

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

FILED

NOV 30 2007

IN RE: Willow Creek General Permit,)
Pumpkin Creek General Permit, and)
Four Mile Creek Plan)

Terri A. Lorenzon, Director
Docket No. 06-3816 Environmental Quality Council

ORDER DENYING SUMMARY JUDGMENT

THIS MATTER has come before the Environmental Quality Council on September 26, 2007, in Casper, Wyoming upon Petitioner's Motion for Summary Judgment with Deborah Baumer, Hearing Examiner, Office of Administrative Hearings.

The Council members present at the hearing were Dennis M. Boal, Presiding Officer, Richard C. Moore P.E., John Morris, Sara Flitner, and Mark Gifford. Also present for the Council were Terri A. Lorenzon, Director/Attorney, the Environmental Quality Council and Bridget Hill, Assistant Attorney General, Attorney General's Office. The Petitioner, Wyoming Outdoor Council, represented by Steve Jones was present at the hearing. The Intervenor, Yates Petroleum, Marathon Oil Company, and Citation Oil and Gas Corp., were represented by Matthew Joy and Eric Hiser of Jordan, Bischoff & Hiser of Scottsdale, Arizona, attended the hearing via video conference. The Department of Environmental Quality, Water Quality Division (WQD), was represented by Mike Barrash, Senior Assistant Attorney General of the Attorney General's Office, attended the hearing via video conference. The Council being otherwise well advised in the premises, the Council finds and Orders as follows:

1. Issues: Petitioner seeks summary judgment on the following grounds:

A. "Both general permits are agency statements of general applicability and should have been promulgated as rules as required by the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq., but instead were improperly issued without such promulgation."

B. "Both general permits were issued, despite the fact that the Wyoming Department of Environmental Quality does not have the requisite statutory authority to issue general permits and therefore are violative of the Environmental Quality Act, W.S. 35-11-302, and the Administrative Procedure Act, W.S. 16-3-103(d)(i)."

C. "Both general permits do not comply with the requirements of Chapter 2, Section 4, Wyoming Water Quality Rules and Regulations, in that they do not meet the requirements for general permits. Specifically, they both have different categories of discharges, with different effluent limitations, and provide for different monitoring

requirements, all within the same permit.”

2. Findings:

A. The Council has jurisdiction over the subject matter and the parties to this proceeding.

B. The Environmental Quality Act, Wyo. Stat. § 35-11-112(b)(iv) grants the EQC authority to conduct hearings in cases contesting the grant, denial, suspension, revocation or renewal of any permit, and Wyo. Stat. § 35-11-112(c)(ii) provides authority to grant, deny, suspend, revoke or modify any permit. The EQC conducts de novo hearings pursuant to the DEQ Rules of Practice and Procedure, the Wyoming Rules of Evidence, and the Wyoming Rules of Civil Procedure.

C. General permits are not required to be promulgated as rules pursuant to the Wyoming Administrative Procedures Act. Specifically, the general permits are not “agency statements of general applicability that implement, interpret, and prescribe the law.” WYO. STAT. ANN. § 16-3-101(b)(ix).

D. The general permits in this matter only apply to specific geographic areas and interested parties may petition the WQD Administrator to require any person authorized to apply for and obtain an individual permit. See WYOMING WATER QUALITY DIVISION RULES AND REGULATIONS, Ch. 2, § 4 (i)(i)-(iii).

E. The Environmental Quality Act does provide authority for the WQD to issue general permits. In particular, WYO. STAT. ANN. § 35-11-302 provides, “the administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations, standards and **permit systems** to promote the purposes of this act.” (Emphasis added).

F. WYO. STAT. ANN. § 35-11-302 (a)(v) authorizes the WQD to promulgate standards for the issuance of permits as authorized by the Clean Water Act. The Clean Water Act provides for the issuance of general permits. See, 40 C.F.R. § 122.28; *Natural Res. Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1380-81 (D.C. Cir. 1977).

G. The Council has promulgated rules governing the issuance of general permits pursuant to this authority. See, WYOMING WATER QUALITY DIVISION RULES AND REGULATIONS, Ch. 2, § 4; Ch. 18. The rules related to general permits have been in place for sixteen years and been through the statutory rulemaking process including the determination of whether the rules are within the scope of the EQC’s authority. See, WYO. STAT. ANN. § 16-3-103 (d).

E. The general permits are not in violation of the requirements of WYOMING WATER QUALITY DIVISION RULES AND REGULATIONS, Ch. 2. Specifically, the plain language of

Chapter 2 does not prohibit the WQD from creating subcategories for discharges within the general permit.

3. Order:

It is hereby ordered that the Petitioner's motion for summary judgment is denied.

DATED this 28 day of November, 2007.

A handwritten signature in black ink, appearing to read "Dennis Boal", written over a horizontal line.

Dennis Boal, Presiding Officer
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Kim McGee, certify that at Cheyenne, Wyoming, on the 30th day of November, 2007, I served a copy of the foregoing **ORDER DENYING SUMMARY JUDGMENT** by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to;

Steve Jones
Watershed Protection Program Attorney
Wyoming Outdoor Council
262 Lincoln Street
Lander, WY 82520

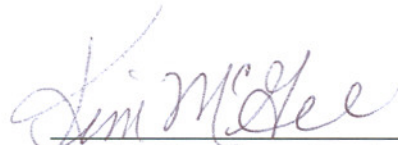
Jorden, Bischoff & Hiser, P.L.C.
Eric L. Hiser
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also to the following persons via interoffice mail:

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