

2/14/07

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FEB 14 2007

Terri A. Lorenzon, Director
Environmental Quality Council

To: Mr. DiRenzio/wqd

777 5973

From: Eric Barlow

Greetings,

Please accept these comments
and submit them to the EQC
Record for the Hearing on
Feb 15th + 16th.

THANKS
Eric

2/12/2007

DEQ/ Water Quality Division
Attn: Bill DiRenzio
Hershler Building-4W
122 W. 25th St.
Cheyenne, WY 82002

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FEB 14 2007

Terri A. Lorenzon, Director
Environmental Quality Council

Re: Comments on Proposed rules and policies under consideration by Environmental Quality Council

Dear Sir,

Please accept these comments regarding the Agriculture Protection Policy and the Chapter One rules that are under consideration by the Environmental Quality Council at its upcoming hearing.

Proposed Agricultural Protection Policy-

There are several fundamental issues that need attention in this policy so that it may truly be protective of the land and its productive capacity. Most importantly, it should take a proactive stance and disallow the potential of diminution caused by the discharge water to the basic soil characteristics and plant communities. Two specific elements contained in the proposed policy that fail to take this proactive approach are:

1. Limiting the acreage that is eligible for protection to those areas twenty acres or greater effectively eliminates most, if not all, lands along the ephemeral drainages of Northeast Wyoming. This criterion is arbitrary and unreflective of the spirit of the policy. The harm that will befall the soils and plant communities, cause erosion and alter or reduce desirable production is not dependent on the size of the land parcel involved and a policy that artificially makes such a conclusion is in grave error.
2. Default standards for SAR and EC should be set at levels that are protective for the most sensitive soils and plant communities expected. This is especially important for the downstream reaches of ephemeral streambeds which will receive the artificial flows of discharge water of unknown parameters. This unknown quality is due to an end of pipe testing protocol that does not evaluate water quality as it moves away from the discharge point. The characteristics of the discharge water as it interacts with the soils, is subject to evaporation and transpiration and other processes is the real, but unaddressed, threat to the stability and productivity of the lands it flows across, through and under. Until such a time when water quality is evaluated at the point of use, the end of pipe standards for SAR/EC should be set extremely conservatively.

Addressing these two criteria would contribute greatly to a policy truly protective of agricultural lands along ephemeral drainages. Without any adjustment, the vast majorities of lands within ephemeral drainages are without protection and consequently, open for wanton damage and destruction. I am supportive of a revised and effective policy being adopted as a Rule, instead of being left as a policy.

Proposed Chapter One rule changes-

There are numerous issues of concern with the proposed Chapter One rules as drafted and in brief they include the following:

1. Creating a new class of water with the designation of (D) which is specifically aimed at legitimizing the dumping of produced water in ephemeral drainages is poor policy, if not illegal.
2. The weight of evidence approach is inappropriate in designating this category due to the significant and poorly conceived presumptions that are utilized to justify the category and the purported benefits. These presumptions in themselves will justify the ends without any meaningful review as they set the bar far too low.
3. The concept of Net Environmental Benefit needs to be defined, both qualitatively and quantitatively, for it to be a meaningful tool. As of now it fails on many fronts, including:
 - a. It relies on the assumption that the addition of the discharge water is beneficial over the native ephemeral condition. Pg. 39, Ln. 4-5
 - b. It fails to recognize the intrinsically temporary nature of the water, irregardless of any extrinsic threat that may impinge upon it.
 - c. It does not account for the diminishing effluent volumes produced over time.
 - d. There is no characterization of the changing quantity and quality that will occur as it travels further from its source.
 - e. It does not contemplate the environmental consequences that will occur upon the normal cessation of the discharge.
4. The credible threat scenario should initially evaluate the threat posed by authorizing the discharge into an ephemeral streambed and not simply be in response to the potential of removing the discharge.
5. The draft rules inappropriately limit the substances that need to be considered for bio-accumulation concerns to selenium and mercury. Others such as Pg. 41, Ln. 5-7
6. The rules give the administrator sole authority for effluent dependent waters and removes oversight by the EQC. Pg. 51, Ln. 14 -15
7. Provides no substantive method to protect the uses and resources apart from the end of the pipe criteria.
8. Apparently authorizes "in- stream flow" which should be under the State Engineers' jurisdiction. Pg. 40 Ln. 8-10
9. The accumulation of hazardous substances is limited to those that will bioaccumulation and disregards the loading of other substances that will occur.

The loading of many constituents will be detrimental to soil health and plant community viability. This is inexcusable and represents a significant shortcoming.

I request the EQC modify the Agricultural Protection Policy to provide prudent and encompassing protections for the soil and plants and those dependent on them and adopt it as a rule. I request the EQC reject the creation of a class of waters based on effluent dependence and the entirety of the rules pertaining to this concept.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "ES Barlow". The signature is written in black ink and is positioned below the text "Respectfully submitted,".

Eric S Barlow