

AUG 02 2007

Terri A. Lorenzon, Director
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

WYOMING OUTDOOR COUNCIL,)
)
 Petitioner,)
)
 v.)
)
 WYOMING DEPARTMENT OF)
 ENVIRONMENTAL QUALITY, WATER)
 QUALITY DIVISION,)
)
 Respondent.)

Consolidated Docket
Nos. 06-3816 & 06-3817

RESPONDENT DEQ'S BRIEF IN RESPONSE TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Respondent Wyoming Department of Environmental Quality (DEQ), pursuant to Rule 56 of the Wyoming Rules of Civil Procedure and Chapter II, Section 14 of the DEQ Rules of Practice & Procedure, submits the following Brief in Response to Petitioner Wyoming Outdoor Council's (WOC) Motion for Summary Judgment in the above-captioned consolidated case before the Wyoming Environmental Quality Council (Council).

Standard of Review

Chapter II, Section 14 of the DEQ Rules of Practice & Procedure makes the Wyoming Rules of Civil Procedure applicable to matters before the Council. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on claim(s) asserted. Wyo. R. Civ. P. 56(c).

Issues to be Decided on Motion for Summary Judgment

WOC has moved for summary judgment on the following three issues raised in its Motion, without the need for an evidentiary hearing on any issues of fact:

- A. Should the contested Pumpkin Creek and Willow Creek watershed general permits have been promulgated as rules?
- B. Does the DEQ have the requisite statutory authority under the Wyoming Environmental Quality Act (WEQA) to issue general permits?
- C. Does issuance of the general permits meet the requirements of Chapter 2, of the Wyoming Water Quality Rules & Regulations (WWQR&R)?

If the Council decides that the two contested general permits are not null and void as *a matter of law*, as WOC alleges, then a hearing would be necessary to present evidence pertaining to issues IV through VII in WOC's Petitions, which involve questions of fact.

Argument

I. The contested general permits did not have to be promulgated as rules.

As discussed more fully below, it is not necessary for the two general National Pollutant Discharge Elimination System (NPDES) permits at issue here to go through the rulemaking process because:

- there is no federal or state requirement for each general permit issued by Wyoming's NPDES program to be promulgated as a separate rule;
- the Council has already adopted a rule (Chapter 2) prescribing the process for state issuance of general NPDES permits;
- the Chapter 2 process for state issuance of general NPDES permits provides as much opportunity for public participation as the Wyoming Administrative Procedure Act (WAPA) rulemaking process does;

- the Chapter 2 process for issuance of general NPDES permits also provides an opportunity for a contested case hearing before the Council (Section 17), which the WAPA rulemaking process does not provide;
- promulgation of each general permit as a separate rule is not required, because statutory and constitutional rights to protest and contest each general permit are afforded to those affected.

This contested case involves WOC's appeals of two particular watershed general permits. These two particular general permits only apply to separate geographic areas corresponding to the Pumpkin Creek and Willow Creek drainages, respectively. WOC argues that the contested general permits are rules which must go through the WAPA rulemaking process, because "[b]oth permits apply to a whole class of persons, not a particular permittee, or a particular site, and regulate the discharge of CBM water in the two general areas." (WOC Br. at 4).

Discharges of pollution or wastes into waters of the state must be "authorized by a permit" issued pursuant to the Wyoming Environmental Quality Act (WEQA). WYO. STAT. ANN. § 35-11-301(a)(i). WYO. STAT. ANN. § 35-11-302(a)(v) authorizes both rules and "permit systems" for issuance of NPDES permits pursuant to 33 U.S.C. § 1342(b). In June, 1991, Wyoming adopted a rule providing for state issuance of general NPDES permits based on existing state authority under WYO. STAT. ANN. § 35-11-302(a)(v). Ch. 18, § 1, WWQR&R. These rules do not require that each general permit itself also be promulgated as a separate rule. See attached as Ex. A.

