

EXHIBIT B

Questions Regarding Water Quality Division Chapter 2 Rules.

The Chapter 2 Rulemaking process began in April 2001. The primary purpose of the rulemaking was to update and consolidate existing rules that were originally adopted as long ago as 1974. Over the course of the 42 months that DEQ dedicated to the Chapter 2 rule making process, eight public meetings were held and five separate written and oral public comment periods were provided. The WQD provided a written response to all comments received during the rule making process and addressed specific questions raised by the Water and Waste Advisory Board and the Environmental Quality Council.

In addition, because the NPDES program is a delegated program from EPA, Region 8 EPA reviewed each of the six drafts for compliance with requirements for program primacy. EPA found that the proposed Chapter 2 rules are consistent with the federal rules.

To the assertion that the rules are long, convoluted and difficult to understand (i.e. not written clearly) the response is:

1. The rules are consistent with the federal rules.
2. The rules are in fact clear and understandable.
3. At the request of EQC, to address this very concern raised by PRBRC at the May 17, 2004 public hearing, the DEQ requested that the University of Wyoming and the Ruckelshaus Institute of Environment and Natural Resources review the document for clarity and grammar respectively. All appropriate changes were incorporated into the rule. DEQ's efforts in response to this issue are documented in DEQ's June 2004 Response to Comments document on page 39, response number 71.

Issue 1) The lack of a true beneficial use of CBM water by relying on a letter (from industry consultant's or one landowner) which states the water is beneficial for livestock and wildlife-in reality this is only true for maybe 1% of the total amount of water discharge water.

This issue was addressed during the public comment process. This issue is specific to Appendix H "Additional Requirements Applicable to Produced Water Discharges from Oil and Gas Production Facilities" of Chapter 2.

The comment is actually in reference to a DEQ Wildlife or Agricultural Use Determination policy memo dated January 27, 2004. The provisions of Appendix H (d)(i) does not require submittal of a letter but rather states that "Where discharge water is accessible to livestock and/or wildlife; meets the effluent limitations as specified in this appendix; 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."

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Appendix H(a)(i) states that “ The produced water discharged into surface waters of the site shall have use in agriculture or wildlife propagation. The produced water shall be of good enough quality to be used for wildlife or livestock watering or other agricultural uses and actually be put to such use during periods of discharge.”

It is DEQ’s opinion that there should not be a quantity limitation related to the agricultural and wildlife use determination. The federal regulations from which this provision originates 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.

For a complete explanation of the Wildlife or Agricultural Use provisions please see the attached August 18, 2004 Addendum to the EQC.

Issue 2) The lack of public notice to downstream landowners potentially affected by CBM discharges and the lack of public comment on expanded blanket general permit.

This issue was discussed with the EQC and amendments were made to the rule to accommodate the concerns. Specifically the following language was added to the rule in Section 4 (l):

- (ii) General permits will require a copy of the authorization letter be posted at the physical location of the permitted site in a prominent and safe place for public viewing.
- (iii) General permits will require the permittee to notify all landowners, on whose property an outfall associated with the general permit is located, prior to submitting the Notice of Intent to the administrator.

The question and DEQ’s response to the issue of adequate public notice was discussed with EQC and are documented in DEQ’s June 2004 Response to Comments document on page 29, response number 55. The response states:

“Upon review of the rule and the task force recommendations, it is DEQ’s opinion that there is sufficient opportunity for all interested parties to obtain information regarding a permit that is public noticed through being on the mailing list, the WDEQ web site, and posting in a paper of statewide distribution, which is the same consideration for notice provided to downstream States.

The task force recommendation being referred to is contained in Section 4.3 of the NPDES task force report. The issue identified in the report is not with the public notice

but rather notification at the beginning of the process by operators. The issues and recommendations are a bit more complex than conveyed by the first commenter. There were four recommendations listed in the report for this issue as follows:

1. CBNG operators should work, prior to development, with the surface users and the appropriate permitting agency to identify the appropriate water management techniques that will be the most beneficial for livestock, agriculture and wildlife.
2. State, local, and federal agencies should make available to surface users assistance to achieve a resource management strategy that will compliment their ranch operations.
3. A watershed permitting approach, if feasible, would facilitate communication regarding water management options among all potentially affected parties within a watershed. And
4. The NPDES permit applicant should give notice of the permit application as follows:
 - a. Prior to submitting the permit application, the applicant should send a letter that notifies the surface owner or lessee of the locations of the permitted facilities, the timeframe, a general description of the water management techniques, and the name, address and phone number of a company person to contact for more information. Copies of the letters should accompany the permit application submitted to the WDEQ.
 - b. The letter is sent to all identified surface users, surface owners or lessees, the surface user immediately downstream of the property subject to the permit application, and any downstream irrigator or livestock producer from the point of discharge to the confluence of the main stem river.

Issue 3) The failure to draw a connection between groundwater pumped to the surface and discharged and how that water is now impacting shallow groundwater.

This issue was raised and addressed before the Environmental Quality Council in Public Meetings held on July 7, 2004 and August 18, 2004.

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 protection of surface water quality standards consistent with W.S. 35-11-301 and 302. Groundwater protection is addressed in separate water quality rules and regulations, specifically Chapters 3 and 8.

The WQD is currently evaluating the potential groundwater concerns associated with CBM development. If it is determined by the WQD Groundwater Program that there is a need to address groundwater concerns the WQD 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.

