

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING



IN THE MATTER OF THE)
PROMULGATION OF CHAPTER XIII)
WATER QUALITY RULES AND)
REGULATIONS)

STATEMENT OF PRINCIPAL REASONS

FOR ADOPTION OF CHAPTER XIII

The Environmental Quality Council, pursuant to the authority vested in it by Wyoming Statutes 16-3-101 et seq., is promulgating rules covering Class I injection wells under the Underground Injection Control program. At present, Chapter IX of the Wyoming Water Quality Rules and Regulations, entitled "Groundwater Pollution Control" (GPC), requires a permit for Class I wells, but does not contain detailed siting and construction standards required by the federal government. Promulgation of updated rules is necessary to incorporate changes in federal regulations promulgated after chapter IX was written and to clarify differences between the federal UIC regulations and the state UIC regulations.

Chapter XIII is the first of three new chapters which will eventually replace Chapter IX entirely and bring Wyoming's program into compliance with the federal program. The other two chapters will cover *in-situ* mining and shallow injections, such as drywells and drainfields.

The state has primacy under the federal UIC program for regulating the underground injection of hazardous waste. To retain primacy over the program, the state must ensure that its regulations are no less stringent than the federal regulations. See 40 CFR 145.11.

Wyoming's GPC program was promulgated prior to the federal regulations covering

Underground Injection Control (UIC). In assuming primacy, the state had considerable difficulty in convincing EPA that its regulations were as stringent as the federal regulations. This was a result of inconsistencies in definitions between the two programs and differences in the EPA's well classification system and aquifer exemption procedure. Neither the classification system nor the aquifer exemption procedure are contained in Chapter IX of the state's rules and regulations. Consequently, national firms and industries operating in the state presently experience difficult interpretational problems resulting from the differences between the state and federal programs.

In 1984, after the state adopted Chapter IX, the EPA made minor changes in the federal UIC program. These changes required the state to modify its program, as well. The state implemented these changes by requiring certain language to be included in all permits. This language is mandatory and cannot be changed without the approval of the EPA under a Memorandum of Agreement between the Water Quality Division and the EPA.

On July 26, 1988, EPA promulgated major changes to the federal UIC program that affect Class I injection wells. Many of these changes are in direct conflict with Wyoming's UIC program. For example, under the federal program, a permit cannot be issued for more than ten years, where the Wyoming program issues permits for the life of the injection.

Since the majority of these new regulations apply only to hazardous waste injection wells, and because there are no existing hazardous waste injection wells in Wyoming, the Environmental Quality Council initially promulgated Chapter XIII of the Wyoming Water Quality Rules and Regulations on October 4, 1989. The old Chapter XIII banned the issuance of any new hazardous waste GPC permits until such time as the Council promulgated new rules

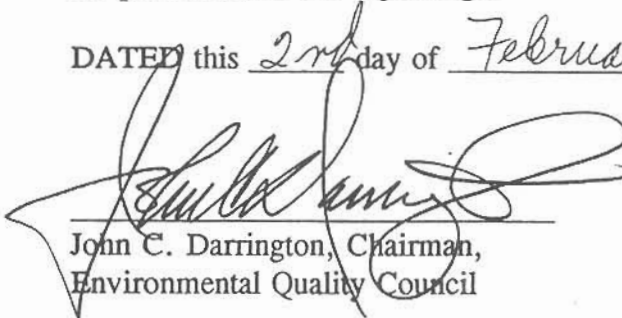
to cover these injections. The old Chapter XIII was written to expire two years from the date it was promulgated, or October 4, 1991. Since that date, the state has been out of compliance with the regulations required by the federal UIC program.

Had it chosen to do so, EPA could have revoked the state's primacy over the program. As a means of forestalling the loss of primacy, the Water Quality Division re-issued all Class I injection well permits issued after 1988. The re-issued permits incorporate the requirements contained in Chapter XIII. The adoption of Chapter XIII is therefore necessary to vest the department with the regulatory power necessary to implement and enforce the new federal requirements.

The promulgation of Chapter XIII will bring the state's program into partial compliance with the federal program. The promulgation of the other two chapters will complete these necessary changes. The adoption of these chapters is necessary to retain primacy over the federal program, by ensuring that the state's program is no less stringent than the federal program.

The Council finds that the adoption of Chapter XIII is reasonable and necessary to accomplish the policy and purpose of the Act and to maintain primacy over the federal UIC program. The Council further finds that Chapter XIII has been promulgated in accordance with the provisions of the Wyoming Administrative Procedures Act.

DATED this 2nd day of February, 1993.


John C. Darrington, Chairman,
Environmental Quality Council