

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

JAN 13 2008

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL OF REVIEW)
OF THE ISSUANCE OF WYOMING POLLUTANT)
DISCHARGE ELIMINATION SYSTEM (WYPDES))
GENERAL PERMITS AND THE FOUR MILE)
CREEK WATERSHED PLAN)

DOCKET NO. 06-3816

PRE-HEARING CONFERENCE ORDER

THIS Order arises out of the pre-hearing conference conducted by the hearing examiner for the Environmental Quality Council on January 9, 2008.

1. Motions.

- (a) Arguments were heard on Respondent DEQ's Motion for Partial Summary Judgment. Subsequent to the pre-hearing conference, Respondent withdrew its Motion for Partial Summary Judgment.

2. Issues. The following issues were identified as the issues involved in this proceeding:

- (a) Are the effluent limits in the permits appropriate?
 - (i) Are the effluent limits applicable to Category IC discharges located above irrigation for EC and SAR appropriate?
 - (ii) Do all the effluent limits in the general permits meet the requirements of Chapter 1, § 20, by protecting all existing and potential agricultural uses?
- (b) What is the appropriate point of compliance for effluent limits?
- (c) Is the 50-year, 24-hour storm event containment requirement justifiable, if a permittee selects the Category II option?
- (d) Does the incorporation of the *Wyoming Powder River Assimilative Capacity Allocation and Control Process* in the permits provide fair notice concerning what requirements will be imposed on permittees?
- (e) Are the on-channel reservoirs authorized by the general permits "treatment works" as defined by W.S. 35-11-103(c)(iv), and if so, are separate permits to construct required for those reservoirs, as required by W.S. § 35-11-301(a)(iii)?

- (f) Are the erosion control protections set forth in the general permits adequate to protect the drainages damage caused by erosion?
- (g) Are the requirements in the *Head Cut Monitoring and Mitigation* provision of the general permits appropriate?

3. Witnesses. The parties identified the following witnesses:

- (a) The Department of Environmental Quality (DEQ) will call as witnesses, Jason Thomas, Katy Shreve, and Bill DiRienzo. DEQ may call John Wagner.
- (b) Petitioner, Yates/Marathon/Citation (Y/M/C), will call as witnesses, Dr. Eric Kern, Hugh Lowham, P.E., and Bob Innes. Y/M/C, may call Bill DiRienzo, Jason Thomas, Todd Parfitt, and Kathy Shreve.
- (c) Petitioner, Wyoming Outdoor Council (WOC), will call as witnesses Dr. Larry c. Munn, Dr. Ginger Paige, and Bill DiRienzo. WOC, may call John Wagner, and Todd Parfitt.

4. Exhibits. In their pre-hearing memorandums, the parties identified the exhibits they intend to use during the hearing. The parties stipulated to the following exhibits, and as such, they are admitted and will be published to the council prior to the hearing:

- (a) Y/M/C: Exhibits 1-30, & 40-41.
- (b) WOC: Exhibits 2, 3, 6, 13, 15, 16, & 18-20.
- (c) DEQ: Exhibits 1, 7, 8, 8(A), 9, 10, 11, & 14-17.

The parties may offer any of their remaining listed exhibits at the hearing with objecting parties setting forth their specific objections to those exhibits at that time.

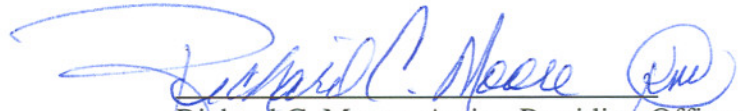
5. Order of Proceeding. Each party will have ten (10) minutes for opening statements. Following opening statements, the order for the presentation of evidence shall be as follows:

- 1. DEQ (background information regarding the permits)
- 2. Y/M/C
- 3. WOC
- 4. DEQ (presentation of case)
- 5. Y/M/C and WOC (rebuttal)

6. Date, Time and Location of Hearing. The hearing is scheduled for five days beginning January 28, 2008 through February 1, 2008. The hearing will begin at 9:00 a.m. in Room B-63 of the Herschler Building.

7. **Objections to Pre-Hearing Conference Order.** The parties shall have five days from the date of service to serve and deliver any objections to this Order.

SO ORDERED this 15th day of January.



Richard C. Moore, Acting Presiding Officer
Environmental Quality Council
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Herschler Building
Cheyenne, WY 82002
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FAX: 307-777-6134

CERTIFICATE OF SERVICE

I, Kim McGee, certify that at Cheyenne, Wyoming, on the 15th day of January, 2008, I served a copy of the foregoing **ORDER** 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
Matthew Joy
7272 East Indian School Road, Ste. 360
Scottsdale, AZ 85251

also to the following persons via interoffice mail:

Mike Barrish
Office of Attorney General
123 State Capitol
Cheyenne, WY 82002

John Wagner, Administrator
WDEQ
122 W. 25th, 4-W
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John Corra
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