

The Dry Fork Mine WDEQ/LQD permit contains a unique set of agreements which are intended to benefit a local stream (Moyer Creek). While the proposed policy/rule appears to intend that our operation's historical discharges are exempt from the agricultural use policy, we are concerned that during implementation of the policy or rule, an assertive regulator could misconstrue the language to force its implementation on some or all of our future discharges. If the proposed language were inadvertently applied to our agreement to *continuously* supplement flows in this Creek, we might not be able to comply at all times with the discharge standards contained in this proposed policy/rule without installing/operating a very costly water treatment system. Further, even with such a treatment system, upset conditions are not exempt under the current proposed policy/rule. One of the only sure things in life is that equipment will fail and will need to be occasionally taken offline to be maintained. During that period, our continuous discharge water may not meet these standards.

We also would like the Council to be aware that these treatment systems are not as simple as relocating a Texas-designed oilfield water treatment system to Wyoming and plugging it in. They require large heated and pressurized buildings, significant electrical infrastructure to operate the motors, compressors, and heaters, compressed air water blowout systems, MSHA approved motors and electrical disconnects, and MSHA specified and trained operators. The supplemental heating and safety related equipment typically far outweighs the treatment system itself in cost. Just having a system of this magnitude available requires us to spend thousands each month to keep the power available "on-demand" and the ever-changing labor force operators trained. There must also be roads and systems to dispose of waste sludge.

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We are concerned that, if applied to us, the policy/rule may cause us to abandon our voluntary agreements to supplement flows to this Creek. Doing so would have a negative impact on local wildlife and downstream users, and could impact the viability of our LQD permit to mine. If we must limit or curtail our legal and high quality discharges into this creek, it may impact our operation to the point of reducing our ability to recover all our leased and legally mineable coal. Ultimately, this may result in a takings issue. Worse, if coal recovery were impacted, each ton of coal lost would reduce revenues to the federal, state and local economy by approximately \$1.86¹. Losses to our mine employees would be on the order of an additional \$1/ton. Treating prior to supplementing flows into the Spring could severely impact our ability to compete with other mines in the PRB. Because of these reasons, we specifically request that our supplemental flows into Moyer Creek be exempted from this rule.

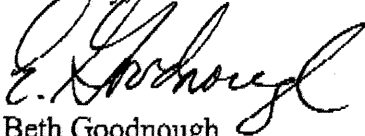
If our activities at this Creek cannot be specifically exempted, we believe this policy/rule needs to at least be modified. The policy/rule should be modified to make allowances for upset conditions, in order to exempt all operators who might be inadvertently discharging while their treatment systems were unknowingly out of service.

We request that this proposed policy/rule not be implemented as currently written for the following reasons:

- This policy/rule appears to be very costly to implement. A cost/benefit analysis should accompany a proposal of this magnitude.
- This policy/rule is more stringent than Federal rules; therefore, it could impact the ability of Wyoming coal to compete.
- This policy/rule impacts different areas of the State more than others and again could impact the ability of certain mines to compete against other mines within the State.
- As this program appears to benefit only a few agricultural producers, perhaps it would be less costly for the State or a group of operators to pay the cost for treatment systems at a few sites downstream of a group of wellfields or at a few sites upstream of a few ranches, rather than at each individual discharge point. We question whether this is the right solution to what appears to be a very a limited problem.

While leaving it as a policy will be preferable than implementing it as a rule, it is nonetheless a high impact program whose benefits seem to be overwhelmingly outweighed by the costs. For that reason, it should not be approved as currently proposed.

Sincerely,



Beth Goodnough
Director of Regulatory Affairs

¹ "A Concise Guide to Wyoming Coal 2006", Wyoming Coal Information Committee, Wyoming Mining Association.