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NOV 12 2013

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

Jim Ruby, Executive Secretary
Environmental Quality Council

IN RE LINC ENERGY OPERATIONS, Inc.) DOCKET NO. 13-4804

**LINC ENERGY OPERATION'S BRIEF REGARDING SUBJECT MATTER
JURISDICTION**

Pursuant to the Council's Briefing Order, entered on October 29, 2013, Linc Energy Operations, Inc., by and through undersigned counsel, files this brief regarding the Environmental Quality Council's subject matter jurisdiction to consider the requested aquifer exemption.

I. Issue Statement.

The Briefing Order directs the parties to brief the issue, "whether the council has subject matter jurisdiction over the issue of the aquifer exemption since the Water Quality Division of the DEQ does not have the final decision making authority over whether the exemption is granted or denied." The Briefing Order further directs the parties to "describe...the final action taken by the Water Quality Division of the DEQ that is the appealable final action."¹

¹ As will be shown, Linc Energy Operations, Inc. believes that the Environmental Quality Council has subject matter jurisdiction pursuant to the specific statutory grant contained in Wyo. Stat. § 35-11-406(k), incorporated by reference in Wyo. Stat. § 35-11-431(a)(vi). That is, the determination of subject matter jurisdiction does not depend on the general jurisdiction of the

II. Background.

Linc Energy Operations, Inc. (“Linc”) is a diversified energy company with resource holdings on four continents. In the Powder River Basin of Wyoming, Linc holds leases on 333 State parcels totaling in excess of 184,000 acres. Linc is a global leader in underground coal gasification (UCG). It has successfully operated a UCG demonstration facility in Chinchilla, Australia, since 1999, and owns a controlling interest in a UCG facility in Uzbekistan, which has been operating at a commercial scale for more than 50 years.

During the 14 years of operations at the Chinchilla facility, Linc has successfully deployed, operated and maintained the UCG operations within environmental compliance.

Linc has current plans for UCG projects in Alaska and Wyoming.

Prior to any commercial scale UCG operations in Wyoming, the Department of Environmental Quality has directed that Linc complete a UCG demonstration. Linc’s application for a research and development license² for a small scale project in Campbell County, Wyoming, is the result of that direction. Briefly, Linc proposes to develop a less-than-commercial scale UCG project which has been designated as Gasifier 6.³ In simplified terms, UCG involves drilling an injection well and a production well into the coal seam. The two wells are then connected by horizontal drilling, and the coal is then gasified. Air is continuously injected into the gasification zone to support the gasification which produces synthesis gas (syngas) which is drawn from the production well.

EQC to review final agency action pursuant to Wyo. Stat. § 35-11-112(a)(iv) or the contested case provisions of the Wyoming Administrative Procedures Act. Wyo. Stat. §§ 16-3-101, *et seq.*

² The research and development license is governed by Wyo. Stat. § 35-11-431.

³ Linc has operated Gasifiers 1 through 5 at its Chinchilla facility.

Gasifier 6 will be designed to gasify Powder River Basin coal in the Wyodak coal seam, situated approximately 1,100' below land surface. Gasifier 6 is designed to operate for 90-120 days, and it is expected that approximately one million standard cubic feet per day of syngas will be produced, consuming approximately 11 to 16.8 tons of coal per day.

Under the State's underground injection control (UIC) program, UCG is considered to be a Class III operation. See Water Quality Division Rules and Regulations, Ch. 13, § 1(i)(iv) (“Class III well” means a well used for in situ mining which injects for extraction of minerals, or products, or recovers recovery fluids, minerals or products, including a well used in * * * Underground coal gasification operations...”) Because the Wyodak coal seam is also an aquifer, and because UCG involves the injection of air or oxygen into the seam,⁴ an aquifer exemption is required. The area of the exemption requested in the research and development license application is 80 acres of the Wyodak seam.

