

FILED

MAR 10 2006

Terri A. Lorenzon, Director
Environmental Quality Council

March 10, 2006

Terri Lorenzon
Wyoming Environmental Quality Council
Herschler Building, Room 1714
Cheyenne, Wyoming 82002

RE: Petition to Amend Water Quality Rule, Chapter 2, Appendix H

Dear Ms. Lorenzon:

On December 7, 2005, Petitioners submitted the above-referenced petition ("the Petition"). The Petition included as Exhibit 1 specific proposed amendments to Chapter 2, Appendix H of the rules of the Department of Environmental Quality. On February 16, 2006, after a prehearing conference in accordance with the Council's rules of practice and procedure, the Council voted to accept the Petition for rulemaking. It has come to our attention that, by letter dated March 2, 2006, counsel for Petitioners submitted to the Council a letter asking the Council to suspend consideration of the Petition as submitted, and instead to conduct rulemaking on a significantly different set of proposed amendments to Chapter 2, Appendix H, as well as an entirely new proposed Chapter 2, Appendix I.

Petitioners' March 2, 2006 letter suggests that the Council's February 16, 2006 acceptance of the Petition with its proposed amendments for rulemaking can and should be deemed acceptance of these new and very different proposed regulations for further proceedings. However, under the relevant statute and regulations, the Council may not simply proceed to a hearing on these new and different proposals. Rather, the Council must first consider this new petition and determine whether to proceed with rulemaking. Only after such consideration can the Council decide whether to proceed to rulemaking on the new petition.

Petitioners submitted their December petition for amendment of the Department of Environmental Quality's rules under W.S. 16-3-106, which provides that "any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule . . ." Under the statute, "Upon submission of a petition, the agency as soon as practicable either shall deny *the petition* in writing (stating its reasons for the denials) or initiate rulemaking proceedings in accordance with W.S. 16-3-103." (emphasis added) Clearly, the agency must either deny or initiate rulemaking on "the petition" as submitted.

The Council's rules of practice and procedure even more clearly require that the petition on which rulemaking proceeds must be the same petition the Council accepted for rulemaking. Under Chapter III, Section 2(a), "each petition" to promulgate, amend or repeal a rule must be submitted to the Council. Under Section 2(c), "After filing of *the petition*, the Council may hold a prehearing conference to review *the petition* and *its persuasiveness*." (emphasis added). Under Section 2(d): "As soon as practicable, the Council shall deny *the petition* in writing (stating its reasons for the denial) or initiate rule-making procedures." (emphasis added) A prehearing conference on a petition for rulemaking -- such as the Council held on February 16, 2006, on the Petition -- provides an important opportunity for the Council to receive comment on and consider the persuasiveness of

that particular petition. Under the Council's rules, a determination on a specific petition is a precondition to further proceedings on that petition.

While some discussion occurred at the February 16th hearing on the Petition of possible distinctions between produced water from traditional oil and gas operations and from coal bed natural gas operations, the Council considered and rejected the idea that the Petition should be limited to CBNG discharges. The Council instead accepted the Petition as submitted (just as its rules require). Petitioners' efforts to convert the accepted petition to a wholly different one preclude further proceedings on the Petition and require another determination by the Council as to the "persuasiveness" of the new petition.

This is far from a formalistic requirement. The new petition raises important and fundamental issues the Council did not consider or decide on February 16, 2006. First and foremost is the question of whether it is appropriate to impose different regulations regarding produced water from CBNG operations. The new petition provides no evidence, analysis or even argument in support either of such differentiation or of the particular distinctions that would be made in Appendices H and I to account for any such differences. The new bifurcated petition also contains a number of ambiguities regarding apparent differences in the criteria to be used to determine beneficial use of water discharged from CBNG operations vs. water discharged from conventional oil and gas operations. In light of the absence of any information in Petitioners' new petition to justify further proceedings on the proposed bifurcated rule, and the need for clarification as to the operation of the bifurcated rule, we submit that a hearing is necessary in order for the Council to assess the persuasiveness of the new petition.

Accordingly, we respectfully urge the Council to suspend rulemaking proceedings on Petitioner's now-withdrawn Petition and to convene a hearing on their new Petition in accordance with Chapter III, section 2(c) of the Council's rules of procedure.

Sincerely,


PETRO-CANADA RESOURCES (USA) INC.
Keith S. Burron
Associated Legal Group, LLC
1807 Capitol Avenue, Suite 203
Cheyenne, WY 82001
Office: (907) 632-2888

MARATHON OIL COMPANY
Counsel: John C. Martin
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037

LANCE OIL AND GAS COMPANY, INC.

1099 18th Street, Suite 1200

Denver, CO 80202

Company Representative: Steve H. Ozawa, Senior Attorney

Office: (303)-252-6073

ANADARKO PETROLEUM CORPORATION

PO Box 1330, Houston TX 77251-1330

Contact: Natalie Eades, Esq.

Counsel

832-636-2611 Office

YATES PETROLEUM CORPORATION

Counsel:

Eric L. Hiser

Matthew Joy

Jorden, Bischoff & Hiser, P.L.C.

7272 East Indian School Road

Suite 205

Scottsdale AZ 85251

(480) 505-3900

WILLIAMS PRODUCTION RMT COMPANY

300 North Works Avenue

Gillette, Wyoming 82716

Company Representative: Joe Olson

Facilities Engineer

DEVON ENERGY PRODUCTION COMPANY, LP

Counsel: Margo Sabec, Nicol Kramer

Williams Porter Day & Neville, PC

159 North Wolcott St, Suite 400

PO Box 10700

Casper, WY 82602

Phone: (307) 265-0700 ext. 123

cc: Kate Fox
John Corra