

EXHIBIT E



Wyoming Water Quality Rules and Regulations

Chapter 2

PERMIT REGULATIONS FOR DISCHARGES TO WYOMING SURFACE WATERS

EQC Version 1

RESPONSE TO COMMENTS

June 2004

Comments Provided by:

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32	Section 5(a)(v)(T)	<p>Section 5. Effluent Permits. Page 2-29 should include among the list of all active permits or construction approvals the approval from the State Engineer for the construction of in-channel reservoirs. This should include proof of the requirement for a bypass to be constructed around the in-channel reservoirs so that downstream water rights holders can still be assured of receiving the natural flow of the stream.</p> <p>A requirement that the reservoir be permitted before the discharge permit is issued would go a long way to addressing the problems that coordinate actions of the DEQ and the State Engineer.</p> <p>The Wyoming Oil and Gas Commission permitting of off-channel pits and the required bonding should also be required to be listed and permitted prior to the issuance of the NPDES permit.</p>	<p>The DEQ agrees that it is useful in the DEQ's continued efforts to coordinate closely with these agencies for an applicant to list any permits or construction approvals received or applied for by the State Engineers Office and the Oil and Gas Conservation Commission.</p> <p>However, as related to the comment of requiring SEO and OGCC permits, the same argument could be made that a NPDES permit is required prior to issuance of a State Engineers permit. As recommended by the NPDES task force there has been improved coordination between the agencies to ensure that actions by the agencies do not affect the actions of the other agency. It should be noted that the Wyoming State Engineer was added to the governmental agency mailing list in Section 15 (d).</p>	<p>Added the State Engineers Office and the Oil and Gas Conservation Commission to Section 5(a)(v)(T) as IX and X.</p>
33	Section 5(a)	<p>The Oil and Gas Commission requires a groundwater assessment from the DEQ before it will issue a permit for off-channel reservoirs. The DEQ should require at least that much before issuing its discharge permits, particularly when on-channel reservoirs are an integral part of the water management plan. This could find a place at Section 5(a), with a requirement for certification of Chapter 3 compliance.</p> <p>This new Chapter 2 ignores the connection between surface water and groundwater. For discharges that will clearly reach groundwater, the permittee should be required to meet the requirements of Wyoming's groundwater regulations as well. Any discharge to a reservoir that is designed to leak its contents to groundwater, for instance, should also be required</p>	<p>The OGCC is requiring the groundwater assessment from the DEQ for off-channel reservoirs pursuant to an MOA between the two agencies.</p> <p>The WQD has separate rules for groundwater protection and the groundwater program is currently evaluating the need for and circumstances when groundwater evaluations might be necessary for on-channel reservoirs. If the groundwater program determines a need for requiring groundwater monitoring associated with specific types of NPDES discharges, existing statutes and the proposed rule will allow for the incorporation of these requirements in the applications and permits.</p>	<p>No Change Recommended</p>

		<p>to obtain a groundwater discharge permit, and the permittee should be required to provide assurances that the discharge will not unduly pollute the groundwater in question.</p> <p>DEQ should require a groundwater assessment be made before issuing any discharge permits, especially if on-channel reservoirs are part of a water management plan.</p> <p>Should address the fact that surface and groundwater are connected. They are not two separate entities. Seepage of CBM water from reservoirs can and does resurface downgradient causing the usefulness of draws and meadows, which are our most productive lands.</p>		
34	Section 5(a)(v)(T)	The Chapter 2 rules should require proof that a valid State Engineer reservoir permit has been issued before any DEQ permit that depends on a reservoir for water management is issued.	The same argument could be made that a NPDES permit is required prior to issuance of a State Engineers permit. As recommended by the NPDES task force there has been improved coordination between the agencies to ensure that actions by the agencies do not affect the actions of the other agency. It should be noted that the Wyoming State Engineer was added to the governmental agency mailing list in Section 15 (d).	No Change Recommended
35	Section 5(a)(vii)	The term for permits described in this chapter is five years. Consequently it seems prudent to require that records kept to satisfy a permit requirement be stored for five years also, rather than the proposed three (years).	It should be recognized that permits are not all five years in length. Five years just happens to be the maximum length of a permit allowed. Regardless, the length of permit is irrelevant in evaluating this issue. The question to be answered is will there be any added value to requiring a permittee to maintain 5 years of data rather than 3 years. Because the information will be used for conducting compliance inspections and there is a greater interest in more recent information, the DEQ concludes that there would be no added value to this requirement. Furthermore, to avoid confusion amongst the regulated community it would make sense to maintain the 3 year time frame consistent with EPA and surrounding states.	No Change Recommended

