

## Stephanie Kessler

(Apologies for the lack of letterhead - we were unable to upload the pdf of our comments to this website so have just copied and pasted the text here.)

Wyoming Outdoor Council  
262 Lincoln  
Lander WY 82520

November 17, 2017

Wyoming Environmental Quality Council  
122 W. 25th  
Herschler Bldg. 1W, Room 1714  
Cheyenne, WY 82002

Re: Docket # 17-3101 - proposed revisions to the Department of Environmental Quality's (DEQ) Water Quality Rules and Regulations, Chapter 14, to remove the exemption from financial assurance requirements for grandfathered commercial oilfield waste disposal facilities

Dear Council members,

Thank you for the opportunity to comment on the proposed DEQ revisions to Water Quality Rules, Chapter 14 regarding financial assurance for commercial oilfield waste disposal facilities (COWDFs). The Wyoming Outdoor Council supports the proposed revisions to these rules. We believe they are critical to assure protection for Wyoming taxpayers, our environment and public health.

The Outdoor Council is a statewide conservation organization founded 50 years ago to protect Wyoming's environment and quality of life. In the late 1980s and early 1990s our organization worked with state officials, the public and the legislature to improve our state laws regarding waste management and facilities, including the 1989 COWDF statutes. We have always been concerned about the grandfathering-in or exempting of facilities from the financial assurance requirements in this law, and believe that this has put the state at risk for significant liability and cleanup costs if operators were to abandon these facilities.

Concern over the state's COWDFs has existed for decades, and this regulatory program was highlighted as needing improvement in Wyoming as early as 1992 in a formal report by the Interstate Oil and Gas Compact Commission's (IOGCC) Council on Regulatory Needs. I served on that Council in the early 1990s as part of a cooperative effort between the IOGCC, the Environmental Protection Agency (EPA), industry and NGOs. I was part of a 4 member team that reviewed and evaluated Wyoming's oil and gas waste stream program. The purpose of the review was to identify and recommend improvements for Wyoming's oil and gas exploration and development (E&P) waste regulatory programs. We interviewed DEQ regarding the agency's program for COWDF's.

In the 1992 IOGCC report, our review committee made a total of 41 consensus recommendations to the state of Wyoming. Of these, 28 recommendations applied to the Wyoming Oil and Gas Conservation Commission (WOGCC) and 9 pertained to DEQ. Four applied to both agencies. The majority of the DEQ recommendations focused on improvements for the COWDF program under

the Water Quality Division, including the recommendation that "revisions should establish uniform rules for both new and existing facilities." (An updated version of this report can be found at <http://www.strongerinc.org/wp-content/uploads/2015/04/Wyoming-Follow-up-Review-5-1994.pdf>.)

In 1998 this IOGCC program evolved into a group of industry experts called the State Review of Oil and Natural Gas Environmental Regulations, Inc. or "STRONGER," with the specific mission "to educate regulators and the public as to the appropriate elements of a state oil and gas exploration and production waste management regulatory program, and to compare various state programs against guidelines adopted by the IOGCC for the protection of public health, safety and the environment."

STRONGER published its industry-standard guidelines for E&P waste programs in 2000 and these were adopted by the IOGCC. The guideline committee was chaired by Terri Lorenzon, the Director of Wyoming Environmental Quality Council (EQC) at the time. Those guidelines addressed several topics about commercial oilfield waste disposal facilities, and specifically called out these facilities regarding financial assurance, in section 4.2.4:

"All states should have an adequate financial assurance program to provide resources to the state to close or remediate a site should an operator fail to meet its obligations under the law....

In the case of commercial and centralized facilities as defined in section 5.10, including those that manage oil-field NORM, state financial assurance requirements should be sufficient to cover the costs of appropriate facility decontamination, reclamation, and closure, and should extend through any post-closure care, monitoring, or control period...

States should develop appropriate procedures to access an operator's financial assurance when the operator does not meet the obligations covered by the financial assurance. These procedures should include provisions for notice, hearings, and forfeiture..."

The STRONGER guidelines also emphasized the importance of using operator generated financial assurance mechanisms before letting these costs fall upon the public via special funds or fees:

"Some states have special funds, such as well-plugging funds, that are available for state use to correct problems where an operator is unable to comply with state requirements. Although the availability of such funds may be a consideration in some states when determining bond coverage amounts, special funds should be used to supplement rather than completely take the place of other forms of financial assurance provided by the operator. The use of special funds should be limited to instances where the responsible operator cannot be determined or is unavailable."

These guidelines have been updated over time (and can be found at <http://www.strongerinc.org/wp-content/uploads/2017/09/2017-STRONGER-Guidelines.pdf>).

The 2017 version makes the same points as above except for the inclusion of the following:

"The goal of any financial assurance program should be to avoid passing on the responsibility for closure and remediation costs to the citizens of the state."

We relate this lengthy history to show that even by industry-generated standards, these revisions to Wyoming's rules for financial assurance for all COWDFs are long overdue, and we urge you to pass these changes at your next meeting.

Thank you for your consideration of our comments, and please feel free to let me know if the

Wyoming Outdoor Council can provide you with any additional information.

Sincerely,

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