III. The UIC Program.

Section 1422 of the Safe Drinking Water Act (SDWA) of 1974 allowed States to implement federal UIC regulations provided that states had regulations as stringent as the federal regulations in place. Wyoming's UIC program was approved and became effective in 1983. Wyoming's UIC statutes and regulations have been incorporated into the federal regulations by reference (Title 40 CFR 147.2550 Subpart ZZ). Under the UIC program, the State of Wyoming

⁴ Any injection of “fluid” into an aquifer requires an exemption. A fluid is defined as “any material which flows or moves, whether semisolid, liquid, sludge, gas or any other form or state.” Water Quality Rules and Regulations, Ch. 13, § 1(r). Hence, air is a fluid for the purposes of the UIC program.

has primary enforcement authority, or primacy. See Underground Injection Control Program, Memorandum of Agreement Between The State of Wyoming and the United States Environmental Protection Agency, Region VIII (April 12, 1983) (designating DEQ/WQD as the “lead agency” with “UIC Program primacy.”) A copy of the 1983 MOA is attached hereto as Exhibit A.

The relationship between the EPA and the State of Wyoming with respect to the UIC program is also set out in Federal regulations.

The Director⁵ may...designate “exempted aquifers” using the criteria in 40 CFR 146.4 of this chapter. Such aquifers are those which would otherwise qualify as “underground sources of drinking water” to be protected, but which have no real potential to be used as drinking water sources. Therefore, they are not USDWs. * * * Aquifers which do not fit the definition of “underground source of drinking water” are not “exempted aquifers.” They are simply not subject to the special protection afforded USDWs.

40 CFR § 144.1(g).

Pursuant to 40 CFR § 144.7(b)(3), after a State program is approved, “the Director may, after notice and opportunity for a public hearing, identify additional exempted aquifers. For approved State programs exemption of aquifers identified...under §146.04(b) [sic] shall be treated as a program revision under §145.32.”

The relationship between the EPA and the State is succinctly set out in *Western Nebraska Resources Council v. EPA*, 793 F.2d 194 (8th Cir. 1986). That case concerned a request to exempt 3,000 acres of the Chadron aquifer to allow in situ uranium mining by the Wyoming Fuel Company. On request by the state of Nebraska, the EPA approved a 6.7 acre exemption limited to the lower portion of the aquifer, but held further action on the aquifer exemption “in

⁵ In the case of an approved program, “Director” means the State director. 40 CFR § 144.3.

abeyance.” See 50 Fed. Reg. 5253 (Feb. 7, 1985). “In granting a limited aquifer exemption, essentially intended to allow the establishment of a research and development area by Wyoming Fuel Company, EPA sought to verify conclusively the validity of its determinations before approving any more extensive aquifer exemption.” 793 F.2d, 197.⁶

The Court described the regulatory relationship between the State and the EPA as follows:

Before underground injection will be permitted,...the state, after notice and an opportunity for a public hearing, must itself identify and approve the aquifer exemption. [40 CFR] §144.7(b)(3). That exemption...must then be authorized by EPA as a revision to the state’s approved UIC program. *Id.* §§ 144.7(b)(3), 145.32.

793 F.2d, 196.

A similar explanation of the relationship is set out in *Goliad County, Texas v. Uranium Corp.*, 2009 WL 1586688 (S.D. Tex. 2009):

In addition to issuing a Class III injection well permit, to authorize in situ uranium mining, the [Texas Commission on Environmental Quality] must designate portions of the potentially affected aquifer as exempt. The processes of obtaining an injection permit and aquifer exemption generally mirror one another, and when the two are sought together, the notice and hearing provisions related to the permit application is joined with that concerning the exemption sought. Once these processes have been completed, presuming the TCEQ both grants a permit and designates an aquifer (or portions of the aquifer) as exempt, the exemption would not become final unless and until it is approved by the EPA. An affected person may then challenge the exemption by filing a lawsuit with a United States Court of Appeals for judicial review of the EPA's decision.

2009 WL 1586688 at *2 (internal citations omitted).

⁶ Following the successful research and development project, the State of Nebraska renewed its request for the 3,000 acre exemption, which was approved by the EPA. The EPA’s approval was affirmed in *Western Nebraska Resources Council v. EPA*, 943 F.2d 867 (8th Cir. 1991).

In sum, the process for consideration of aquifer exemption requests under an approved state UIC program requires the State to first identify and approve the aquifer exemption, subject to final approval by the EPA.

