



United States Department of the Interior

FISH AND WILDLIFE SERVICE

SOLID AND HAZARDOUS WASTE DIVISION

Ecological Services

APR 23 2008

5353 Yellowstone Road – Suite 308
Cheyenne, Wyoming 82009

In Reply Refer To:

ES/61411/W./WY08EC0037

Mr. LeRoy C. Feusner, Administrator
Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
122 West 25th Street
Cheyenne, Wyoming 82002

APR 23 2008
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Terri A. Lorenzon, Director
Environmental Quality Council

Dear Mr. Fuesner:

In response to the Public Notice on the proposal to revise the Wyoming Hazardous Waste Rules and Regulations, the U.S. Fish and Wildlife Service (Service) is providing you with comments on the revisions as they relate to the protection of the environment, and specifically, migratory birds. Protective measures for migratory birds are provided by the Service in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 and the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668. Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act and the Fish and Wildlife Act of 1956, as amended, 70 Stat. 1119, 16 U.S.C. 742a-742j.

Chapter 1, Page 1-49: Section (j) CONSIDERATIONS UNDER FEDERAL LAW lists the Fish and Wildlife Coordination Act (FWCA). 16 U.S.C. 661 et seq. and states that “the Director must, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate state agency exercising jurisdiction over wildlife resources to conserve those resources.” The FWCA provides the basic authority for the Service's involvement in evaluating impacts to fish and wildlife from proposed impoundments and other water resource development projects. Please revise this section as follows:

“...consult with the Wyoming Game and Fish Department and the U.S. Fish and Wildlife Service to conserve those resources.”

Chapter 10. Section 10. SURFACE IMPOUNDMENTS: This section should require facility operators to immediately remove any oil or sheens from the surface of wastewater impoundments. Large evaporation ponds pose a significant risk to migratory birds and other wildlife if they contain oil on the surface. The Service has documented migratory bird mortality in oilfield and industrial wastewater ponds due to the presence of oil, paraffin, and sheens on the surface. The presence of visible sheens on wastewater ponds are just as deadly to birds that come into contact with them. A light sheen will coat the bird's feathers with a thin film of oil. Although a sheen of oil may not immediately immobilize the bird, it will

compromise the feathers' ability to insulate the bird. Furthermore, the affected bird will ingest the oil when it preens its feathers and suffer chronic effects. The bird could suffer mortality depending on the severity of the chronic effects and the amount of oil ingested. Any oil or sheens remaining in the ponds in between the removal actions has the potential of coating birds or other wildlife coming into contact with it. Mortality or morbidity may result depending on the amount of oil coating the animal, the species, prior condition of the animal, the amount of stress incurred by the animal after oiling, and weather conditions.

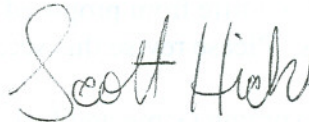
The Migratory Bird Treaty Act (MBTA),¹⁶ United States Code Sections 703-707, prohibits any "take" of migratory birds. The definition of take includes the killing, possessing, or collecting of migratory birds. Migratory birds are listed in the Code of Federal Regulations, Part 50, Section 10.13. Most birds found in Wyoming are listed as migratory birds with the exception of English sparrows, European starlings, rock doves (common pigeons), and birds commonly referred to as upland game birds such as pheasants, chukkers, and grouse. Upland game birds are managed by the Wyoming Game and Fish Department.

All migratory birds killed as a result of contact with exposed oil, or other hazardous materials constitute violations of the MBTA. Operators should always ensure that no surface oil is present on pits, tanks, etc. Exposed oil or other hazardous material (even as the result of an oversight or equipment malfunction) places the company at risk of violating the MBTA should migratory bird mortalities occur. Each violation will be referred to the Office of Law Enforcement for investigation. The maximum criminal penalty for corporations unlawfully taking a migratory bird is a \$15,000 fine, and/or up to 6 months in jail, for each count.

To prevent violations of the MBTA facility operators should take proactive steps to ensure that migratory birds do not come in contact with oil, sheens or hazardous materials.

We appreciate your efforts to ensure the conservation of Wyoming's fish and wildlife resources. If you have questions regarding this letter or your responsibilities under the Act, MBTA or BGEPA, please contact Pedro 'Pete' Ramirez at the letterhead address or phone (307) 772-2374, extension 236.

Sincerely,



for Brian T. Kelly
Field Supervisor
Wyoming Field Office

Enclosure (1)

cc: WGFD, Non-game Coordinator, Lander, WY (B. Oakleaf)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)