The United States Environmental Protection Agency's (EPA) October 17, 1991 Federal Register Notice approving the State of Wyoming's NPDES General Permits

Program noted that “[p]ublic notice and opportunity to request a hearing is also provided for each general permit,” and concluded that “the State will have the necessary procedures and resources to administer the general permits program.” 56 Fed. Reg. 52030 (October 17, 1991). *See attached Ex. B.*

In 2004, Chapter 18 was incorporated into Chapter 2. *See attached Ex. C.* The DEQ did not promulgate each of the contested general permits as a rule, but rather issued them under the permit system in Chapter 2, Section 4 of the WWQR&R, which itself is a rule that was promulgated by the Council pursuant to WYO. STAT. ANN. §§ 35-11-302(a)(v) and 35-11-112(a)(i). Chapter 2 contains the “permitting system” for issuance of NPDES (now WYPDES) permits as authorized pursuant to Section 402(b) of the Clean Water Act (CWA), 33 U.S.C. § 1342(b). WWQR&R, Ch. 2, § 1(c) (“Purpose”). Chapter 2, Section 4 prescribes standards for issuance of general permits.

“General permits are designed to cover categories of dischargers, except those with individual permits, within a specified geographic area.” *See attached Ex. C* at 3.

“Authorization” means a written approval granted by the DEQ to a person or facility which states that a discharge from the facility is permitted under a general permit and subject to the conditions in that general permit. WWQR&R, Ch. 2, § 3(b)(xi). No person shall commence a discharge without having obtained written authorization from the DEQ, and no authorization shall be issued without the permittee’s full compliance with all requirements of these regulations. WWQR&R, Ch. 2, § 4(b)(iii)(A).

Unlike rules, which require a separate rulemaking to repeal (WYO. STAT. ANN. §

16-3-103), general permits have a fixed term not to exceed 5 years (unless extended for 180 days under Section 11), after which they must be renewed to remain effective. WWQR&R, Ch. 2, §§ 4(g)&(h), 9(d). If issuance and renewal of every watershed general permit, which expire automatically in 5 years, had to be promulgated as a rule, it would necessitate a separate rulemaking (including the Governor's approval and filing with the Secretary of State) for each general permit every 5 years and result in perpetual rulemaking.

WOC relies on a state court case from New Jersey¹ and federal approval of Hawaii's state program² (two states that do their NPDES general permits by rulemaking) to argue that the "proper procedure for adopting a general permit is to promulgate that permit as a rule." (WOC Br. at 8). That is a process those states have opted to use as a matter of their own state law or policy. The New Jersey case and federal approval of Hawaii's program cited by WOC do not stand for the proposition that state-issued general NPDES permits must be promulgated as rules as a federal requirement for approval of state programs under 33 U.S.C. § 1342(b) or 40 C.F.R. §§ 122.28 and 123.25. The State of Wyoming's NPDES General Permits Program, as approved by EPA pursuant to 40 C.F.R. §§ 122.28 and 123.25, authorizes the State to issue general permits in lieu of individual NPDES permits without promulgating each general permit as a separate rule. 56 Fed. Reg. 52030-31 (Oct. 17, 1991)

¹ *In the Matter of Freshwater Wetlands Protection Act Rules*, 852 A.2d 167 (2004).

² *Revision of the Hawaii National Pollutant Discharge Elimination System (NPDES) Program to Authorize the Issuance of General Permits*, 56 FR 55502.

(Ex. B).

WOC also cites *Natural Resources Defense Council v. Environmental Protection Agency*, 279 F. 3d 1180 (9th Cir. 2002), for the proposition that general permits *issued by EPA itself* are issued pursuant to administrative rulemaking procedures. 279 F. 3d at 1183. That case does not stand for the proposition that general permits *issued by approved state programs* must be issued pursuant to administrative rulemaking procedures. There is no federal or state requirement for each general permit issued by Wyoming's NPDES program to be promulgated as a separate rule.

WOC's argues that the contested general permits should each be adopted as a separate rule, but also that issuance of the contested general permits must comply with the requirements of Chapter 2, Section 4, which is already a rule. (WOC Br. at 3, 13). Each watershed general permit must be issued in accordance with the detailed process and requirements already prescribed by rule. WWQR&R, Ch. 2, § 4. Requiring that each watershed general permit also be promulgated as a separate rule would be redundant. The "permit by rule" for discharges of dredge or fill material in Chapter 2, Section 7(f) applies only to a single, blanket statewide dredge or fill permit, and does not apply to or require the promulgation of particular area or watershed general NPDES permits as separate rules.

