

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

SEP 13 2007

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL OF)
THE NOTICE OF VIOLATION AND)
ORDER ISSUED TO:)
Devon Energy Production Company, L.P.) Docket No. 06-3812
20 North Broadway)
Oklahoma City, Oklahoma 3102-8260)

DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION TO DISMISS APPEAL

Respondent Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) moves the Wyoming Environmental Quality Council (Council) to dismiss Petitioner Devon Energy Production Company, L.P.'s (Devon) Notice of Appeal and Petition for Hearing (Petition) filed August 28, 2006 in the above-captioned matter. The grounds for this motion are as follows:

1. Devon is the owner/operator of the New Deal Draw coal bed methane (CBM) production facility located in Campbell County, Wyoming.
2. The DEQ issued Devon WYPDES permit WY0042595 on September 17, 2001, with an expiration date of September 16, 2006.
3. Part I.A.1. of WYPDES permit WY0042595 states that no discharge is authorized from such reservoirs.
4. A field inspection by the DEQ/WQD on July 18, 2006 found that a valve had been opened allowing the unauthorized discharge of CBM produced water to an on-channel stock reservoir on an unnamed ephemeral tributary to New Deal Draw in Campbell County. New Deal Draw is a tributary to LX Bar Creek. LX Bar Creek is a tributary to the Powder River.



5. On August 11, 2006, the DEQ issued NOV and Order No. 3878-06 to Devon, alleging the above-described violation of Part I.A.1. of WYPDES permit WY0042595, and ordering that Devon apply to modify its renewal permit to provide for use of multiple on-channel reservoirs below each permitted outfall, where no irrigation activities occur between reservoirs.

6. Devon's Petition contesting Notice of Violation (NOV) and Order No. 3878-06 asserts that the alleged violation resulted from a landowner opening a discharge valve without Devon's consent, and that Devon has submitted an application for a modified permit, which also sets forth the steps Devon is taking to prevent this type of alleged violation from occurring again.

7. In Wyoming, the general law on justiciability provides that courts should not consider issues which have become moot. *In the Interest of SNK v. Wyoming Dep't. of Family Services*, 2005 WY 30, ¶6, 108 P.3d 836, 837-838, ¶6 (Wyo. 2005). A case is moot when the determination of an issue is sought which, if provided, will have no practical effect on the existing controversy. *Id.* A case should be dismissed if events occur during the pendency of an appeal that cause it to become moot or make determination of the issues unnecessary. *Id.*

8. In issuing the NOV and Order, DEQ did not seek a penalty for the alleged violation.

9. The modified renewal permit Devon applied for was issued on September 14, 2006.

10. Based on issuance of the referenced renewal permit modification and receipt of Devon's September 14, 2006 NOV response, DEQ issued a Notice of Compliance dated January 23, 2007, filed with the Council January 25, 2007 (copy attached), confirming Devon's compliance with and satisfaction of all terms and conditions of the contested Order in DEQ Docket No. 3878-06.

11. The above-captioned appeal is moot and should now be dismissed without adjudication, because there are no longer any unsatisfied requirements under the contested Order, making determination of the issues unnecessary.

WHEREFORE Respondent DEQ respectfully requests that Devon's Notice of Appeal and Petition for Hearing in this matter now be dismissed without adjudication for the foregoing reasons.

DATED this 13th day of September, 2007.



Mike Barrash
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, WY 82002
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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing DEPARTMENT OF ENVIRONMENTAL QUALITY'S MOTION TO DISMISS APPEAL was served this 13th day of September, 2007 by United States mail, first class postage prepaid, and by facsimile transmission or email addressed as follows:

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Wyoming Attorney General's Office

BEFORE THE
WYOMING ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

FILED

JAN 25 2007

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF
VIOLATION & ORDER ISSUED TO:

Mr. Randy Maxey
Senior Regulatory Specialist
Devon Energy Production Company, L.P.
20 North Broadway, Suite 1500
Oklahoma City, Oklahoma 73102-8260

DOCKET NUMBER 3878-06


EQC-06-3872

NOTICE OF COMPLIANCE

The Department of Environmental Quality (DEQ), Water Quality Division (WQD) issued Notice of Violation and Order Docket Number 3878-06 on August 11, 2006, to Devon Energy Production Company, L.P. (Devon). The NOV alleged that Devon discharged coal bed methane (CBM) produced water to "waters of the state" in violation of the Wyoming Environmental Quality Act (Act) and applicable Wyoming Water Quality Rules and Regulations (WWQRR).

The Order required Devon to submit a permit application to the WQD to modify WYPDES permit WY0042595. Based on the issuance of the modified permit on September 14, 2006, and receipt of Devon's September 14, 2006 NOV response, Devon has complied with the conditions of the Order for Docket Number 3878-06 and the DEQ finds that all terms have been satisfied.

Dated this 23RD day of January, 2007.



Brian R. Bohlmann, P.E.
WYPDES Compliance & Enforcement Coordinator
Water Quality Division
Wyoming DEQ

cc: Julie Orr, 8ENF-W-NP, EPA Region 8
James B. Eisenhauer, WYPDES Inspection Coordinator, Sheridan DEQ Office
Mike Barrash, Senior Assistant Attorney General
Bill J. DiRienzo ► Brian K. Lovett ► Leah J. Krafft
IPS (for scanning) ► Docket 3878-06
Keith Guille, DEQ Public Information Officer (PDF File Only)
Environmental Quality Council