By letter dated August 29, 2013, the Wyoming DEQ submitted to the EPA the required information regarding the reclassification of the aquifer and the aquifer exemption. *See* Exhibit B, attached. The letter stated, “The [Statement of Basis]...reflects WDEQ’s findings regarding the current use of the affected aquifer as a water source and the presence of commercially producible minerals within the aquifer.” Specifically, the request to EPA was to “review these materials for conformance with Wyoming’s groundwater classification criteria and US EPA’s regulations at 40 CFR 146.4 [Criteria for Exempted Aquifers].”

By letter dated October 5, 2013, the EPA provided its “interim response.”⁷ The EPA stated, “after EPA has the opportunity to review any comments received and WDEQ’s response to comments, we will provide a final response approving or disapproving the aquifer exemption request.” *See* Exhibit C, attached.

IV. The EQC’s Jurisdiction to Hear the Objections.

A. The EQC Has Specific Jurisdiction to Hear the Objections.

Linc’s application for a research and development permit was submitted pursuant to the provisions of Wyo. Stat. § 35-11-431 (§431). The statute provides, in relevant part: “A special license to conduct research and development testing may be issued by the administrator for a one

⁷ Pursuant to the MOA, the EPA is required to respond to the Water Quality Division within 45 days of receipt of the information required. “This response will be an interim response pending receipt and review by EPA of the results of the public participation process conducted by LQD/WQD.” *See* Exhibit A, p. 3.

(1) year period without a permit and may be renewed annually.” §431(a). The application must include some of the information required for a permit to mine governed by Wyo. Stat. § 35-11-406 (§406), as well as “[s]uch other information as the administrator deems necessary or as good faith compliance with the provisions of this act requires.” §431(a)(vii). In addition, §431(a)(vi) incorporates “[a]ll requirements of W.S. 35-11-406(j) and (k)....”

Section 406(k) provides, in pertinent part:

Any interested person has the right to file written objections to the application with the administrator within thirty (30) days after the last publication of the above notice. * * * [A] public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The council or director shall publish notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act, and right of judicial review shall be afforded as provided in that act.

That is, pursuant to §406(k), any interested person may object to a research and development license issued under §431, and the objections are heard by the Environmental Quality Council in a contested case hearing held within twenty days after the final date for filing objections. The Environmental Quality Council has subject matter jurisdiction to hear the objections filed by the Powder River Basin Resource Council pursuant to §406(k), incorporated by reference into §431.

B. The EQC Has General Jurisdiction to Hear the Objections.

In addition to the specific grant of jurisdiction set out in Wyo. Stat. § 35-11-406(k), the EQC has more general jurisdiction to “hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions” as well

as any case contesting the grant of any license authorized or required by this act. *See* Wyo. Stat. § 35-11-112(a) and (a)(iv).

In the process described above for an aquifer reclassification and exemption, the action of the Water Quality Division is complete, and there is no further action for the Division to undertake. Although neither the statutes governing the Council's jurisdiction, nor any decision of the Wyoming Supreme Court appear to require "final agency action" in order to trigger the Council's hearing authority, agency action is generally considered to be "final" when two conditions are met. First, the action must mark the consummation of the agency's decision-making process, and second, the action must be one by which rights or obligations are determined, or from which legal consequences flow. *See* 4 Administrative Law & Practice, § 12:20, *citing Bennett v. Spear*, 520 U.S. 154, 176-78 (1997).

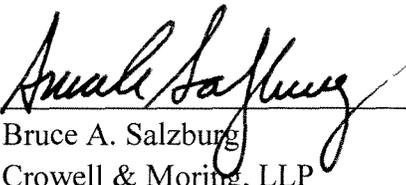
Here, the WQD's decision-making process is complete on the question of whether the aquifer exemption should be granted, and Linc's rights to proceed under the license flow from the determination. Therefore, there is "final agency action."

V. Conclusion.

For the above reasons, the Council has subject matter jurisdiction to proceed to hear the PRBRC's objections.

Respectfully submitted this 12th day of November, 2013.

Linc Energy Operations, Inc.