WOC argues that rulemaking is a multi-stage process in which the public "has a much greater opportunity to affect the whole process if the matter under consideration is a rule," and "has a much greater opportunity to influence the process" because "[p]ublic hearings must be held" and "[c]itizens are allowed to address the decision makers directly." (WOC

Br. at 5-6.) However, WOC earlier described the issuance of the contested general permits as follows:

- the culmination of a long process of permit development involving stakeholder meetings that began in January of 2005, and went through five different draft versions of the general permits;
- Public comments were taken;
- Petitioner Wyoming Outdoor Council (WOC) has been heavily involved in the development of the general permits [and] provided comments during the public comment period for both general permits;
- Steve Jones, WOC's Watershed Protection Program Attorney served on the stakeholder committee for the Willow Creek Watershed General Permit.

(WOC Br. at 1-2).

The Chapter 2 rules for issuance or renewal of general permits include public notice and opportunity for comment. Ch. 2, § 15(a)(i)(D-E), (a)(iii), (a)(v), (a)(viii), (a)(ix), (a)(x)(C-E), (f), (g), & § 16. The opportunity for public notice and comment on a general permit under Chapter 2, Sections 15 and 16 is comparable to the opportunity for public notice and comment on a proposed rule under the Wyoming Administrative Procedure Act (WAPA). Existing statutes and rules provide an interested person an opportunity to contest the issuance or renewal of a permit (including a general permit) authorized or required under the WEQA, which is how WOC brought this present matter before the Council. WYO. STAT. ANN. §§ 16-3-103 and 35-11-112(a)(iv); WWQR&R, Ch. 2, §17; Ex. C at 6; DEQ Rules of Practice & Procedure, Ch. I, §§ 2(a)(ii), 3(b)(ii) & 16(a). There is no comparable

opportunity for a contested case hearing to challenge a rule adopted through the WAPA rulemaking process. Additionally, any interested person may petition the DEQ Water Quality Division Administrator to require any person authorized by a general permit or seeking coverage under a general permit to apply for and obtain an individual permit. WWQR&R, Ch. 2, § 4(i)(ii). These provisions in existing rules for notice, public comment and opportunity for hearing before the Council to contest a general NPDES permit equal or exceed the opportunities for public participation in the rulemaking process under the WAPA.

WOC characterizes the rule promulgation process as being much more rigorous, and with more checks and balances, “than just issuing an individual permit,” which WOC describes as simply requiring a decision and signatures by the Water Quality Division Administrator and DEQ Director. (WOC Br. 5). This is an incomplete comparison, because DEQ issuance of a permit, whether individual or general, is not the end of the permit process, as a look at the Council Docket on the state web site will show. WOC points out that the Council becomes involved in the process of promulgating rules (WOC Br. 5-6), but the Council also hears contested cases challenging general or individual permits issued by DEQ, and may order that a contested permit be granted, denied, suspended, revoked or modified. WYO. STAT. ANN. § 35-11-112(a)(iv) & (c)(ii).

The WAPA rulemaking process is essentially notice and opportunity for public comment. It does not include the WAPA procedures for a contested case hearing. In the present matter, Petitioner is taking advantage of the evidentiary hearing procedures available in contested cases before the Council for objecting to specific terms of the two contested

general permits. Petitioner would not have this opportunity if every general permit was adopted as a rule. *Tri-State Generation & Transmission Ass'n., Inc. v. Env'tl. Quality Council*, 590 P.2d 1324, 1330 (Wyo. 1979).

Promulgation of each general permit as a separate rule is not required because those affected are afforded statutory and constitutional rights to protest and contest each watershed general permit in a contested case hearing before the Council under the WEQA and the WAPA. Similarly, where the valuation system for calculating severance taxes on uranium was approved administratively in a contested hearing before the State Board of Equalization, but was not adopted as a rule through the process prescribed under the WAPA, the Wyoming Supreme Court held that promulgation of the valuation system as a rule was not required as long as "statutory and constitutional rights to protest and contest are afforded to the taxpayer." *Pathfinder Mines Corp. v. State Bd. of Equalization*, 766 P.2d 531, 535-536 (Wyo. 1988).

B. The DEQ has the requisite statutory authority under the Wyoming Environmental Quality Act (WEQA) to issue general permits.

