

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

PETITION TO AMEND WYOMING)
WATER QUALITY RULE, CHAPTER 2,) DOCKET NO. 05-3102
APPENDIX H AND APPENDIX I)

STATEMENT OF PRINCIPAL REASONS

The Environmental Quality Council, (EQC) pursuant to its authority under the Environmental Quality Act, W.S. § 35-11-112, and the Wyoming Administrative Procedure Act, W.S. § 16-3-103, initiated the rulemaking process to amend Chapter 2 of the Wyoming Water Quality Rules and Regulations. The proposed rule change leaves Appendix H unchanged as to traditional oil and gas production facilities, removes the Appendix H provisions specific to Coal Bed Natural Gas, and revises the standards applicable to produced water discharged from Coal Bed Natural Gas Facilities in a new appendix.

Citizen Petition

A group of 19 landowners and the Powder River Basin Resource Council (the Petitioners) filed a Petition to Amend Chapter 2, Appendix H on December 7, 2005. In accordance with W.S. 16-3-106, the Environmental Quality Council convened a public meeting on February 16, 2006 in Cheyenne, Wyoming for the purpose of hearing Petitioners' request to start a formal rulemaking proceeding to consider their Petition. The EQC heard the Petitioners' presentation and then received numerous public comments in support of and opposed to the Petition. The EQC heard comments for a full day, and at the conclusion of the comments, the EQC found that there was sufficient reason to consider the Petition further and reason to hear additional comments in a formal rulemaking hearing. The EQC voted to move forward with rulemaking but did not make a decision on the merits of the Petition.

On April 12, 2006, the Attorney General issued an opinion to the Governor to help clarify the EQC's jurisdiction in this matter. As a result, the original petition, filed on December 5, 2005, was withdrawn and a substitute Petition was adopted at a public meeting held on July 17, 2006, in Casper Wyoming. In preparation for the hearing, the EQC reviewed the Petition language in detail at a public meeting on November 13, 2006, in Buffalo, Wyoming. The EQC also discussed the Petition at a public meeting held on May 11, 2006, in Cheyenne, Wyoming. In addition to the formal meetings and hearings, the Chairman held an additional, informal listening meeting in Basin, Wyoming on November 2, 2006. This meeting was held to hear the concerns of those who use and benefit from the produced water discharges of traditional oil and gas in the Big Horn Basin of Wyoming.

Public Notice

The EQC meeting of February 16, 2006, was announced by mailing the EQC's agenda to a permanent mailing list for EQC meetings. The list is maintained in the EQC's Cheyenne office. The agenda was also mailed to a separate mailing list developed and maintained by the EQC for purposes of this rulemaking case. The list included Coal Bed Natural Gas companies, associations, attorneys and reporters.

Prior to all EQC meetings where the Petition was discussed, an agenda was mailed to both the permanent mailing list and the mailing list maintained for this case.

Public notice of the rulemaking hearing held on January 17-18, 2007, was issued pursuant to the Wyoming Administrative Procedures Act, W.S. 16-3-103(a)(i). Notice was published in 3 Wyoming newspapers with the first publication on December 1, 2006.

EQC Website-<http://deq.state.wy.us/eqc/index.asp>

Notice of all meetings and the hearing on the Petition were posted on the EQC website. The public record pertaining to the Petition, Docket No. 05-3102, has been available for review on the EQC website and at the EQC's office in Cheyenne, Wyoming.

Public Hearing

A rulemaking hearing was held January 17 & 18, 2007, in Cheyenne, Wyoming. The record was left open until January 29, 2007, for additional public comments.

Statutory Background

The Federal Water Pollution Control Act (WPCA) of 1972, as amended by the Clean Water Act (CWA) of 1977 and the Water Quality Act of 1987, gives the Environmental Protection Agency (EPA) the authority to regulate the discharge of pollutants to waters of the United States. The WPCA provides authority to establish the National Pollutant Discharge Elimination System (NPDES) Permit Program, define pollution control technologies, establish effluent limitations, obtain information through reporting and compliance inspections and take enforcement actions when violations occur.

The Code of Federal Regulations, Chapter 40 Part 123, provides procedures for States to assume responsibility for implementing the NPDES Permit Program. On November 1, 1974, Wyoming Governor Stan Hathaway submitted a request to the EPA for Wyoming to conduct a state permit program pursuant to the provisions of the NPDES under Section 402 of the WPCA. On January 30, 1975, pursuant to § 402(c) of the WPCA, the EPA approved the Wyoming Department of Environmental Quality (WDEQ) NPDES program and suspended the issuance of NPDES permits by EPA, with a few exceptions. The Wyoming NPDES program authority was amended September 24, 1991, to include state authority for issuance of general permits. The program has been renamed Wyoming Pollutant Discharge Elimination System (WYPDES).

The WYPDES program must, at all times, be in accordance with § 401 of the WCPA, all guidelines promulgated pursuant to § 304(h)(2) of the WPCA, and the Memorandum of Agreement between the EPA Regional Administrator and the Director of the Wyoming DEQ.

Proposed Revisions for Public Comment

Chapter 2 of the Water Quality Rules and Regulations contains the regulations for the WPDES program and it includes 12 Appendices where requirements for specific operations and discharges are set forth. Two Appendices are reserved for additional regulations.