By: 
Bruce A. Salzburg
Crowell & Moring, LLP
205 Storey Blvd., Ste. 120
Cheyenne, WY 82009

CERTIFICATE OF SERVICE

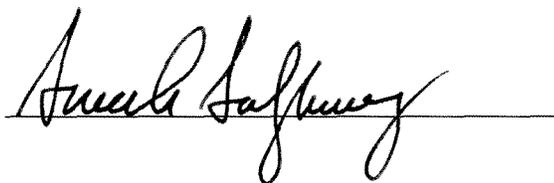
I hereby certify that a copy of the above and foregoing Brief Regarding Subject Matter Jurisdiction was served by electronic mail on the 12th day of November, 2013, on the following:

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Anneli Safeway

Underground Injection Control Program

(Document Received: Apr. 12, 1983

EPA Region VIII Drinking Water Branch)

Memorandum of Agreement

Between

The State of Wyoming
Department of Environmental Quality
Water Quality Division

and

The United States Environmental
Protection Agency
Region VIII

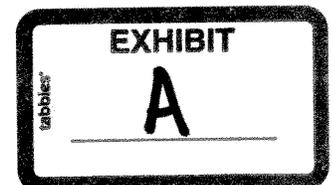
Introduction

The Regional Administrator of Region VIII of the Environmental Protection Agency (hereinafter referred to as the Administrator), and the Director of the State of Wyoming Department of Environmental Quality (hereinafter referred to as the Director), have entered into this Memorandum of Agreement to delineate the responsibilities of Region VIII of the Environmental Protection Agency (hereinafter referred to as EPA), and the State of Wyoming, Department of Environmental Quality, Water Quality Division (hereinafter referred to as the Division) for the ongoing operation of the Underground Injection Control Program (hereinafter referred to the UIC Program) for Class I, III, IV and V injection wells, as described in Part C of the Safe Drinking Water Act (Public Law 93-523 as amended by Public Law 95-190 and 96-502 hereinafter referred to as SDWA). The agreement establishes policies, responsibilities, and procedures pursuant to 46 CFR Part 123 for the State of Wyoming UIC Program. The agreement specifies areas of cooperation, standards of performance and guidelines for achievement of the goals set forth in the SDWA.

I. Policies and Agreements

A. Lead Agency Responsibilities

Wyoming Department of Environmental Quality, Water Quality Division, which receives the annual program grant, as designated by the Governor of the State, is also the lead agency to coordinate the UIC Program. This lead agency shall coordinate the UIC Program to facilitate communication between EPA and the State agencies having program responsibilities. These responsibilities shall include, but not be limited to, the submission of grant applications, reporting and monitoring results and annual report requirements. The Wyoming Oil and Gas Conservation Commission is responsible for and has authority over all Class II injection wells. The Division, DEQ Land Quality Division, and the State Engineer are responsible for and have authority over all Class I, III, IV and V injection wells. The Wyoming Oil and Gas Commission and the Division are responsible for administering the State Program for the injection wells under its jurisdiction including, but not limited to, reports, permits, monitoring and enforcement actions. The Wyoming Oil and Gas Commission shall enter into a separate MOA with EPA for Class II wells under Section 1425 of SDWA.



B. Transfer of Responsibility from EPA

The Administrator shall transfer from EPA to the Division any pending permit, applications and any other information relevant to program operation not already in the possession of Director when Wyoming assumes primacy for the program.

C. EPA Review of Permits

The Division recognizes EPA's oversight authority allowing review of permits. The procedures for submitting proposed or final permits to EPA for review and comment will be outlined in the State application for primacy. The State/EPA Agreement will be revised to reflect this process.