Addendum

DEQ Response
to
EQC July 7, 2004 Questions

This addendum provides additional clarification to EQC questions raised on July 7, 2004, regarding proposed Wyoming Water Quality Rules and Regulations Chapter 2. Specifically, this addendum addresses the Agricultural and/or Wildlife Use provisions of Appendix H.

On September 15, 1975, U.S. EPA published, in Federal Register, Vol. 40, No. 179, a Notice of Interim Final Rule Making for offshore segment of the oil and gas extraction point source category (40 CFR Part 435). This interim final rule making established effluent guidelines for existing source. The Interim Final Rule did not contemplate allowing surface discharge for the onshore segment of the oil and gas extraction point source category. The following Wyoming organizations commented on the Interim Final Rule: Wyoming Department of Environmental Quality; Wyoming Environmental Institute; Powder River Basin Resource Council - Buffalo, Wyoming; Wyoming Game and Fish Department; and the Wyoming State League of Women Voters. In addition, many other states and interested parties commented on the Interim Final Rule.

On October 13, 1976, U.S. EPA published, in Federal Register, Vol. 41, No. 199, a Notice of Interim Final Rule Making for onshore segment of the oil and gas extraction point source category (40 CFR Part 435). The regulation amended Part 435 and was applicable to existing sources for the onshore subcategory, the coastal subcategory, the beneficial use subcategory and the stripper subcategory. The applicable subcategory to Wyoming was the beneficial use subcategory which where applicable to facilities where the produced water has a beneficial use when discharged to navigable waters.

The term "onshore" was defined as all land and water areas landward from the inner boundary of the territorial seas. The term "beneficial use" was defined as meaning that the produced water is of good enough quality to be used for livestock watering or other agricultural uses and is being put to such use.

435.32 (a) and (b) established the following effluent limitations for the Beneficial Use Subcategory of the Onshore Segment of the Oil and Gas Extraction Point Source Category.

(a)(1) There shall be no discharge of waste water pollutants into navigable waters from any source (other than produced water) associated with production, field exploration, drilling, well completion, or well treatment (i.e., drilling muds, drill cuttings, and produced sands).

(a)(2) Produced water discharges shall not exceed the following limitation:
Oil and grease.....45 mg/l.

(b) The discharger must show beneficial use of the produced water being discharged to qualify for this subpart.

The following Wyoming organizations commented on the Interim Final Rule: State of Wyoming; Powder River Basin Resource Council; State of Wyoming State Engineers Office; Wyoming Department of Agriculture; Wyoming Game and Fish Department; and the Wyoming State League of Women Voters; League of Woman Voters, Cheyenne, Wyoming; Wyoming Environmental Institute; City of Worland, Wyoming. In addition, many other states and interested parties commented on the Interim Final Rule. Some of the more significant issues raised were as follows:

(1) Many commenters stated that no discharge requirements for onshore oil and gas production should not be universal and that discharge of low TDS produced waters when used for cattle water, irrigation, etc. should be excluded.

EPA agreed with the comment and discharge to surface waters of produced water was allowed and left to the permit issuing agency to determine if the beneficial use provisions were being met.

(2) It was suggested that the Wyoming standard of 10 mg/l be used.

EPA stated that they would evaluate and adjust in the future if data suggested that a change was appropriate.

(3) Some commenters supplied information about the problems of taste and odor caused by produced water discharges, even when these wastes were low in TDS and were considered beneficial use discharges.

EPA responded even if beneficial use can be shown, the discharge is still subject to further regulation of applicable water quality standards.

On April 13, 1979 U.S. EPA published, in Federal Register, Vol. 44, No. 73, Federal Effluent Guidelines for the oil and gas extraction point source category (40 CFR Part 435). This was a revision to the existing provisions of Part 435. Specifically, Subpart E (435.50 -52) was amended as follows:

1. The term "Beneficial Use" was changed to "Agricultural and Wildlife Water Use Subcategory" because of the term "beneficial use" is used by agencies regulating water quantity, which created unnecessary confusion.

2. 435.50 was revised by limiting the applicability of the Agricultural and Wildlife Water Use Subcategory to onshore facilities located in the continental United States and west of the 98th meridian for which produced water has a use in agriculture or wildlife propagation when discharged into navigable waters.

3. 435.51 (c) included the following revisions: The term "use in agricultural or wildlife propagation" means that the produced water is of good enough quality to be used for wildlife or livestock watering or other agricultural uses and that the produced water is actually put to such use during periods of discharge.

4. 434.52 (a) included the following revisions:

(1) There shall be no discharge of waste pollutants into navigable waters from any source (other than produced water) associated with production, field exploration, drilling, well completion, or well treatment (i.e., drilling muds, drill cuttings, and produced sands).

(2) Produced water discharges shall not exceed the following daily maximum limitation:
Oil and grease.....35 mg/l.

The federal effluent guidelines have not been revised since 1979. The Wyoming DEQ has historically taken the position that if the produced water discharge meets the effluent limitations established to protect designated uses established in the water quality standards, through protection of water quality criteria, then there is a rebuttable presumption that the water will be used by agriculture or wildlife.

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 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.

Because the EPA has taken the position that the federal effluent guideline 40 CFR Part 435 does not apply to coal bed methane facilities, EPA is not requiring DEQ to require documentation of actual use. DEQ continues to support the position that there is a rebuttable presumption that the water will be used by agriculture or wildlife as long as all applicable water quality standards are met.