In light of the state and federal documents, notices, rules, and court decisions discussed below, WYO. STAT. ANN. § 35-11-302(a)(v) constitutes statutory authority for DEQ issuance of general NPDES permits. WYO. STAT. ANN. § 35-11-302 expressly authorizes "permit systems," and does not limit those "permit systems" to individual permits. WYO. STAT. ANN. § 35-11-302(a)(v) authorizes the promulgation of "permit systems" prescribing standards for issuance of NPDES permits as authorized pursuant to Section

402(b) of the Clean Water Act (33 U.S.C. § 1342(b)). Section 402 does not explicitly describe the necessary scope of a NPDES permit, but the Clean Water Act allows EPA to structure permits in the form of area or general permits and EPA has promulgated regulations to make use of general permits. *Natural Res. Defense Council, Inc. v. Costle*, 568 F.2d 1369, 1380-1381, 1383 (D.C. Cir. 1977). The federal regulations for implementing the NPDES program include 40 C.F.R. § 122.28 (applicable to State NPDES programs under 40 C.F.R. § 123.25), which expressly authorizes the issuance of general permits for discharges subject to the NPDES program.

Petitioner claims “DEQ has blithely ignored this lack of statutory authority” for general permits. (WOC Br. at 11). On the contrary, DEQ relied on advice of counsel, who in a June, 1990 memorandum, citing WYO. STAT. ANN. § 35-11-302(a)(v) for statutory authority, advised the DEQ that there did not appear to be a legal problem with the DEQ promulgating rules and regulations covering the issuance of general permits, in some fashion. Memo. from Steve Jones to John Wagner, June 1, 1990 (*attached as Ex. D*). The advice further counseled that while the statute might allow issuance of such general permits, there was nothing covering general permits in the existing regulatory scheme, and promulgation of appropriate rules and regulations to cover the general permit concept must be achieved before issuance of general permits can be authorized. *Id.* Based on the advice in counsel’s June 1, 1990 memorandum, the rule providing for DEQ issuance of general NPDES permits was initially adopted the following year as Chapter 18 of the WWQR&R in June, 1991. *See Ex. A.*

The State of Wyoming was initially authorized to administer the NPDES program on January 30, 1975. On September 24, 1991, the EPA approved the State of Wyoming's NPDES General Permits Program, authorizing the State to issue general permits in lieu of individual NPDES permits, as provided by 40 C.F.R. § 122.28. 56 Fed. Reg. 52030-31 (Oct. 17, 1991) (Ex. B).

The Council amended Chapter 2 of the WWQR&R in 2004 to incorporate the general permit provisions from Chapter 18 "designed to cover categories of dischargers" within a particular geographic area. (See Ex. C, Council's Statement of Principal Reasons for adoption of amended Chapter 2, dated August 27, 2004, at 3-4).

2007 House Bill 0212 (*attached as Ex. E*) proposed to amend existing WYO. STAT. ANN. § 35-11-302(a)(v) by adding language "clarifying" that §302(a)(v) included watershed general permits for surface discharges related to coal bed methane production. WOC argues for drawing a conclusion that the Legislative intended to deny authority for general permits from the fact that House Bill 0212 was not enacted. (WOC Br. at 11-12). As the introductory language explains, HB 0212 was proposed as a clarification of existing statutory authority rather than a grant of new authority. DEQ had rules for issuance of general permits (Chapter 18) dating from 1991, which specifically identified WYO. STAT. ANN. § 35-11-302(a)(v) as statutory authority for the rules. Statutory authority for general permits was not an issue until WOC raised it in this appeal before the Council. Bills fail to be enacted for any number of reasons. The fact that HB 0212 was not enacted does not equate to a rejection of authority for general permits, which HB 0212 proposed only to clarify.

The Legislature may be considered to have acquiesced in an administrative interpretation by its failure to amend the law, particularly if the Legislature has had knowledge of its construction. *County of Natrona v. Casper Air Serv.*, 536 P.2d 142, 148 (Wyo. 1975). Administrative interpretation of a statute is entitled to weight when the Legislature has failed over a long period of time to make a change in the statute, since the failure to change the statute is some indication of an acquiescence by the Legislature to administrative interpretation. This principle is particularly compelling where the Legislature can be considered to have knowledge of the interpretation made by the administrative agency. Legislative knowledge may be implied by virtue of the promulgation of written regulations. *Town of Pine Bluffs v. State Bd. of Control*, 647 P.2d 1365, 1367 (Wyo. 1982).

