

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

MAY 17 2007

Terri A. Lorenzon, Director
Environmental Quality Council

WYOMING OUTDOOR COUNCIL,)
)
 Petitioner,)
)
 v.)
)
 WYOMING DEPARTMENT OF)
 ENVIRONMENTAL QUALITY, WATER)
 QUALITY DIVISION,)
)
 Respondent.)

Docket No. 06-3816

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
RESPONSE TO PETITION FOR REVIEW OF THE
PUMPKIN CREEK GENERAL PERMIT

Wyoming Department of Environmental Quality ("DEQ"), by and through its attorney, submits this Response to Petition for Review of the General Permit for Coal Bed Methane (CBM) Discharges to Pumpkin Creek, WYG280000 ("general permit").

1. DEQ is without sufficient knowledge to admit or deny the allegations contained in paragraph 1 of the Petition for Review.
2. There is no paragraph 2 to which DEQ can respond.
3. DEQ admits the information contained in paragraph 3.
4. DEQ denies the allegations contained in paragraph 4.
5. DEQ admits the information contained in paragraph 5.

6. DEQ admits the allegations in paragraph 6.

7. DEQ admits the allegations in paragraph 7, with the exception of the word, “allegedly,” which DEQ denies.

8[a]. DEQ admits the allegation contained in the first paragraph designated as “8.”

8[b]. There is no paragraph 9. DEQ admits the allegation contained in the second paragraph designated as “8.”

10[a]. DEQ denies the allegation contained in the first paragraph designated as “10.”

10[b]. DEQ alleges the statute speaks for itself and denies the remaining allegations contained in the second paragraph designated as “10.”

11. DEQ admits that the general permit did not go through rulemaking. DEQ denies the remaining allegations in paragraph 11.

12. DEQ admits it did not promulgate the general permit as a rule. DEQ denies all other allegations in paragraph 12.

13. With regard to the allegations contained in paragraph 13.a through 13.e, DEQ alleges the statutes speak for themselves. DEQ admits it did not take the actions listed in paragraphs 13.a. through 13.e. DEQ denies the remaining allegations contained in paragraphs 13.a. through 13.e.

14. DEQ denies the allegations in paragraph 14.

15. DEQ admits Chapter 2 Wyoming Water Quality Rules and Regulations (“WWQRR”) contains criteria for the issuance of general permits. DEQ denies the remaining allegations contained in paragraph 15.

16. DEQ alleges the regulations speak for themselves. DEQ denies the remaining allegations contained in paragraph 16.

17. DEQ denies the general permit has five separate categories of discharges, but asserts the general permit covers two categories of discharges, one of which has four subcategories. DEQ admits there are differences in sodium adsorption ration (“SAR”), electrical conductivity or specific conductance (“EC”) and iron effluent limitations in some of the categories and some of the subcategories of discharges. DEQ admits some effluent characteristics have different effluent limits under some of the categories and some of the subcategories of discharges. DEQ denies the remaining allegations contained in paragraph 17.

18. DEQ admits some operating conditions and monitoring requirements differ to some degree between some of the categories and some of the subcategories of discharges, but DEQ asserts operating conditions and monitoring requirements do not differ within any given category. DEQ denies the remaining allegations contained in paragraph 18.

19. DEQ denies the allegations in paragraph 19.

20. DEQ admits the Wyoming Environmental Quality Act (“WEQA”) was enacted in 1973, but denies the other allegations in paragraph 20.

21. DEQ alleges the provisions of the WEQA, WYO. STAT. ANN. §§ 35-11-101-1904, speak for themselves. DEQ admits that WYO. STAT. ANN. § 35-11-302 expressly authorizes “permit systems,” but denies that those “permit systems” are specifically limited to individual permits. DEQ denies the other allegations in paragraph 21.

22. DEQ admits a Notice of Intent (NOI) is required for coverage under a general permit. DEQ denies the other allegations in paragraph 22.

23. DEQ asserts the statutes and regulations speak for themselves. DEQ denies the remaining allegations contained in paragraph 23.