		idea of a public meeting suggests that it is up to the discretion of the Administrator to determine how it will be conducted, whether individuals are allowed to speak at the hearing, and whether any formalities will be observed.		
58	Section 17	We urge you to retain the existing public hearing rule that provides for a public hearing before the EQC when public interest is substantial. And, we urge you to modify the proposed rule to provide clear criteria for when such a hearing should be scheduled.	The changes to the Public Hearing provisions is to allow a mechanism for public participation through a public meeting to resolve issues regarding permits during the draft phase of the permit without compromising the ability for persons to appeal permits to the Environmental Quality Council at a later time based upon the decision of the Director. The Hearing Section was added to make clear the opportunities for hearings with Environmental Quality Council.	No Change Recommended However, modifications to this section have been made as described on DEQ changes at the end of this document #80.
59	Section 18	Page 2-97, Section 18 Public Information. A description of information availability similar to the description found in <u>Section 15. Public Participation</u> , needs to be included or referenced in Section 17.	A complete set of all file information is maintained only in the Cheyenne office and availability of public information is subject to W.S. 35-11-1101 as stated in the draft rule. It is the DEQ's opinion that a description of availability similar to the description found in Section 15 is not appropriate as the intent of these two provisions is dissimilar.	No Change Recommended
60	Appendix H	Appendices H needs to address the current practices of DEQ/WQD with regard to allowing discharges to "on-channel reservoirs," off-channel reservoirs, total containment ponds or containment units. Currently, DEQ/WQD has ignored the fact that the ponds that have been allowed pursuant to these NPDES permits by the DEQ/WQD are in fact "treatment works" as that term is defined by W. S. 35-11-103(c)(iv), in that they are most certainly "used for treating, stabilizing or holding wastes." These ponds are, as WDEQ must admit, constructed by the permittee for the purpose of receiving the produced water. Therefore, DEQ/WQD must permit them as a "sewerage system, treatment works, disposal system or other facility... capable of causing or contributing to pollution..." requiring a permit	The DEQ has determined that these CBM reservoirs (on-channel and off-channel) are surface waters of the state and therefore appropriately protected under the provisions of Wyoming Water Quality Rules and Regulations Chapter 1, Wyoming Surface Water Quality Standards and NPDES permitting requirements. The DEQ is currently evaluating the potential groundwater concerns related to the use of the reservoirs . If it is determined by the WQD	No Change Recommended

