

FILED

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

OCT 17 2007

IN THE MATTER OF THE APPEAL)
OF PERMIT NO. WY0055158)
THE TERMO COMPANY)

Docket No. 07-3615

Terri A. Lorenzon, Director
Environmental Quality Council

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
RESPONSE TO APPEAL BY THE TERMO COMPANY**

Respondent Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD), pursuant to the Environmental Quality Council's (EQC or Council) September 18, 2007 Order in the above-captioned matter, responds as follows to Petitioner The Termo Company's (Termo) May 4, 2007 Petition appealing WYPDES Permit No. WY0055158 issued March 8, 2007.

1. Respondent DEQ **admits** that Paragraph #1 of the Petition identifies Petitioner, lists Petitioner's address, identifies Petitioner's Environmental Manager and Legal Counsel, and lists Petitioner's Legal Counsel's address.

2. DEQ **admits** that the actual language of WYO. STAT. ANN. § 35-11-112 describes the powers and duties of the Council, and **admits** that Paragraph #2 of Termo's Petition "requests a hearing in this matter."

3A. DEQ **admits** that Permit No. WY0055158 (the contested permit) was issued to Termo on March 8, 2007.

3B. DEQ **admits** that the contested permit authorizes the discharge of produced water to five existing reservoirs in Campbell County, located on Class 3B ephemeral tributaries to Bitter Creek, which is also Class 3B.

3C. DEQ **admits** that Bitter Creek drains into the Powder River in Montana.

3D. DEQ **admits** that the contested permit authorizes the discharge of produced water to five specified existing reservoirs. DEQ also **admits** that the contested permit, as

issued, prohibits discharge from the reservoirs, except when a natural precipitation event causes them to spill. DEQ does not have sufficient independent knowledge how much if any non-produced water there is in the existing reservoirs to admit or deny that mixing would occur, and therefore **denies** that mixing would occur. DEQ further **denies** that mixing would occur if a minimal natural precipitation event causes spillage from a reservoir that is full of produced water. DEQ **admits** that produced water meeting the permitted end-of-pipe effluent limits for discharge *into* the reservoirs would be suitable for use as irrigation water, as well as stock water, with or without mixing.

3E. DEQ **admits** that the permit also provides for an Irrigation Monitoring Point (IMP) at or just above the first point of diversion from Bitter Creek and a tributary monitoring point prior to any flow from the tributary into Montana.

4A. DEQ **denies** that the end of pipe effluent limitations for SAR and EC in the permit are more restrictive than is needed to protect water quality in the receiving reservoirs and more restrictive than necessary to meet the requirements of Chapter 1, Section 20 of the Wyoming Water Quality Rules and Regulations.

4B. DEQ **denies** that the preliminary analysis submitted with Termo's application indicates that when coalbed produced water is mixed with natural run-off in the reservoirs, that the water will be suitable for landowner irrigation purposes.

5A. DEQ does not have sufficient independent knowledge to admit or deny and therefore **denies** that Termo has worked with the landowners in the Homestead Draw II project to establish a water management plan that addresses the needs of their operations.

5B. DEQ does not have sufficient independent knowledge of the landowners' or Termo's intent to admit or deny and therefore **denies** that there is no intent on their part to allow any coalbed produced water to reach Bitter Creek. DEQ further **denies** that the

landowners' or Termo's intent in that regard is determinative for purposes of Chapter 1, Section 20.

5C. DEQ **admits** that the contested permit, as issued, prohibits discharge from the reservoirs, except when a natural precipitation event causes them to spill.

5D. DEQ **denies** that due to the fact that there will be no permitted discharge to Bitter Creek from the reservoirs, except when a natural precipitation event causes them to spill, implementing effluent limits to protect potential uses or diversions from Bitter Creek are not required and are overprotective for the landowners' intended uses of the water.

6A. DEQ **admits** that Termo's Petition represents that Termo seeks a permit modification that will allow it to discharge to existing reservoirs, in order to make the water available for the landowners in the Homestead II project area.

6B. DEQ does not have sufficient independent knowledge to admit or deny and therefore **denies** that the landowners had an expectation that coalbed produced water would be available for their own uses and need the modification of the permit to allow them to use the water produced on their land, as originally planned.

6C. DEQ **admits** that permitted reinjection is one of the possible options for management of produced water, but does not have sufficient independent knowledge to admit or deny and therefore **denies** that without modification of the effluent limits Termo could be forced to reinject the water, which would not make the water available for landowner purposes. DEQ **admits** that the function of effluent limits is to protect the quality of discharged water available for crop and livestock production.

6D. DEQ **admits** that treatment is another one of the possible options for management of produced water, but does not have sufficient independent knowledge to admit or deny and therefore **denies** that without modification of the effluent limits Termo

could be forced to engage in treatment of the water which would render the project uneconomic.

DATED this 17th day of October, 2007.



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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO APPEAL BY THE TERMO COMPANY was served this 17th day of October, 2007 by United States mail, first class postage prepaid and by facsimile transmission or email addressed as follows:

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