



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

FILED

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**Terri A. Lorenzon, Director
Environmental Quality Council**

Ms. Terri Lorenzon
Director
Wyoming Environmental Quality Council
Rm. 1714, Herschler Bldg.
Cheyenne, WY 82002

Re: Citizen Petition for Rulemaking – Powder River Basin Resource Council et al

Dear Terri:

In your letter to me dated January 25, 2006, you invited the Water Quality Division (WQD) to comment on the citizen petition for revisions to Chapter 2, appendix H of WQD's rules.

The petition has two basic parts:

The first part calls for changes to existing effluent limits on sulfates and total dissolved solids plus a new effluent limit on barium. These are water quality questions and it could be reasonably argued that this part of the petition warrants discussion before the Council.

The second part of the petition would require the WQD to regulate the quantity of discharge available for lawful designated uses, and police those uses when the quantity of discharge does not cause violation of applicable water quality standards. Specifically, the petition calls on WQD to limit the quantity of produced water discharges to only that "quantity of water that can be demonstrated to have actually been put to beneficial use". In other words, regardless of whether the quality of the discharge (even if it were distilled water) meets applicable water quality standards adopted by the Council to protect existing uses, the agency would have to limit the quantity of discharge across the board. WQD believes that such a proposal exceeds our legal authority and goes well beyond our traditional approach to setting limits on the quantity of discharge.

While the WQD does typically set limits on discharge quantity in its WYPDES permits, those limits are almost always based on the discharge quantity that the permittee requests in their application. For example, if a discharge were to a perennial stream and the discharger applied to discharge 5 million gallons per day (MGD), the WQD would write a permit with a flow limit of

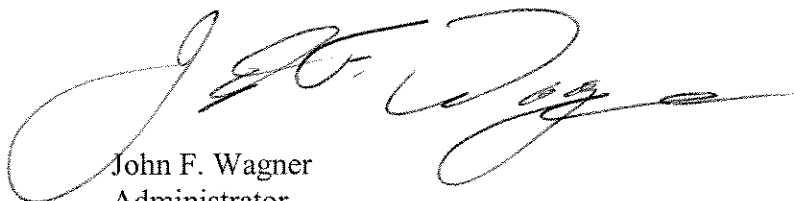


5MGD and we would calculate the effluent limits based on the size and classification of the receiving water with a 5MGD discharge. If the applicant were to change its mind and was willing to be limited to only 1MGD, WQD would adjust the flow limit in the permit to 1MGD and adjust the effluent limits to reflect the resultant change in the dilution factor.

When discharges are to intermittent or ephemeral drainages, no dilution factor calculations are made because the in-stream low flow condition is zero. However, WQD has, on occasion, set limits on the volume of discharge to intermittent and ephemeral streams when there is concern that the volume of effluent would cause a water quality problem (i.e., overwhelm the channel and cause scouring and/or excessive sedimentation).

In summary, the WQD does not believe it has the authority to limit effluent quantity as proposed in the petition because there is no logical connection between the proposed quantity limitation and protection of in-stream water quality. For this reason, the WQD recommends that the Council not proceed with consideration of that part of the petition. The part of the petition which suggests changes to effluent quality limits is within the authority of the WQD and could reasonably be heard by the Council.

Sincerely,



John F. Wagner
Administrator
Water Quality Division

JFW/bb/6-0101.LTR

cc: Members of the Environmental Quality Council
Vicci Colgan, Sr. Asst. Atty. General
Mike Barrash, Asst. Atty. General
John Corra, DEQ Director
Todd Parfitt, WQD Cheyenne
Bill DiRienzo, WQD Cheyenne