

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL)
OF EDWARD H. SWARTZ)
FROM NPDES PERMIT NOS WY0048224,)
WY0048232, WY0047384, WY0047376)

No.

02-3603
FILED
DEC 26 2002
Terri A. Lorenzon, Director
Environmental Quality Council

PETITION FOR HEARING
AND NOTICE OF APPEAL

Edward H. Swartz, by and through his undersigned counsel, files this Petition for Hearing pursuant to Wyo. Stat. Ann. § 35-11-112(a)(iv) (LexisNexis 2001) and Chapter I, Section 3 of the Rules of Practice and Procedure promulgated by the Environmental Quality Council ("Council"). In particular, Mr. Swartz ("Petitioner") protests the above-referenced Department of Environmental Quality's ("DEQ") Authorization to Discharge Under the National Pollutant Discharge Elimination System (the "Permits") issued to Pennaco Energy, Inc. and J.M. Huber Corporation on October 28, 2002.

The basis for Petitioner's protest is that the Permits were issued:

- (1) In violation of the Wyoming Environmental Quality Act, Wyo. Stat. §§ 35-11-101 et seq. and the rules and regulations promulgated thereunder, specifically Quality Standards for Wyoming Surface Water, Chapter 1, § 20, which states:

All Wyoming surface waters which have the natural water quality potential for use as an agricultural water supply shall be maintained at a quality which allows continued use of such water for agricultural purposes.

Degradation of such waters shall not be of such an extent to cause a measurable decrease in crop or livestock production.

Unless otherwise demonstrated, all Wyoming surface waters have the natural water quality potential for use as an agricultural water supply.

The standards as well as the enforcement mechanisms contained in the permits fall far short of providing the necessary compliance to the EQA and the rules and regulations promulgated thereunder, for reasons including, but not limited to: (1) the permit provisions allow for monitoring and enforcement after the damage is done, if at all; (2) the permits do not provide for adequate identification of the source of discharge water; (3) DEQ has failed to obtain adequate baseline data; (4) there is no justification for the DEQ's arbitrary restriction of the "irrigation season;" (5) the "beneficial use" statements are a sham, (6) the limits set for SAR and EC have caused and will cause a measurable decrease in crop production.

(2) Pursuant to improperly promulgated rules, in violation of the Wyoming Administrative Procedures Act, Wyo. Stat. §§ 16-3-101 et seq.

(3) In violation of Wyo. Stat. § 35-11-801, in that the permits should never have been issued by the DEQ without "proof by the applicant that the procedures of this act and the rules and regulations promulgated herunder have been complied with. . ." The DEQ's failure to comply with that requirement has improperly placed a continuing burden upon Swartz to provide proof that the procedures have not been complied with.

Facts

(1) Ed Swartz is a resident of Campbell County, Wyoming, whose address is P.O. Box 1539, Gillette, WY 82717-1539.

(2) Petitioner's Ranch is located on Wildcat Creek, downstream of numerous Coal Bed Methane wells which, since early October, 1999, have been permitted by the State of Wyoming Department of Environmental Quality to discharge large volumes of water into Wildcat Creek. In some cases, the water is not discharged directly into the Creek, but is stored in reservoirs of varying sizes before it is discharged either by overflow or by seepage into the subsurface groundwater. In other cases, the water is discharged directly into the watershed. The above-referenced Permits are only some of those discharging water into Wildcat Creek.

(3) Swartz Ranch owns adjudicated water rights, which it has used historically to irrigate approximately 280 acres of hay meadows along the meanders of Wildcat Creek. These hay meadows form the heart of the ranching operation in this arid country.

(4) Since October of 1999, great volumes of CBM discharge water began to flow in the Wildcat Creek, causing demonstrable harm to the creek channel, and reasonably likely harm to the irrigated hay meadows, if the water were applied to irrigate them as it historically has been.

Swartz requests the EQC deny these permits, or to order that they be issued with substantially more stringent standards and enforcement provisions, and to grant all such other and further relief as the EQC deems appropriate.

Petitioner respectfully requests a hearing before the Council.

Dated this 26th day of December, 2002.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Petition for Hearing and Notice this 26th day of December, 2002 addressed as follows:

Wendy Hutchinson, Chair
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