D. Classification of Ground waters

When it becomes necessary to classify groundwater as Class V (Mineral), the DEQ and EPA shall proceed upon the following schedule:

1. Upon determination by LQD that a complete application has been received, WQD will submit the information shown in Appendix A to EPA for review.
2. Concurrent with No. 1, above WQD will provide to EPA its findings regarding:
 - a. Current use of the affected aquifer as a drinking water source, and
 - b. That the aquifer contains commercially producible minerals.
3. EPA will review the information and findings submitted for consistency with the criteria established in 40 CFR 146.04 and 40 CFR 122.35, including the current use of the aquifer, existence of commercially producible minerals, and opportunity for public participation in the classification process.
4. Within 45 days from EPA receipt of the information and findings referred to in Nos. 1 and 2, above, EPA will respond to WQD/LQD in writing. This response will be an interim response pending receipt and review by EPA of the results of the public participation process conducted by LQD/WQD. This interim response will become final if there are no comments related to the classification of the ground water during either the comment period or the public hearing, if held. If comments are received during the comment period or the public hearing the interim response will become final if not modified within 20 days of the receipt of all the comments by Region VIII.

With regard to other ground water classification actions concerning injection wells, the DEQ and EPA shall proceed upon the following schedule:

1. Upon determination by WQD that an application to inject is complete, WQD will submit a copy of that complete application to EPA.
2. Concurrent with No. 1, above, WQD will provide its findings regarding:

- a. Current use of the affected aquifer as a drinking water source, and
 - b. The criteria for the classification proposed to be made.
 - c. When available, affidavits of notice to the public and summary of comments received.
3. EPA will review the information and findings submitted for consistency with the criteria established in 40 CFR 146.04 and 40 CFR 122.35, including the current use of the aquifer, criteria for the proposed classification, and opportunity for public participation in the classification process.
 4. Within 45 days from EPA receipt of the information and findings referred to in Nos. 1 and 2) above, EPA will respond to WQD in writing. This response will be an interim response pending receipt and review by EPA of the results of the public participation process conducted by WQD. This interim response will become final if there are no comments related to the classification of the ground water during either the comment period or the public hearing, if held. If comments are received during the comment period or the public hearing, the interim response will become final if not modified within 20 days of the receipt of all the comments by Region VIII.

III. Compliance Monitoring

A. General

The Division will operate a timely and effective compliance monitoring system to track compliance with permit conditions and UIC Program requirements. This tracking system will be outlined in the application for State primacy. The tracking system shall consist of 1) review of compliance reports, 2) inspection and surveillance, 3) complaint investigation, and 4) compliance schedules.

IV. Enforcement

A. General

The Division is responsible for taking timely and appropriate enforcement action against persons in violation of UIC program requirements, compliance schedules, technical requirements, and permit conditions. The State enforcement program will be described in the application to assume UIC Program primacy.

V. EPA Oversight

A. General

EPA shall oversee the State's administration of the UIC program on a continuing basis to assure that such administration is consistent with the MOA, the State UIC grant application, the State/EPA Agreement, and all applicable requirements embodied in current regulations, policies and federal law.

B. Review

This Agreement shall be reviewed annually as part of the annual program grant and State/EPA Agreement (SEA) process. The annual program grant and the SEA shall be consistent with this Agreement and may not override this Agreement.

C. Conformance with Laws and Regulations

The Director shall administer the UIC program consistent with the State's submission for program approval, this MOA, the SDWA, current Federal policies and regulations, promulgated minimum requirements, priorities established as part of the annually approved State UIC grant, and any separate working agreements which shall be entered into with the Regional Administrator as necessary for the full administration of the UIC program.

D. Responsibilities of Parties

Each of the parties has responsibilities to assure that the UIC requirements are met. The parties agree to maintain a high level of cooperation and coordination between Division and EPA staffs in a partnership to assure successful and effective administration of the UIC program. In this partnership, the Regional Administrator will provide to the Director on a continuing basis technical and policy assistance on program matters.

It is recognized that the primary responsibility for issuance of UIC permits in the State of Wyoming is with the Division; that the EPA will provide policy guidance, financial and technical assistance, and aid in the issuance of permits, and that both EPA and the Division share responsibility for enforcement actions necessary for protection and enhancement of the State's waters.

The Regional Administrator is responsible for keeping the Director apprised of the meaning and content of Federal guidelines, technical standards, regulations, policy decision, directives, and any other factors which affect the UIC program.

The strategies and priorities for Issuance, compliance monitoring and enforcement of permits, and implementation of technical requirements shall be established in the Division's program description, the annual State/EPA Agreement, or in subsequent working agreements. If requested by either party, meetings will be scheduled at reasonable intervals between the Division and EPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the UIC program.

