

The State
of Wyoming



Department of Environmental Quality


Dave Freudenthal, Governor

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MEMORANDUM

TO: Coal Bed Methane (CBM) and Oil and Natural Gas NPDES Water Discharge Permit Applicants and Interested Parties

FROM: Todd Parfitt, NPDES Program Manager 

DATE: January 27, 2004

RE: Wildlife and Agricultural Use Demonstration

This memo replaces Leah Krafft's January 30, 2001 memo on Effluent Limitation Guidelines and outlines requirements for making Wildlife and Agricultural Use determinations for Oil and Natural Gas and CBM discharges.

The Clean Water Act requires that effluent limits be established in permits that are based on technologies available to treat pollutants in addition to limits based on water quality standards for protecting the designated uses of receiving streams. The national Effluent Limitation Guidelines (ELG) associated with the Oil and Gas Point Source Category predate the development of coal bed methane extraction technology, however, the technology is similar enough to conventional gas extraction that, in the professional judgement of the Wyoming Department of Environmental Quality (WDEQ), these ELGs are appropriately applied to coal bed methane gas production.

According to the federal regulations, "no discharge" is allowed for onshore operations, unless the discharge of produced water occurs west of the 98th meridian and is used for agricultural purposes and/or wildlife propagation. The basis for this "no discharge" exemption (subpart E of 40 CFR 435) is that, within certain limits, produced water can be a benefit to wildlife, stock, irrigation and the health and diversity of an arid environment. The regulations further state that the produced water shall be 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 uses during periods of discharge.

In order to comply with the requirements associated with the federal regulations, the WDEQ will require permittees who propose to discharge produced water to document that the water will be used for a specific agricultural or wildlife purpose. Examples of agricultural and wildlife use of produced water may include: discharges to streams to enhance wildlife habitat; discharges to stock tanks, reservoirs, or ponds for stock watering, irrigation, and/or wildlife use; and, discharges to streams for various agricultural or wildlife uses.

Agricultural and wildlife use documentation includes (but is not limited to) a certified letter from a landowner(s), a formal written statement from a state, federal or local resource management agency, or a formal written statement, with supporting documentation, from a natural resources or environmental professional accompanied by the credentials of the natural resources or environmental professional. Agriculture and wildlife use documentation must be provided for each outfall included in the application.

For Oil and Natural Gas discharges, other than coal bed methane, permitted to discharge prior to June 10, 2002, the attached letter from the Wyoming Game and Fish Department satisfies the requirement referenced above, provided there is no increase in permitted flow volume and the permitted effluent limits are met. For the purposes of determining whether permitted effluent limits have been met, minor exceedances of permitted effluent limits which, in the opinion of the WDEQ, have been brought back into compliance in a timely manner satisfy the provisions for beneficial use.

If you have any questions, please contact Todd Parfitt at (307) 777-6709 or Leah Krafft at (307) 777-7093.

Attachment: Wyoming Game and Fish Department Letter dated June 10, 2002

TTP/mad/4-0057-ltr

WYOMING
GAME AND FISH DEPARTMENT



"Conserving Wildlife - Serving People"

June 10, 2002

WER 10322

Dennis Hemmer, Director
Wyoming Department of Environmental Quality
Herschler Building, 4 West
Cheyenne, WY 82001

Dear Mr. Hemmer:

In recent weeks, the Wyoming Game and Fish Department has received a number of requests for beneficial use statements from oil and gas operators. Most of these have been for permit renewals of historic, produced-water discharges. We understand that all oil and gas facility discharges now require a statement of beneficial use for either wildlife or agriculture.

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Approximately three years ago, Department personnel in the Powder River Basin were becoming inundated by requests from coal bed methane operators for beneficial use statements. We even received a request from the Wyoming Business Council to provide a statewide or regional statement of beneficial use for all discharges meeting water quality standards. The decision was made by the Department at that time to not issue such statements. We felt it would not be possible to easily determine if any given discharge would provide benefits or cause adverse impacts to fish and wildlife, or their habitats, without site-specific reviews and considerable analysis. Such reviews would create a huge burden on our personnel. Our position was stated in Department letters to your Water Quality Division as early as 1999 and was discussed with you by our former Director, John Baughman.

Our position today is unchanged. We will not issue such statements unless the discharge is part of a project on which we partner with industry and on which there is a Department-approved habitat enhancement plan. Given the many thousands of potential beneficial use statement requests, particularly for new discharges by the coal bed methane industry, it is not remotely possible for this Department to be involved.

The Department would like to make one exception to our position on this matter. As I indicated, the recent requests have been for historic discharges that are being considered for permit renewals, with no changes in water quantity or quality. In these instances, we feel a beneficial use for fish and/or wildlife has been demonstrated over time. On a few of these requests, our personnel have conducted site-specific reviews and we have provided two statements of beneficial use. However, this cannot continue as we are receiving more and more of these requests. Therefore, we wish to provide the following generic statement that will apply to all historic discharges for which there are no water quantity or quality changes:

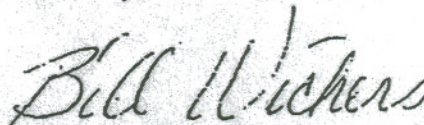
Mr. Dennis Hemmer
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The Wyoming Game and Fish Department recognizes that historic discharges by oil and gas production facilities have demonstrated a beneficial use to fish and/or wildlife. Provided there are no changes to the quantity of discharge, and the water quality continues to meet DEQ standards for discharge, any permit renewal for these discharges will be considered by the Department as having a beneficial use for fish and/or wildlife.

The Department will not issue additional beneficial use statements for these historic discharges. We will assume that the Department of Environmental Quality, Water Quality Division, will accept the above statement as applicable for all historic discharges as described. We will advise all operators requesting statements under these conditions that DEQ has received our blanket statement. For new discharges or discharges that do not meet the conditions described above, we will not issue beneficial use statements except as noted for partnered projects. In these instances, we would appreciate DEQ personnel advising operators to either secure a beneficial use statement through a consultant or from the affected landowner, and not direct them to the Department as has happened on a number of occasions in the past.

Please advise us if you have questions regarding this letter. We would be glad to meet with you and your staff if you so desire. If we have not heard from you by July 12, we will assume our approach is acceptable. Thank you for your assistance in this matter.

Sincerely,



BILL WICHERS
DEPUTY DIRECTOR

BW:TC:as

cc: Gary Beach
Leah Krafft
Roland Peterson