

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

JUL 30 2007

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF THE APPEAL OF )  
PENNACO ENERGY, INC. OF )  
CONDITIONS IN RENEWAL OF )  
WYPDES PERMIT NO. WY0048283 )

DOCKET NO. \_\_\_\_\_

NOTICE OF APPEAL AND PETITION FOR HEARING

Pennaco Energy, Inc. ("Pennaco"), through its undersigned counsel, hereby appeals certain conditions contained in WYPDES Permit No. WY0048283 ("the Permit") issued by the Department of Environmental Quality ("DEQ") to Pennaco on May 30, 2007 and requests a hearing pursuant to the Environmental Quality Act, the Wyoming Administrative Procedure Act ("WAPA"), and the Rules of Practice and Procedure of the Environmental Quality Council ("EQC"). In support of this appeal, Petitioner advises the EQC as follows:

**I. Information About the Petitioner**

The petitioner filing this appeal is:

Pennaco Energy, Inc.  
3601 Southern Drive  
Gillette, Wyoming 82718

Petitioner is represented in this matter by Brent Kunz of Hathaway & Kunz, P.C., 2515 Warren Avenue, Suite 500, Cheyenne, Wyoming 82003 and by Duane Siler and John Martin of Patton Boggs LLP, 2550 M Street, Washington, D.C. 20037. Correspondence and information related to this appeal should be served on the undersigned counsel and on Mr. David T. Hill at Pennaco Energy, Inc. at the Gillette address above.

## II. Action Being Appealed

1. Pennaco appeals the proposed permit limitations for Outfalls 001-003 on the following grounds:

(A) The Agricultural Use Policy, by means of which DEQ is implementing Section 20 of the Water Quality Regulations, and upon which these limits are based, and as in effect when this permit was issued, is not applicable to permit renewals for existing produced water discharges, absent a showing that existing discharges are harmful to humans or animals. No evidence suggests that the existing discharges under this permit are causing such harm. The proposed new and more stringent effluent limits and impoundment requirements for Outfalls 001-003 are unauthorized and contrary to the Section 20 policy as in effect when the permit was written.<sup>1</sup>

(B) DEQ could not lawfully apply the requirements of the Agricultural Use Policy, including the default final effluent limits on specific conductance, a.k.a., electrical conductivity ("EC") and sodium adsorption ratio ("SAR"), to this permit because DEQ was required to first adopt the "policy" as a rule in accordance with the procedural requirements of the Water Quality Act and the Administrative Procedure Act.

(C) Even if DEQ could apply these rules without rulemaking, the 'policy' is arbitrary and capricious in establishing after an interim period final default effluent limits on EC of

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<sup>1</sup> A cover letter accompanying Pennaco's January 9, 2007, permit renewal for Kline Draw B says Pennaco "has chosen Option 2 for Outfalls 001-003" and "understands" that at the end of an interim period, the current permit's ICP would be eliminated and replaced by EOP limits. Pennaco's 'choice' was of course constrained by the categories dictated by DEQ in CBM permitting guidance - Pennaco had no real choice but to select one of WQD's permitting 'options.' Pennaco's 'understanding' was based on instructions from DEQ. As Pennaco advised in its comments, dated May 21, 2007, neither this 'choice' nor 'understanding' should be misconstrued as a waiver by Pennaco of its objections to DEQ's requirement for final end-of-pipe limits on these outfalls.

1330 uS/cm (and consequent SAR limit of 7<sup>2</sup>) as end-of-pipe limits, instead of higher values recommended by the Water and Waste Advisory Board at *locations where irrigation actually occurs*.

(D) After the interim period the permit also eliminates the existing requirement for water quality compliance at an irrigation compliance point (ICP) and imposes end-of-pipe effluent limits on CBNG produced water discharges. This is irrational because it presumes the effluent from these outfalls would impact irrigated lands or aquatic life, even though the discharges are impounded and cannot be released except during precipitation events with attendant dilution, and even then for not longer than 48 hours.

2. Additionally, Pennaco objects to the proposed permit limitations for Outfalls 004-005 on the ground that DEQ has improperly coerced Pennaco to 'choose' Option 1-B. To require an applicant to construct and maintain an impoundment capable of retaining precipitation and runoff from a 50-year/24-hour precipitation event, as a condition of relief from the default end-of-pipe limits under the Section 20 Policy, is arbitrary, unreasonable and unlawful.

### III. Relief Requested

Petitioner respectfully requests that the EQC grant the following relief:

1. Grant Petitioner a contested case hearing on the challenged provisions of WYPDES Permit No. WY0048283 pursuant to the EQA, the WAPA, and the EQC's Rules of Practice and Procedure.

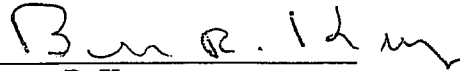
2. Finally determine Pennaco's application for renewal of WYPDES Permit No. WY0048283; reject the permit provisions referenced herein; and order that the renewed permit shall be finally issued without those provisions.

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<sup>2</sup> Part I.A.1b of the proposed permit specifies an SAR limit of 7 for Outfalls 001-003 after July 1, 2008. The Statement of Basis, at page 3, says the limit will be 7.5.

3. Provide such other relief as the EQC determines just and reasonable under the circumstances.

Respectfully submitted,



Brent R. Kunz  
Brent R. Kunz  
HATHAWAY & KUNZ, P.C.  
2515 Warren Avenue, Suite 500  
P.O. Box 1208  
Cheyenne, Wyoming 82003  
(307) 634-7723  
(307) 634-0985 (fax)

Duane A. Siler  
John C. Martin  
PATTON BOGGS LLP  
2550 M Street, N.W.  
Washington, D.C. 20037  
(202) 457-6000  
(202) 457-6315 (fax)

Dated: July 30, 2007

CERTIFICATE OF SERVICE

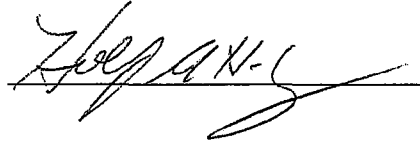
The undersigned certifies that on July 30, 2007, the foregoing Notice of Appeal and Petition for Hearing was served by hand as follows:

*Original and 10 copies to:*

Terri Lorenzon, Director  
Environmental Quality Council  
Herschler Building, Room 114  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002

*Two copies to:*

John Corra, Director  
Department of Environmental Quality  
Herschler Building, 4<sup>th</sup> Floor West  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002

A handwritten signature in black ink, appearing to read "Terri Lorenzon", written over a horizontal line.