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Jim Ruby, Executive Secretary
Environmental Quality Council

DEQ Response to Comments about Chapter 5.

We have reviewed the draft rules which will be presented at the Environmental Council Meeting in January. Although many of the comments that we submitted in September 2010 were taken into consideration, we still take issue with Section 5, Facility Classification. The draft rule states that the *"facilities subject to this rule shall be classified by the Administrator using a nationally recognized rating system"*. And that the *"specific rating system will be identified by DEQ policy and posted to the...website."* We believe that the rating system should be identified in the rule, so that all facilities know what is expected of them. In addition, the rating system that the DEQ decides to use should be subject to rulemaking, rather than policy. Rulemaking requires formal public notice and would alert water systems of classification changes. There are no requirements to notify the public of a 'policy' change. If the classification system remains nebulous, owners will have no assurance that the operators that they have trained will be adequate for the operation of their systems if the classification system can be changed without public notice. If system modifications or replacements are necessary, again the owners will not be able to make sound business decisions because the rule does not clearly define how a facility is to be ranked and consequently what level of operator will be needed if changes are made to the system.

Rose Hoarian, Peabody Energy and the Wyoming Mining Association.

The WMA has previously provided comments regarding this rule. These comments were submitted on November 15, 2010 and additional comments on March 25, 2011. In addition to these comments, a number of our member companies also provided Individual comments. These comments include:

- Western Fuels comments dated March 7, 2010,
- Peabody's comments dated September 28, 2010, and
- Thunder Basin Coal Company's comments dated November 2, 2010.

We appreciate the Water Quality Division's (WQD) willingness to consider these comments. The WQD has addressed many of the previously identified concerns. However, we believe there is one issue that remains outstanding and should be addressed prior to the rules being finalized.

The proposed definition of "facility classification" is very open ended and does not clearly define the ranking system that will be used to classify facilities. The facility classification determines what level of operator will be needed to manage the facility. To ensure continued compliance with this rule, it is imperative that the ranking system be clearly defined. As proposed the rule states that the facility classification will be based on a "nationally recognized point rating system". This does not define what point rating system is to be used.

If the classification system remains nebulous, owners will have no assurance that the operators that they have trained will be adequate for the operation of their systems if the classification system can be changed without public notice. If system modifications or replacements are necessary, again the owners will not be able to make sound business decisions because the rule does not clearly define how a facility is to be ranked and consequently what level of operator will be needed if changes are made to the system.

WQD's decision to use the ABC classification system is supported by the WMA as this is a system used by 37 states and territories in the US. However, WMA does not understand the WQD's reluctance to clearly define that the ABC classification system is the approved system that will be used to rank facilities. In an

effort to ensure continued compliance with the rule, the facility classification definition must be modified.

The suggested modifications are outlined below. The following conventions have been used: Underlined text indicates changes recommended by WMA. Strike through text designates requested deletion from the rule. Comments have also been added in italics to further explain the requested changes.

Section 3- Definitions

"Available" means based on system size, complexity, and source water a certified operator shall be on-site or able to initiate the appropriate operational and technical actions in a timely manner.

The WMA believes this definition is acceptable if the 'facility classification' definition is changed so it clearly defines the facility classification system that will be used. If the 'facility classification' definition is left unchanged this definition must be revised as shown to clearly define how system size, complexity and source water will be used to define what classification of operator will be required to operate the system.

"Facility classification" means the level of operational complexity of a water treatment, water distribution, wastewater collection, or wastewater treatment system based on a nationally recognized point rated system the ABC classification system.

Section 5 – Facility Classification

(a) All facilities subject to this rule shall be classified by the Administrator using a nationally recognized rating the ABC classification system.

ii. The Administrator may modify the ranking system to better accommodate Wyoming systems after public notice has been given.

(c) A facility classification review by the Administrator is required for any facility modification change to a facility that is significant enough to require a DEQ individual permit to construct or which would change the classification of the system using the ABC classification system.

The current proposed language would require a facility classification review for any change to a facility that is significant enough to require a DEQ individual permit to construct. This language does not define what changes to a facility are considered significant. The language as written has resulted in DEQ involvement in minor items, such as regular maintenance, plumbing or even changing pump brands. WMA prefers the above suggested language as it would provide clearer guidance for Certified Operators of when DEQ involvement is required. Assuming the operators are properly trained and certified, they should be able to specify minor changes without notifying DEQ. This suggested language would give the Certified Operators the flexibility to make and implement changes to ensure facilities are kept in compliance.

Many WMA members operate onsite water systems to provide potable water for their employees. With the proposed changes outlined above facilities would be able to continue operations knowing exactly what is required to maintain compliance with the rules. As always, the WMA is interested in supporting rules which maintain environmental and public protection without undue burden on the regulated community. We appreciate the Environmental Quality Council taking these comments under consideration as the rule is finalized.

Marion Loomis, Executive Director, Wyoming Mining Association

Section 5 – Facility Classification DEQ can understand the commenters’ point of view. DEQ suggests rewording Section 5 – Facility Classification to read:

(a) All water and wastewater treatment facilities subject to this rule shall be classified ~~by the Administrator using a nationally recognized rating system in accordance with the Points Classification System from the Association of Boards of Certification Operator Certification Program Standards.~~

(i) ~~The specific rating system will be identified by DEQ policy and posted to the DEQ/WQD Operator Certification website.~~

(ii) ~~The Administrator may modify the rating system to better accommodate Wyoming systems.~~

(b) All water distribution and wastewater collection systems subject to this rule shall be classified by the Administrator.

(i) The rating systems used to classify water distribution and wastewater collection systems will be posted to the DEQ/WQD Operator Certification webpage.

(bc) The Administrator may, ~~upon receiving written request from the facility owner,~~ alter the classification of an individual plant or system because of special conditions including ease or difficulty of operation or extraordinary environmental or public health factors.

(d) What is now (c)

(e) What is now (d)

(f) What is now (e)

changes;

Section 5(c) The commenter requests clarification of the terminology “change to a facility that is significant enough to require a DEQ individual permit to construct”.

Wyoming Statute 35-11-301(a)(iii) and (v) specifically prohibit the modification of any sewerage system, treatment works, disposal system, public water supply or the construction of any subdivision water supply except when authorized by a permit issued pursuant to the provisions of the act.

The word “modification” is not defined in statute or rule but the WQD uses a working definition that the modification must have the potential to change the operating characteristics of the facility for a permit to be required. While there may be validity to the concern about the lack of definition for “modification”, the operator certification rules are not the place to insert such a definition.