24. DEQ asserts the statute speaks for itself. DEQ admits no Chapter 3 WWQRR construction permits have been issued under WYG280000. DEQ denies the remaining allegations contained in paragraph 24.

25. DEQ asserts the statute and regulations speak for themselves. DEQ denies the other allegations in paragraph 25.

26. DEQ denies the allegations contained in paragraph 26.

27. DEQ denies the general permit provides for five categories of discharges, three of which are subcategories. DEQ asserts the general permit covers two categories of discharges, one of which has four subcategories.

28. DEQ admits Category I discharges are direct discharges to Pumpkin Creek. DEQ admits Category II discharges are to on-channel reservoirs. DEQ admits some effluent characteristics regulated in Category I are subject to limits that differ to some degree from or are not regulated in Category II. DEQ denies the other allegations in paragraph 28.

29. DEQ admits the permit authorizes Category I and Category II discharges to be made to the Pumpkin Creek sub-basin. DEQ admits the Category I and Category II discharges will affect the same class of water. DEQ denies the remaining allegations contained in paragraph 29.

30. DEQ admits it has the authority to require different effluent limitations that are not arbitrary and capricious in individual permits. DEQ denies the remaining allegations contained in paragraph 30.

31. DEQ denies the allegations contained in paragraph 31.

32. DEQ denies the allegations contained in paragraph 32.

33. DEQ asserts the regulations speak for themselves. DEQ admits ranchers can make use of naturally irrigated lands to graze and water their livestock. DEQ admits the grass in these naturally irrigated lands can be crucial to ranchers' operations. With regard to allegations in paragraph 33 that certain events "should" occur, DEQ asserts these are not allegations of fact or law and constitute arguments to which responsive pleading is not appropriate, and DEQ therefore denies them. DEQ denies the remaining allegations in paragraph 33.

34. DEQ admits the Pumpkin Creek sub-basin naturally irrigated lands can capture natural moisture events and can exhibit vegetative production in excess of uplands. DEQ admits these naturally irrigated lands can be important components in sustaining rangeland use by livestock and wildlife. DEQ denies the remaining allegations contained in paragraph 34.

35. DEQ denies the allegations contained in paragraph 35.

36. DEQ denies the allegations contained in paragraph 36.

37. DEQ asserts it addresses headcuts in WYG280000, paragraph 8.1, not paragraph 6.1. DEQ denies the remaining allegations in paragraph 37.

38. DEQ admits the terms of WYG280000, paragraph 8.1, allow a headcut mitigation plan to be implemented within three months of approval of the plan. DEQ denies the remaining allegations contained in paragraph 38.

39. With regard to allegations in paragraph 39 that events "should" occur, DEQ asserts these are not allegations of fact or law and constitute arguments to which responsive pleading is not appropriate, and DEQ therefore denies the allegations contained in paragraph 39.

40. DEQ admits WYG280000, paragraph 8.1, allows a downstream landowner to waive, in writing, the discharger's obligation to monitor and/or mitigate a headcut, but DEQ asserts the discharger may be released from monitoring and/or mitigating a headcut only if it is not contributing to a water quality violation or impairment. DEQ denies the remaining allegations contained in paragraph 40.

WHEREFORE, Respondent requests the Environmental Quality Council uphold General Permit WYG280000 and deny Petitioner's request for relief.

Respectfully submitted this 11th day of May, 2007.



Mike Barrash
Mike Barrash
Senior Assistant Attorney General
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, Wyoming 82002
Telephone: 307-777-6946

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of May, 2007, a true, full and correct copy of the foregoing **WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO PETITION FOR REVIEW OF THE PUMPKIN CREEK GENERAL PERMIT** was served via United States Mail, first class postage prepaid, and by facsimile transmission and/or e-mail, as follows:

Steve Jones
Watershed Protection Program Attorney
Wyoming Outdoor Council
262 Lincoln
Lander, WY 82520
FAX: 307-332-6899
steve@wyomingoutdoorcouncil.org

A handwritten signature in black ink, appearing to read "Mike Banner", is written over a horizontal line.

Wyoming Attorney General's Office