

EXHIBIT I

DAVE FREUDENTHAL
GOVERNOR

THE STATE OF WYOMING



STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

December 3, 2004

Ms. Kate Fox
Davis & Cannon
2710 Thomas Avenue
P.O. Box 43
Cheyenne, WY 82003

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RE: Chapter 2, Water Quality Rules and Regulations

Dear Ms. Fox:

Thank you for your letter of September 10, 2004 and your interest in the Chapter 2, Water Quality Rules and Regulations. The State NPDES rules were in serious need of updating and the rule as proposed by the WDEQ is a significant improvement from the existing rule. As you know, I have signed the rules. However, based on your interest and scrutiny of certain aspects of the rule, I have reviewed the issues with DEQ and find that the rule is appropriate.

Your concern regarding groundwater was addressed by the Environmental Quality Council (EQC) during the rule making process. The DEQ explained to the EQC that the federal definition of "waters of the United States" under 40 CFR 122.2 does not include groundwater. The federal NPDES rules and the intent of the State WYPDES rules are specifically designed to address discharges to surface waters and the protection of surface water quality standards.

I agree that there are groundwater issues associated with the management of coal bed methane produced water. However, adding groundwater rules to Chapter 2, "Permit Regulations for Discharges to Wyoming Surface Waters" is not necessary because groundwater protection is already addressed in separate water quality rules and regulations, specifically Chapters 3 and 8. Further, the WQD Groundwater Pollution Control program has recently made implementation changes to appropriately address groundwater issues associated with coal bed methane water management practices.

As to your concern about the agricultural or wildlife provisions of Appendix H, I understand that those provisions are designed to be consistent with the provisions of 40 CFR Part 435 "Oil and Gas Extraction Point Source Category" which allows for the discharge of produced water if the water is used by wildlife or agriculture during periods of discharge. The state of Wyoming has supported this position since 1975. The Wyoming DEQ has historically taken the position that if the produced water discharge meets the effluent limitations established to protect downstream surface water quality standards, then the water is suitable for use by agriculture and/or wildlife.

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In recent years, 2000-2001, U.S. EPA has requested that DEQ demonstrate how the water is being used for agriculture or wildlife. The Wyoming Game and Fish Department provided a letter to the DEQ in 2001 stating that historic conventional oil and gas discharges were a benefit to wildlife. This letter addresses the demonstration for historic oil and gas discharges. New conventional oil and gas facilities must provide the DEQ with an Agricultural or Wildlife Use statement with the application to satisfy this demonstration.


To get at your concern over quantity of discharge from coal bed methane dischargers, it is my hope that through the watershed based permitting approach downstream landowners can express their concerns and have a voice in how the produced water is managed. Regarding downstream States, like Montana, the WDEQ is actively engaged in and making progress through constructive dialogue on the appropriate management of coal bed methane water and the protection of our neighboring states' water quality standards.

After looking at Appendix H (d)(ii), it is apparent to me that the "letter of agricultural or wildlife use" is only one of the conditions imposed by this provision. The provisions of Appendix H (d) (ii) also state that the Water Quality Administrator shall review all requests for modification of effluent limits submitted under this section and make a determination based upon the technical merits of a Use Attainability Analysis. Furthermore, the rule is clear that any permit must also ensure protection of all surface water quality standards as outlined in Water Quality Rules and Regulations Chapter 1. Consequently, I do not see this provision as the loophole you have suggested.

You raised the issue of the rule length and comprehensibility with the WDEQ and the EQC during the rule making process. To address this concern the WQD obtained the services of the University of Wyoming and the Ruckelshaus Institute of Environment and Natural Resources to review the rule for clarity and grammar. The WDEQ incorporated appropriate changes provided by the University and the Ruckelshaus Institute. The WDEQ has developed a consolidated rule, addressing all regulated sectors, which is consistent and clearer in many respects than the federal regulations.

I want to thank you again for your interest in these rules and for your participation in the process to develop regulations for discharges to surface waters of the state. The WDEQ is committed to the continued improvement of the WYPDES program by implementing the NPDES Task Force recommendations, implementing watershed based permitting, and making much need improvements to outdated rules.

Sincerely,



Dave Freudenthal
Governor

cc: John Corra