The Department agrees that any applications or permit forms submitted as part of the primacy application will not be modified without notification and approval by EPA provided however, the applications or forms shall be deemed approved unless disapproved by EPA in writing within 45 days from receipt of the proposed modification.

The Water Quality Division commits to carry out the UIC Program as outlined in the State's application to assume UIC Program primacy.

The Division commits to support all activities with the appropriate level of staff and resources.

In addition to the specific oversight activities listed in 40 CFR 122) the State recognizes EPA's right to access files necessary for evaluating the Director's administration of the UIC Program.

It shall be the policy of the EPA and the Division to minimize paperwork and interagency decision procedures, and to make the best use of available manpower and funds, so as to prevent duplication of effort and unnecessary delays.

The Department stipulates that the language contained in W.S. 35-11-404 and 427 will not be used to reduce aquifer protection inasmuch as such action would adversely affect the interests of the State of Wyoming. Furthermore, all EPA Class III designated wells will require a permit from WQD or LQD prior to construction.

E. Sharing of Information

The Director shall promptly inform EPA of any proposed, pending or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions which might affect the UIC Program and the Division's authority to administer the program. The Director shall promptly inform EPA of any resource allocation changes (for example, personnel budget, equipment, etc.) which might affect the Division's ability to administer the program.

Any information obtained or used by the Division under its UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the Division under a claim of confidentiality, the Division must submit that claim to EPA when providing EPA such information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with 40 CFR Part 122.19. If EPA obtains information from the Division that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA shall furnish to the Division the information in its files not submitted under a claim of confidentiality which the Division needs to implement its approved program. EPA shall furnish to the Division information submitted to EPA under a claim of confidentiality which the Division needs to implement its approved program subject to conditions in 40 CFR Part 122.19.

F. General Provisions

Nothing in this agreement is intended to affect any UIC or program requirement, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than: (1) any set forth in the UIC regulations; or (2) other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this agreement shall be construed to limit the authority of the EPA to take action pursuant to Sections 1421, 1422) 1423, 1424, 1431 or other Sections of the SDWA.

VI. Permitting

A. General

The Division is responsible for drafting, circulating, issuing, modifying, reissuing, and terminating permits and shall take appropriate action pursuant to State and federal law and rules and regulations. These procedures will be detailed in the State application for UIC primacy.

VII. EPA Inspections of Facilities

A. General

EPA shall notify the Division of any proposed facility inspection within the State of Wyoming at least seven (7) days before any inspection which EPA determines to be necessary. This procedure will allow coordination of scheduling and allow joint inspections. This procedure may be waived for emergency situations.

VIII. Effect, Rescission, and Modification

This Agreement shall take effect upon program approval by the Administrator pursuant to 40 CFR 123.6 and shall remain in effect for the duration of such approved program or until this Agreement is rescinded by mutual agreement of the parties. This Agreement may be modified upon the initiative of the Division, EPA or the Governor of the State of Wyoming. Modifications must be in writing and must be signed by the Director and the Regional Administrator. Modifications become effective when signed by all parties to the Agreement. Modifications may be made by revision prior to the effective date of this Agreement or subsequently by addenda attached to this Agreement and consecutively numbered, signed and dated.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Approved Original signed by Governor Ed Herschler 3/30/83
Governor Ed Herschler Date
State of Wyoming

Approved Original signed by Stephen J. Durham 4/26/83
Steven J. Durham Date
Region VIII
U.S. Environmental Protection Agency

Approved Original signed by Robert E. Sundin 3/30/83
Robert E. Sundin, Director Date
Wyoming Department of
Environmental Quality

(Document rescanned by Paul S. Osborne
June 28, 2003—A correct copy of the original
signed document)

Appendix A

- I. Information requirements for EPA Class III wells.
 - A. Definition of permit area with map.
 - B. Application Appendix D-5 (Description of regional and site specific geology including the mineralized zone).
 - C. Application Appendix D-6 (Description of the groundwater within the permit area including map and description of groundwater uses).
 - D. Mine Plan
 1. Description of mineralized zone including extraction techniques.
 2. Process description including:
 - a. Well Field
 - b. Monitoring Plan
- II. As soon as available, affidavits of notice to the public and copies of comments related to the ground-water classification.



