

FILED

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**Jim Ruby, Executive Secretary
Environmental Quality Council**

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

In the Matter of the Appeal of JOHN)
D. KOLTISKA, AC RANCH, INC., a)
Wyoming Corporation, PRAIRIE)
DOG RANCH, INC., a Wyoming) Docket No. 09-3805
Statutory Close Corporation, and)
PRAIRIE DOG WATER SUPPLY)
COMPANY from WYPDES Permit)
No. WY0054364)

PENNACO ENERGY INC'S MOTION TO DISMISS

Pennaco Energy, Inc. (Pennaco), by and through counsel, Holland & Hart LLP, moves the Environmental Quality Council to dismiss Petitioners' purported appeal of the Department of Environmental Quality's issuance to Pennaco of WYPDES Permit No. WY0054364 dated April 29, 2009 (Permit). As required, Pennaco submits with this motion a memorandum brief of points and authorities. EQC R. Ch. 2 § 14(a); WYO. R. CIV. P. 7. As grounds for this motion, Pennaco states as follows:

1. The Council lacks statutory authority to review, on application from these Petitioners, the Department's issuance of the Permit. WYO. STAT. § 35-11-802; § 35-11-1001. Because the Wyoming Legislature has not granted the Council the authority to hear an appeal from Petitioners, the Council lacks subject-matter jurisdiction and must dismiss the Petition. *Diamond B. Servs. v. Rohde*, 120 P.3d 1031, 1038 (Wyo. 2005); *United Mine Workers of Am.*

Local 1972 v. Decker Coal Co., 774 P.2d 1274, 1283-1284 (Wyo. 1989); *Geerts v. Jacobsen*, 100 P.3d 1265, 1269 (Wyo. 2004); *Terex Corp. v. Hough*, 50 P.3d 317, 320 (Wyo. 2002); *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 7 P.3d 900, 904 (Wyo. 2000).

2. The Petition must be dismissed because the Petitioners do not state a claim upon which relief can be granted by the Council. Petitioners do not have the right, as a matter of law, to bring their complaint to the Council. WYO. STAT. § 35-11-802. Instead, Wyoming law allows aggrieved parties such as Petitioners to seek review from the courts. WYO. STAT. § 35-11-1001, § 16-3-114(a). Such relief is exclusive. Therefore, the Petition should be dismissed.

3. Pennaco requests that the Council grant this motion and dismiss the Petition with prejudice.

Respectfully submitted October 16, 2009.



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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2009, I served the foregoing MOTION TO DISMISS to the following by:

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Handwritten signature of Mark Stewart, underlined.