

EXHIBIT C



POWDER RIVER BASIN RESOURCE COUNCIL

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May 17, 2004

Mr. Olin Sims, Chairman
Environmental Quality Council
Herschler Building
Cheyenne, WY 82002

HAND DELIVERED

Re: Comments on proposed rules, Chapter 2, Water Quality Rules and Regulations

Dear Chairman Sims and Council members:

Thank you for the opportunity to comment on these proposed rules changes. These comments are submitted on behalf of the Powder River Basin Resource Council and our directly affected and concerned members.

First, we would like to recognize what we know has been a long process with a great deal of work from the DEQ staff to get to this point. Given that fact, we would also like to request that the Council provide ample time for your critical review and also provide more time for public review and comment on these rules. Since these rules have been in the works for some time many of us have lost track of the process and are not attempting to become familiar with the proposed changes and we want the Council and the general public to have an adequate opportunity for review. We believe the Council can improve upon these rules and make them clearer, more comprehensible and more user friendly.

Secondly, we have some general overarching concerns regarding certain sections of the rules that we ask to carefully consider. They are:

1. Section 4. General Permits. One of our very biggest concerns involves this section of the proposed rules. We believe this section is most troubling because of the lack of public notice and opportunity for review and comment on proposed discharges that could impact someone's property or use of a stream. We believe this general permit section as written denies the public the right of due process for failure to notice what is specifically being permitted and for the right to an appeal or hearing. What opportunity would exist for the public to address their concerns regarding discharges under a general permit? How would the public or a potentially affected landowner find



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information regarding discharges from a general permit once it has been issued? We believe that the intent of allowing a general permit under the Clean Water Act was only when a class of discharges are very, very similar. How does this general permit set up that type of criteria? Specifically in this area of the rules, the authorization to discharge should make clear that it is "written" authorization.

2. 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. There is a good deal of experience and knowledge regarding DEQ NPDES permits for CBM discharge into unpermitted reservoirs. 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. Additionally, 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.

Page 2-30, line 30 – records retention on permits should be for five years, at least as long as the permit is valid. This will assist the DEQ and the public in reviewing compliance history and permit conditions. It should be made very clear that the state has a legal right when a discharge permit is granted to enter land to inspect the facility and that discharge. The language in this section is not clear and direct.

Page 2-39, Line 25. Why does the DEQ allow up to 9 months before a permittee is expected to be in compliance? We have observed and reviewed some NPDES permits where the permittee has been in chronic non-compliance and DEQ is endlessly sending out letters of violation or requirements to come into compliance. The damage that can be caused by the non-compliance and allowing it to continue over time can be serious. If the permittee is out of compliance it is a violation and appropriate action should be taken quickly or fines should be levied. In no other area of society is the public allowed to violate permits or licenses without consequences. Additionally, if a notice of violation is issued the permittee should be required to immediately cease the violating action even while it is appealed before the Council. This happened and the discharge water causing the problem continued for months while the notice of violation was under appeal to the EQC.

3. Section 9. Issuance or Denial of Permits or Authorizations. Powder River landowners feel very strongly that the NPDES process has completely failed to address the problem that CBM produced water is having on our clay soils and native vegetation. The rules as currently written and proposed still do not

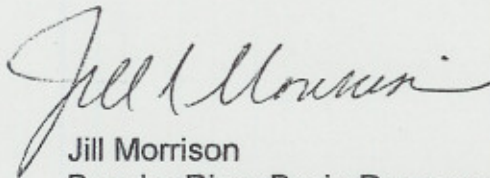
prevent the devastating and long-term impacts to our soil and vegetation and ephemeral streams. A sodium adsorption ration (SAR) over 5 or 6 and an EC over 2000 changes the molecular structure of the soil, turning it to hard pan that will not allow water to be taken up in the roots of plants. There is virtually no cost effective reclamation for this problem and would require hauling in new topsoil. The NPDES discharge permit system is not adequately addressing this problem and we are permanently changing the structure of our soils and our native vegetation along hundreds of miles of ephemeral streambeds. We are also salt loading these streambeds with a continual discharge of this CBM water. Accordingly, two additional reasons for denial of permits should be inserted into these rules that state that, "No permit will be issued for surface discharge of CBM produced water that has the sodic and saline characteristics or/ and an SAR over 5 that will destroy the native soil and vegetation." And, "No permit shall be issued for a CBM pond or reservoir for use in storing CBM produced water exhibiting an SAR above 5 or a high EC that will cause a detrimental effect on clay bearing soils and native vegetation if the pond or reservoir is capable of allowing surface and subsurface infiltration outside of its containment surface."

4. Section 15. Public Participation The lack of public notification was one of the specific problems identified by and documented in the final October 2003 report of the DEQ NPDES Task Force. The recommendation was made that the NPDES permit applicant should send a letter of notification to the surface owner or lessee of the locations of the permitted facilities, the time frame, a general description of the water management techniques and the name, address and phone number of a company person to contact. This letter should also accompany the permit application to DEQ. The letter should also be sent to all identified surface users, surface owners, or lessee, 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. While public notice is to be provided to the owner of the property there is no requirement to notify the downstream landowner or irrigators. This should be required as the report recommended. We should give downstream landowners as much notice as the DEQ is proposing to give to downstream states.
5. Appendix H. This section needs to be carefully reviewed by the Council and substantially modified. 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. In fact, we are wasting this water by allowing it to be pumped and dumped on the surface and calling it beneficial. It is not. Additionally, further allowing a paid industry consultant to make this claim of

beneficial use, as is now allowed, 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 no more should be allowed to be wasted by dumping it on the surface and allowing it to cause damage downstream. We ask that you review this section carefully and bring the truth about actual beneficial use of this water to the rules. The truth is that much of the impacts of dumping the CBM water have been more detrimental than beneficial by dumping it downstream.

Finally, we ask that you again review the DEQ NPDES Task Force Report and see how to incorporate those recommendations more adequately into the rules. We also respectfully ask that you not rush into approving these proposed rules. We believe they need much more review, editing and clarification before they are actually an improvement over what we have now. Thank you again for the opportunity to comment.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jill Morrison". The signature is written in dark ink and is positioned above the printed name.

Jill Morrison
Powder River Basin Resource Council