Department of Environmental Quality



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

Matthew H. Mead, Governor

Todd Parfitt, Director

August 29, 2013

Mr. Douglas Minter
Unit Chief
Underground Injection Control Program
US EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

Re: Linc Energy. Underground Coal Gasification Demonstration Gasifier #6 Project;
Groundwater Reclassification to Class 5 (Mineral Commercial)

Dear Mr. Minter:

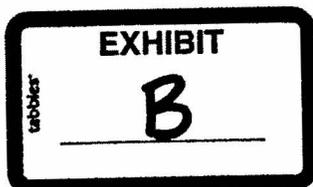
In accordance with the 1983 Underground Injection Control (UIC) program Memorandum of Agreement (MOA) between the State of Wyoming and the United States Environmental Protection Agency (US EPA), the Wyoming Department of Environmental Quality (WDEQ) is providing the following materials related to the above-referenced in-situ mining project for your review:

- definition of the permit area and map (hard copy and electronic shape file);
- description of regional and site specific geology, including the mineralized zone;
- description of the groundwater within the permitted area, including map and description of groundwater use;
- sections of the mine plan, including extraction techniques and process detail; and
- aquifer exemption summary sheet (attached).

With the exception of the hard copy map, these data and materials are being submitted electronically in the attached DVD as a stand-alone "Aquifer Reclassification Justification Statement of Basis" (SOB), also known as Appendix D-12. Appendix D-12 contains the relevant sections of the mine permit application geology section (Appendix D-5) and hydrology section (Appendix D-6) that were previously submitted independently of this document.

The SOB is for the Water Quality Division's (WQD) reclassification of groundwater within the mining unit to Class V (Mineral Commercial) and reflects WDEQ's findings regarding the current use of the affected aquifer as a water source and the presence of commercially producible minerals within that aquifer.

In accordance with the MOA, please review these materials for conformance with Wyoming's groundwater classification criteria and US EPA's regulations at 40 CFR 146.4.



2100 West 5th Street • SHERIDAN, WY 82801
(307) 673-9337 • FAX (307) 672-2213



Strata Energy Corp., Ross Project
Statement of Basis
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Please contact Don Fischer, North District Groundwater Section Supervisor, at (307)675-5640 if you have any questions. We look forward to your review and response.

Sincerely,

A handwritten signature in cursive script that reads "Don Fischer".

Kevin Frederick
Wyoming Department of Environmental Quality
Administrator
Water Quality Division

Attachments: *Statement of Basis, (a.k.a., Appendix D-12); Aquifer Exemption Summary Sheet*

cc: Todd Parfitt, WDEQ Director (w/o enclosures)
Nancy Nuttbrock, LQD Administrator (w/o enclosures)
Don Fischer, WQD/GPC District Supervisor, Sheridan (w/o enclosures)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

OCT 25 2013

Ref: 8P-W-UIC

Mr. Kevin Frederick
Wyoming Department of
Environmental Quality (WDEQ)
Water Quality Division
Herschler Building
122 West 25th Street
Cheyenne, Wyoming 82002

Re: Linc Energy
UCG Demonstration Gasifier #6 Project
Wyodak Coal, Fort Union Formation
Aquifer Exemption
Campbell County, Wyoming

Dear Mr. Frederick:

We have reviewed the application as well as other supporting information provided by Linc Energy and the WDEQ and at this time have no comments regarding your aquifer exemption request.

This letter will serve as an interim response until the Environmental Protection Agency is notified of the results of the public participation process. At the close of this process, and after EPA has the opportunity to review any comments received and WDEQ's response to comments, we will provide a final response approving or disapproving the aquifer exemption request.

Please contact Wendy Cheung of my staff at 303-312-6242 with questions or concerns regarding this matter.

Sincerely,


Derrith R. Watchman-Moore

Assistance Regional Administrator
Office of Partnerships and Regulatory Assistance