In 2007 the Legislature's knowledge of the Council's and DEQ's interpretation of authority for general NPDES permits based on WYO. STAT. ANN. § 35-11-302(a)(v) can be implied from the 16 year history of Chapter 18, the rule adopted in June, 1991, which initially prescribed the process for DEQ issuance of NPDES general permits. The general permit provisions of Chapter 18 were incorporated into current Chapter 2 in 2004. Had the fate of HB 0212 actually reflected the Legislature's intent to reject authority for watershed general permits, it could have made that intent clear by amending WYO. STAT. ANN. § 35-11-302(a)(v) to expressly exclude such general permits, but did not. Instead, WYO. STAT. ANN. § 35-11-302(a)(v) was left unchanged. The Legislature has expressly excluded certain matters from DEQ authority when that was its intent. For example, the Legislature expressly

excluded administrative penalties from the Council's authority to adopt hazardous waste rules. WYO. STAT. ANN. § 35-11-503(d)(i).

C. Issuance of the two contested general permits meets the requirements of Chapter 2 of the WWQR&R.

As explained below, general NPDES permits may cover one or more categories or subcategories of discharges within a particular watershed, and the limits or conditions for each category or subcategory in the two contested general permits meet the requirements of Chapter 2, Section 4(a)(iii).

WOC's Petitions and Brief allege that the two contested general permits violate Chapter 2, Section 4 because they each contain separate categories and/or sub-categories of discharges, and effluent requirements, limits or operating conditions differ *between* different categories or sub-categories. (Petitions, ¶¶15-19; WOC Br. at 14-15). Specifically, Petitioner argues that while Chapter 2 "requires the same effluent limitations for all discharges falling under the umbrella of a general permit," the Willow Creek general permit has a total of six different categories and subcategories, each with different effluent requirements. (WOC Br. at 14).

Some operating conditions and monitoring requirements in the two contested general permits differ *between* categories or subcategories of discharges, but operating conditions and monitoring requirements do not differ *within* any given category or subcategory. The DEQ informed Petitioner that "[t]he use of separate discharge categories in this [Willow Creek] general permit does not violate Chapter 2, Section 4," because "[e]ach category

complies with the five criteria established in section 4(a)(iii).” Petitioner dismisses DEQ’s position as “unmitigated sophistry.” (WOC Br. at 15-16). As noted above, WYO. STAT. ANN. § 35-11-302(a)(v) authorizes the promulgation of “permit systems” prescribing standards for issuance of NPDES permits as authorized pursuant to section 402(b) of the Clean Water Act (33 U.S.C. § 1342(b)).

The federal regulations implementing the NPDES program (and applicable to authorized state programs under 40 C.F.R. § 123.25) provide for issuance of a general permit to regulate one or more categories or subcategories of point sources if the sources *within* each category or subcategory all:

- (A) Involve the same or substantially similar types of operations;
- (B) Discharge the same types of wastes . . . ;
- (C) Require the same effluent limitations, [or] operating conditions . . . ;
- (D) Require the same or similar monitoring; and
- (E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

40 C.F.R. § 122.28(a)(2)(ii).

The state requirements for general permits in Chapter 2, Section 4(a)(iii) are essentially the same as those in 40 C.F.R. § 122.28(a)(2)(ii). A DEQ general permit may be written to regulate certain effluent discharges if the sources all:

- (A) Involve the same or substantially similar types of operations;
- (B) Discharge the same types of pollution or wastes;

- (C) Require the same effluent limitations or operating conditions;
- (D) Require the same or similar monitoring; and
- (E) In the opinion of the administrator, are more appropriately controlled under a general permit than under individual permits.

WWQR&R, Ch. 2, § 4(a)(iii).

The Council initially adopted the rule providing for DEQ issuance of NPDES general permits as Chapter 18 of the WWQR&R in June, 1991. Section 1 of Chapter 18 expressly cites WYO. STAT. ANN. § 35-11-302(a)(v) as authority for NPDES general permits. In September 1991, EPA approved Wyoming's NPDES General Permits Program, authorizing the State to issue general permits in lieu of individual NPDES permits, in accordance with 40 C.F.R. § 122.28. 56 Fed. Reg. 52030-31 (Oct. 17, 1991) (See Ex. B).

