

August 26, 2008

Mr. David Waterstreet  
WDEQ/ Water Quality Division  
Hershler Building, 4W  
122 West 25<sup>th</sup> Street  
Cheyenne, WY 82002

RECEIVED

AUG 26 2008

WATER QUALITY DIVISION  
WYOMING

Re: Water Quality Proposed Revisions to Chapter 1, Appendix H

Dear Mr. Waterstreet

We, the following representatives of Thunder Basin Coal Company, LLC, Western Fuels-Wyoming, Inc., and Powder River Coal, LLC hereby submit comments on the above proposed rules as representatives of our respective companies.

Comment 1. Water has been discharged from Powder River Basin mines for many years, and we are not aware of WQD receiving any complaints about the quality of the discharges. We are very concerned that the rules must be passed with a grandfather clause, (paragraph 5 of Appendix H) and we feel that is an essential part of the rule as written. Removing the grandfather clause would be a radical change to these proposed rules, requiring the rules to go back to the Advisory Board for rehearing.

Comment 2. That being said, we believe the grandfather clause needs to be slightly revised to correctly work as intended. However, paragraph 5 of Appendix H, we strongly recommend the word "discharges" be changed to "discharge permits".

Comment 3. The rule should be modified to make allowances for upset conditions, in order to exempt all operators who might be inadvertently discharging while their treatment systems were unknowingly out of service.

Comment 4. How far downstream from the discharge will these rules apply? Page H-3 (Sections ii and iii): The statement that WYPDES effluent limits for EC and SAR will be applied in all instances where the produced water discharge may reach any artificially irrigated lands should be changed to state where produced water discharge may compose a significant portion of the irrigation water supply for naturally or artificially irrigated lands. To do otherwise would place unnecessary limits on dischargers when the discharge water would only reach irrigated areas in combination with runoff water or natural stream flow.

Comment 5. There are historic but unused or non-maintained irrigation structures that exist in Wyoming. If a discharge is sent to this historic irrigation feature, must the waters meet the requirement of this standard at this structure?

Comment 6. Has the Division conducted an analysis of the technical practicability and economic reasonableness of the proposed rules? Such an analysis is required by the Wyoming Environmental Quality Act, 35-11-302(a)(vi)(D).

Comment 7. To be compliant, many industrial facilities will opt to not discharge. This will deny water to downstream agricultural users. The purpose of the Western Alkaline Rules that were promulgated into Wyoming's WDEQ rules and regulations was to ensure that water was not

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WDEQ/WQD Appendix H Rules  
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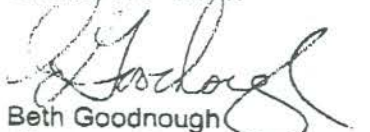
unnecessarily retained by facilities, but rather was more readily discharged so that the water could be put to beneficial use downstream. In addition, we are concerned that the State is inconsistent with the intent of the Western Alkaline Rules.

Comment 8. Page H-4 (Section II): Given the variables involved in irrigation in Wyoming, the use of the 100 percent yield threshold value and a goal of no measurable decrease in crop or livestock production may place an unreasonable demand on dischargers to show that their discharge did not cause problems occurring on a particular agricultural operation. Many water quality problems that have been attributed to facility discharges are more probably attributed to the ongoing drought. In general, irrigators in our area pull water from the stream during periods of high flow. During much of the year, the baseline water quality is not of irrigation quality. Although there is allowance for the EC and SAR limits only applying during the irrigation season, there should be some consideration of use of irrigation water and flow volume and quality during irrigation periods and during the rest of the year. For instance, baseline flow quality in Antelope Creek and the Cheyenne River for most of the year is over 1,500 mg/l, and often over 2,000 mg/l, and is much less during the irrigation period. Appendix H needs to include a provision for mixing studies to determine the actual impact on irrigation potential or livestock watering from the discharge water. The appendix should also allow for water to be stored and discharged during periods of high flow when the water quality would not impact irrigation or during periods when irrigation is not taking place. A numerical standard based on water quality would also be much easier to administer by the WDEQ/WQD and the dischargers.

In summary, we believe that the language in the proposed rule is better than the former agricultural protection policy language that came before the EQC in February 2007. However, there continue to be enough questions and potential economic impacts from these proposed rules that we believe it would be prudent to utilize this document as a guideline or policy so that through practical application the document can be improved without having to go through formal rulemaking. Application as a policy will allow more flexibility during implementation. We are concerned that the rules may otherwise cause unintended consequences which may actually harm downstream agricultural users.

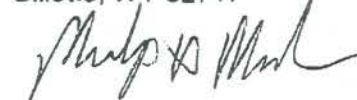
Sincerely,

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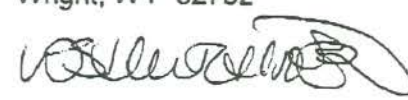
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