Appendix H is titled “Additional Requirements Applicable to Produced Water Discharges from Oil and Gas Production Facilities”. Currently, Appendix H contains requirements for those oil and gas operations that are not coal bed methane operations. These operations have been referred to as “traditional oil and gas operations” and are referenced as such in the Petition. Appendix H also contains a section, Section (d), titled “Additional Permit Conditions and Limitations Specific to Coal Bed Natural Gas Production Facilities”.

Appendix H is unchanged as to water quality standards applicable to traditional oil and gas production facilities. The proposed revisions amending Chapter 2 Appendix H were proposed and approved as follows:

1. Change the title to read “Additional Requirements Applicable to Produced Water Discharges from **Traditional** Oil and Gas Production Facilities (**excluding coal be natural gas a/k/a coalbed methane gas “CBM”**).
2. Change Section (c) to read “Additional Permit Conditions and Limitations” thereby deleting the words “Specific to Oil and Natural Gas (other than coal bed natural gas) Production Facilities.”
3. Delete all of Section (d).

The proposed revisions include use of Appendix I to address produced water discharges from coal bed natural gas operations. Appendix I contained the following proposed language, which was not approved in its entirety:

1. Section (a) set out the application requirements and used the term “credible data” to describe the type of information required on each requirement. This section

mimics Section (a) of Appendix H. Credible data is defined in the Environmental Quality Act.

2. Section (a)(i) imported Section (a)(i) of Appendix H.
3. Section (a)(iii) imported the statutory definition of pollution. W.S. 35-11-103(c)(i).
4. Section (b)(vii)(B),(C), and (E), sections that set the effluent limits for sulfates, total dissolved solids and specific conductance and barium, would be modified to lower the standard and, in the case of barium, propose a new standard.
5. Section (c) is imported from Appendix H and contains the additional permit conditions and limitations that were specific to coal bed natural gas operations.

Principal Reasons for Revisions

The Environmental Quality Council received numerous and voluminous public comments on the proposed revisions to Chapter 2. While testimony was received that the produced water from CBM wells was often welcome, particularly during this time of drought, testimony was also received from landowners that the water had caused damage.

The EQC significantly revised the proposal that was the subject of public comment. The EQC found that making use of a reserved appendix for coal bed natural gas requirements, Appendix I, will clarify the regulations for that industry. The requirements for traditional oil and gas produced water discharges and coal bed natural gas produced water discharges should be separated as the impact of the discharges is different.

Appendix H is revised to delete references to and the requirements applicable to coal bed natural gas operations. The requirements for coal bed natural gas operations, as modified by the EQC, are in Appendix I.

The WDEQ has a contract with the University of Wyoming to conduct a literature search for information on water quality standards; therefore, the EQC expects to have better information available on all numeric standards in the future. The EQC removed the proposed numeric standards for sulfates, total dissolved solids, and barium from

consideration at their February 16, 2007 meeting. When the University contract is complete, the EQC will consider numeric standards.

The EQC concluded that importing the statutory definition of pollution as a regulation was not helpful in implementing the discharge permit program, and the use of statutory language in Appendix I could cause serious problems for the coal bed natural gas industry. Therefore, the EQC voted to eliminate the proposed section (a)(iii) from Appendix I.

While Section (a) of Appendix H requires “information” on the use of produced water for livestock and wildlife in an application for a WPDES permit, the proposed requirement to require “credible data” on the use of the produced water discharge for agriculture and wildlife in the new Appendix I was not justified. Public comment revealed that data is often lacking on the drainages that are receiving the discharges from coal bed natural gas production. While credible data may not be appropriate, a clarification of the type of information needed in a permit application improves the process. The application should require “representative and valid data” on the use of produced water that is discharged into surface waters of the state for livestock and wildlife. This clarification allows operators to propose the use of data from comparable areas.

Given the concerns of landowners who testified to problems with the produced water discharges from coal bed natural gas operations, in particular with high volumes of discharged water, and the change in the application requirements to require “representative and valid” data, the presumption in section (c)(i) of Appendix I, is unnecessary and somewhat contradictory; therefore, it was deleted. A better process is to have a permit applicant present information on agriculture and wildlife use in the application process. The Department of Environmental Quality can then evaluate the data for compliance with Chapter I, the Wyoming Surface Water Standards.

References have been added or removed to reflect the EQC’s changes to Appendix I and Chapter 2. Additionally, miscellaneous formatting errors have been corrected in

Appendix H. These format changes were approved by the EQC in a public meeting on February 23, 2007.

Conclusion

The members of the EQC have carefully reviewed the entire record, including the public comments at the rulemaking hearing, as well as the entire documentary record. By a majority vote of those on the Environmental Quality Council, this matter was decided on February 16, 2007. It is the judgment of the EQC that Wyoming Water Quality Rules and Regulations Chapter 2 should be amended for the reasons set forth above.

DATED this 23rd day of February, 2007.

A handwritten signature in cursive script that reads "Richard C. Moore" followed by a circled number "12".

Richard C. Moore, P.E., Chairman
Environmental Quality Council