	<p>to construct pursuant to W. S. 35-11-301(a)(iii).</p> <p>Appendices H, which addresses produced water, should state clearly that anyone discharging into such ponds must also obtain a permit pursuant to Chapter 3 of the regulations. This is needed because these ponds are invariably unlined. Unlined ponds will leak their contents to the groundwater. This means that there is a very serious potential, for all reservoirs allowed by these permits, that they will pollute groundwater, and possibly surface water, depending on the hydrologic connectivity of the aquifer below the reservoir to surface waters further downgradient. By allowing these reservoirs to go unpermitted (i. e. no permit to construct), DEQ/WQD is ignoring its duties under the EQA, and is leaving open the distinct possibility of pollution to waters of the state, in violation of W. S. 35-11-301(a)(i), which is not be regulated by DEQ/WQD at all, since no groundwater monitoring is contemplated or required by any of these NPDES permits.</p> <p>Appendix H should require that any permit application involving disposal into unlined reservoirs include submittals of construction design plans and specifications, subsurface geology, percolation tests, distances to groundwater and surface water, quality of groundwater, and monitoring wells. Currently, DEQ/WQD does not require any of this information to be submitted. DEQ/WQD's pit siting guidelines are a bit of an improvement over nothing, but they are not even referred to in these Appendices.</p> <p>The alluvial aquifer is in direct connection with the Powder</p>	<p>Groundwater Program that there is a need to address groundwater concerns the DEQ will address these concerns under the appropriate groundwater regulations and evaluate the most efficient and sensible means of incorporating groundwater requirements with surface water quality permitting requirements.</p>	
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61	Appendix H	Page H-1, Appendix H, Lines 8 through 18. It is urged that this appendix be revised to better describe the factors associated with permit application requirements that are specific to all produced water discharges and their impact on soil and vegetation, in addition to lessen impact on animals and humans.	Appendix H is clear in its intent and is designed to protect designated uses as defined in Wyoming Water Quality Rules and Regulations Chapter 1, which includes a narrative standard for the protection of Agricultural Water Supply and numeric human health criteria for individual constituents.	No Change Recommended
62	Appendix H	The rule lacks content involving permitting retention ponds used for disposal or storage of coal bed methane produced water. Mention is simply limited to stating that the Wyoming Oil and Gas Conservation Commission manages/permits certain types of surface containment. However, the Wyoming State Engineer's Office and the Wyoming Department of Environmental Quality also manage/permit certain types of surface containment structures. It would be helpful to anyone using the proposed Chapter 2 if it provided enlightenment enabling readers to distinguish between the differences in agency responsibility	Permitting of CBM ponds is beyond the scope of the NPDES program. Permitting of CBM ponds is done by the State Engineers Office and the Oil and Gas Conservation Commission. This rule is not an appropriate forum for enlightening enabling readers about the responsibilities of different State agencies.	No Change Recommended
63	Appendix H (d)(v)	The Wyoming Game and Fish Department is still receiving requests for beneficial use statements for historic discharges. There is still some confusion with the statement in Appendix H, Section d(v), first sentence that says: A... or a signed statement by the Wyoming Game and Fish Department was	The WDEQ is aware of the Wyoming Game and Fish Department (WGF) concerns with new requests for beneficial use statements. The proposed revisions would limit the need for such determinations and does not reference the WGF as a source for beneficial use statements. The only reference to WGF is (in	No Change Recommended

		provided in which it is stated that the discharge in question is of value to fish or wildlife. This confusion could be corrected if, in line 3, the following was added: A...may be granted on a case by case basis if, <i>in the original application</i> , a signed... If our interpretation is incorrect, then we request the Wyoming Game and Fish Department be removed entirely from this sentence.	reference only) related to historic beneficial use statements that were provided under existing regulations which is necessary to preserve the status of these existing permits.	
64	Appendix H(d)(i)	<p>Suggest the following language change: (d)(i) "Where discharge water is accessible to livestock and/or wildlife; meets the effluent limitation as specified in this appendix paragraph (b)(viii) or modified effluent limitations as specified in paragraph (d)(ii); and meets the criteria for the protection of livestock and wildlife as specified in Wyoming Water Quality Rules and Regulations Chapter 1, Wyoming Surface Water Quality Standards, the discharge will be considered in compliance with the requirements of Appendix H (a)(i) of these regulations."</p> <p>This change essentially makes it clear that if a permittee is authorized to discharge under a modified effluent limitation and complies with the modified effluent limitation, the permittee will be considered in compliance with Appendix H.</p>	This change is unnecessary because modified effluent are included in the appendix and are therefore covered by the provisions of H(d)(i). Further, there are more effluent limitations besides those specified in paragraph (b)(viii).	No Change Recommended
65	Appendix H (a)(i)	A quantity parameter must be included in the quality/beneficial use standard in order to have it serve any useful purpose. (Appendix H(d)(i) suffers from the same infirmities)	40 CFR 435 allows for the discharge of produced water if the water is used by wildlife or agriculture during periods of discharge. This was a provision that was supported by the Wyoming DEQ, Wyoming Game and Fish and many landowners within Wyoming to allow for the continued use of produced water rather than re-injecting the water. It is the DEQ's opinion that there should not be	No Change Recommended

