



September 16, 2009

John Morris, Hearing Examiner
Environmental Quality Council
122 W. 25th Street
Herschler Bldg., Rm. 1714
Cheyenne, WY 82002

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Jim Ruby, Executive Secretary
Environmental Quality Council

RE: Docket # 08-3101 WQD Agricultural Protection Rule

Dear Mr. Morris:

I served on the Environmental Quality Council (EQC) for ten years and reviewed the proposed Water Quality Division (WQD) rulemaking on Chapters 1 and 2, as well as the proposed changes to Chapter 2 that were petitioned by the Powder River Basin Resource Council. I can appreciate the difficulties in trying to create a defensible rule based on science and applaud your efforts in trying to do so.

I was on the EQC when we chose to ask the Water Quality Advisory Board (WQAB) to take the Agricultural Protection Policy back for further review and format it into a rule. The hope at that time was:

1. In rule form, the policy would undergo increased scrutiny and be improved;
2. A rule would clarify the requirements;
3. Good science would prevail in the rulemaking process (or conversely, bad science would be exposed through the rulemaking process).

I believe the Council, the WQAB, the WQD staff, industry and concerned citizens have done a gallant job at attempting to meet the three goals described above. Certainly the policy has undergone increased scrutiny, resulting in an improved document. The rewriting of the policy into rule form has increased the clarity of the requirements. And thirdly, it has been discovered that the science behind the policy/rule is still in its infancy.

I have continued to follow this process through the WQAB meetings and EQC hearings. I commend the EQC for hiring expert opinion on the science behind the rule. Given the data available to the WQD, the option for Tier 2 seemed viable. However, your commissioned study has shown that the science behind Tier 2 is not solid enough to be a basis for rulemaking. Additionally, your commissioned experts did not offer up a viable scientific alternative. Given these facts, I do not believe the policy defensible enough to be made into rule.

The WQD has continued to utilize the agricultural protection policy in the field. As time progresses, more empirical data can be gathered from these discharges. To my knowledge, the WQD believes the current policy is protective of the environment. Concurrently, there has been a significant drop in the demand for new CBM discharges, which allows the State the time to further the science. As discussed previously, the beauty of a policy is that the WQD can adjust it as new science becomes

available. Perhaps this policy will be ready for rulemaking in the future as the science develops, but that time is not today. Nor, do I believe there is great environmental risk by allowing the use of the policy to continue.

As a former Council member, I cannot in good conscience recommend rulemaking on questionable science. As a practical environmental professional, I do believe there is a time and place for experimental policy. Given the scrutiny that this rule/policy has undergone, I believe it is very appropriate to continue its usage as a policy until further science can clarify a definitive rule.

Thank you for the opportunity to comment and on your continued dedication to finding a workable scientific solution.

Sincerely,



Wendy Hutchinson, P.E.
Regulatory Affairs Manager

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WSH Reader