In 2004, the Council amended Chapter 2 to incorporate the general permit provisions from Chapter 18, observing that general permits are designed to cover "categories of dischargers" within a specified geographic area, and explained that the rule was being revised to "1. Update and revise permit application and issuance requirements and procedures *to be consistent with changes in state and federal water quality protection programs.*" (Emphasis added.) (Ex. C at 3-4).

On May 15, 2000, EPA had published notice of a final rule revising 40 C.F.R. § 122.28 (applicable to State NPDES programs under 40 C.F.R. § 123.25) to expressly allow non-storm water general permits to cover more than one point source category or subcategory to increase the effectiveness of general permits issued on a geographic basis to

provide comprehensive controls on a number of different discharges (as separate categories) within a geographic area such as a *watershed*. 65 Fed. Reg. 30886, 30890-91 (May 15, 2000) (*attached as Ex. F*). This revision would authorize permitting authorities to issue a single multi-category general permit in place of multiple single category general permits. Id. The types of operations conducted or wastes discharged within each category or subcategory authorized by a general permit would still have to be substantially the same. Id. *Within* each identified category or subcategory, limitations would have to be identical for all covered dischargers. Id.

The Wyoming state requirements for an NPDES general permit under Chapter 2, Section 4(a)(iii) are virtually identical to the federal requirements for an NPDES general permit under 40 C.F.R. § 122.28(a)(2)(ii) (which are applicable to state NPDES programs under 40 C.F.R. § 123.25). Where Wyoming state rules are virtually identical to their federal counterparts, the Wyoming Supreme Court “consider[s] federal authority relative thereto to be highly persuasive.” *Kimbley v. City of Green River*, 642 P.2d 443, 445, n.3 (Wyo. 1982). The Federal Register Notice from May 15, 2000 pertaining to 40 C.F.R. § 122.28 is persuasive authority in interpreting Chapter 2, Section 4, our state counterpart. 65 FR 30886, 30890-91 (Ex. F).

As a practical matter, the requirements in each of the two contested general permits were developed to cover discharges in a particular watershed for the next 5 years. While the requirements in each general permit are subject to challenge (and in fact are being challenged here) in a contested case on the merits before the Council, once those issues are adjudicated,

those requirements, if upheld, are no longer subject to repeated, separate appeals of individual permits containing those same requirements for discharges in that particular watershed. Both WOC (Docket Nos. 06-3816 & 3817) and Yates, Marathon and Citation (Docket No. 06-3815) are contesting specific limits and conditions of these same two general permits, so apparently the permits are not too one-sided. Limits and conditions also can be reevaluated and adjusted when a general permit comes up for renewal every 5 years, without the need for a separate rulemaking on each one every 5 years.

Even if Petitioner's interpretation of Chapter 2 was correct, the remedy, according to that interpretation, would be issuance of separate general permits for each category of discharge. However, Petitioner is asking the Council to require that the two general permits be replaced by numerous individual permits as "a more appropriate management tool" (WOC Br. at 20-21), which reflects a basic difference of opinion between WOC and DEQ about whether the sources at issue are more appropriately controlled under a general permit rather than under individual permits. WWQR&R, Ch. 2, § 4(a)(iii)(E) & 40 C.F.R. § 122.28(a)(2)(ii)(E). This suggests that the real objective of Petitioner's objection is eliminating general permits altogether in favor of individual permits only. Existing Chapter 2, Section 4(i)(ii) already provides a process for any "interested person" to petition the administrator to require any person to apply for an individual permit in lieu of coverage under a general permit.

Conclusion

For the reasons discussed above, Petitioner is not entitled to summary judgment as a matter of law on the three issues identified in Petitioner's Motion and Brief.

DATED this 2nd day of August, 2007.

A handwritten signature in black ink, appearing to read "Mike Barrash", written in a cursive style.

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing RESPONDENT DEQ'S BRIEF IN RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT were served this 2nd day of August, 2007 by United States Mail, first class postage prepaid, and by facsimile transmission and/or e-mail, addressed as follows:

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