		<p>Appendix H. The issue of implying all the CBM water being discharged is of beneficial use for livestock and wildlife is mostly false. While it is true that a very, very small total percentage of the CBM water is put to beneficial use, the majority is running downstream causing damages to soil, vegetation, fisheries and downstream irrigators. The volumes of water are so great that it cannot possibly all be beneficially used by all the cattle, wildlife or people in all of Wyoming. Allowing a paid industry consultant to make this claim of beneficial use, when the landowner will not, goes even further down the road of false claims regarding the beneficial use of the water. The beneficial use of this CBM water should be supported by the volume of water that can actually be used for livestock and wildlife by the landowner and not more should be allowed to be wasted by dumping it on the surface and allowing it to cause damage downstream.</p>	<p>a quantity limitation related to the agricultural and wildlife use determination. The federal regulations did not contemplate a maximum allowable flow rate but rather that the water being discharged was actually used by wildlife or agriculture during periods of discharge. It was not the intent of the federal regulations that all of the water be consumed</p>	
66	Appendix H	<p>Appendix H(d)(ii) appears to be a great big loophole, again relying on the false premise that a letter of agricultural or wildlife use from a landowner makes it all okay. One landowner cannot vouch for the desirability of the water that has significant impacts far down the drainage beyond his own land.</p>	<p>The provision related to the "letter of agricultural or wildlife use" is only one of the requirements of this section and is consistent with other provisions of this appendix. As stated in earlier in this provision the administrator will make the decision on modified limits based on the merits of a Use Attainability Analysis to ensure all designated uses are protected.</p>	No Change Recommended

67	Appendix H	<p>The quantity of produced CBM water must be beneficial to livestock and wildlife. The beneficial use statement must come from the landowner on the person who leases the land. Any beneficial use statement coming from the CBM gas companies should be considered to be totally useless.</p>	<p>The wildlife and/or agriculture use statement is intended to verify that when the water is discharged to the surface that it will be used by agriculture or wildlife. The demonstration can be reasonably made by the landowner or other qualified individuals. The DEQ does agree that agricultural use determinations would likely need to be made by the landowner or lessee.</p>	No Change Recommended
68	Appendix J	<p>What is the federal counterpart to Appendix J? We believe this Appendix adds to the duplication of environmental permitting between two DEQ divisions (WQD and LQD). Allow just one division to oversee and regulate the construction and maintenance of sedimentation control structures and storm water runoff.</p>	<p>The federal counterpart to Appendix J is 40 CFR 434. The relevance of this appendix to these rules is that this appendix covers discharge regulations directly applicable to Coal Mines. Appendix J is reflective of what is currently in Wyoming Water Quality Rules and Regulations Chapter 10. The DEQ agrees that there have been some modifications to the federal regulations in 40 CFR 434 that are not included in Appendix J but should be.</p> <p>The applicable provisions to Chapter 3 were incorporated in the existing state NPDES Rules and Regulations Chapter 10 in 1985 to address minimum design standards for surface coal mining sedimentation control facilities. The provisions of Chapter 10 were incorporated into the proposed Chapter 2 rule to consolidate the NPDES permitting rules into a single rule package. Through an internal working agreement with the Land Quality Division (LQD) and the Water Quality Division (WQD), reviews of the sedimentation control facilities for compliance with the Chapter 10 requirements are done by the LQD and a Chapter 3 WQD application is not required. LQD has indicated that they intend to incorporate the minimum design standards for surface coal mining sedimentation ponds into their rules and guidance that will satisfy the requirements of Appendix A of the current WQD Chapter 10 regulations. Therefore, reference to the minimum design standards</p>	No Change Recommended