

**FILED**

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
OF THE STATE OF WYOMING**

**FEB 17 2009**

*Jim Ruby, Executive Secretary  
Environmental Quality Council*

IN THE MATTER OF THE APPEAL )  
OF CLABAUGH RANCH, INC. )  
FROM WYPDES PERMIT NO. WY0039519 )

Docket No. 09-3804

**PETITION**

Clabaugh Ranch, Inc. petitions the Environmental Quality Council of the State of Wyoming as follows:

1. Name and Address of Protestant and Protestant's Attorney. The name and address of the Protestant is Clabaugh Ranch, Inc., P. O. Box 12, Arvada, WY 82831. The name and address of the Protestant's attorney is Tom C. Toner, Yonkee & Toner, LLP, P. O. Box 6288, Sheridan, WY 82801.

2. Action Upon Which Hearing Is Requested. This is an appeal from the issuance of WYPDES Permit No. WY0039519 to Pennaco Energy, Inc. issued December 31, 2008 by the Director of the Department of Environmental Quality.

3. Statement of Facts.

a. Clabaugh Ranch, Inc. ("Clabaugh") is the owner of a ranch in Sheridan and Campbell Counties, Wyoming.

b. On December 30, 2008, the Administrator of the Water Quality Division of the Department of Environmental Quality and on December 31, 2008 the Director of the Department of Environmental Quality signed a renewal of WYPDES Permit No. WY0039519 to Pennaco Energy, Inc. (the "Permit")

c. This permit authorizes Pennaco to discharge water produced from coalbed methane wells located up gradient from Clabaugh's ranch into Wild Horse Creek which is a tributary to the Powder River.

d. The outfalls are located up drainage from the Clabaugh ranch, and any water discharged under the permit will be discharged onto the Clabaugh ranch.

e. The water that the permit allows Pennaco to discharge will cross the Clabaugh ranch for several miles.

f. The discharged water will pass through the bottom lands on the Clabaugh ranch through areas that serve as important grazing pastures for Clabaugh livestock.

g. Water uses in existence on and after November 28, 1975 and the level of water quality necessary to protect those uses are not maintained and protected by the Permit in violation of Ch. 1, §8 of the Water Quality Rules and Regulations of the DEQ.

h. The Permit does not prevent the presence of substances attributable to or influenced by the activities of man that will settle to form sludge, bank or bottom deposits in quantities which could result in significant aesthetic degradation, significant degradation of habitat for aquatic life or adversely affect agricultural use, plant life or wildlife in violation of Ch. 1, § 15 of the Water Quality Rules and Regulations of the DEQ.

i. The Permit does not prevent the presence of floating and suspended solids attributable to or influenced by the activities of man in quantities which could result in significant aesthetic degradation, significant degradation of habitat for aquatic life, or adversely affect agricultural water use, plant life, or wildlife in violation of Ch. 1, § 16 of the Water Quality Rules and Regulations of the DEQ.

j. The Permit does not prevent the waters from containing substances attributable to or influenced by the activities of man that produce taste, odor and color or that would visibly alter the natural color of the water in violation of Ch. 1, § 17 of the Water Quality Rules and Regulations of the DEQ.

k. The Permit allows degradation of Wyoming surface waters to such an extent as to cause a measurable decrease in crop or livestock production in violation of Ch. 1, § 20 of the Water Quality Rules and Regulations of the DEQ. The Permit does not establish effluent limitations that will protect livestock consumption.

l. The Permit fails to assure compliance with the turbidity requirements of Ch. 1, § 23 of the Water Quality Rules and Regulations of the DEQ.

m. The Permit fails to establish conditions to provide for and assure compliance with the Clean Water Act, the Wyoming Environmental Quality Act, and the Wyoming Water Quality Rules and Regulations prior to the final administrative disposition of the permit in violation of Ch. 2, §5(c)(ii) of the Water Quality Rules and Regulations of the DEQ.

n. The Permit fails to require that the discharge ensures compliance with the applicable water quality requirements of all affected states in violation of Ch. 2, §9(a)(v).

o. The conditions of the Permit do not provide compliance with applicable requirements of Wyo. Stat. §35-11-302 and the Water Quality Rules and Regulations of the DEQ in violation of Ch. 2, §9(a)(vi) of the Water Quality Rules and Regulations of the DEQ.

p. The Permit fails to include the conditions and limitations that are required in all permits by Ch. 2, Appendix H paragraphs (b)(i)(ii)(v)(vii) and (ix) of the Water Quality Rules and Regulations of the DEQ.



q. The Permit fails to require the permittee to take all reasonable measures to prevent downstream erosion that would be attributable to the discharge of produced water as required by Ch. 2, Appendix H paragraph (d)(iv) of the Water Quality Rules and Regulations of the DEQ.

r. The Permit does not require that the produced water be used for agriculture or wildlife during periods of discharge in violation of 40 C.F.R. Part 435 Subpart E. The Permit does not require that the produced water have use in agriculture or wildlife propagation and actually be put to such use during periods of discharge and Pennaco has not documented that the produced water will actually be put to use during periods of discharge in violation of Ch. 2, Appendix H paragraph (a)(i) of the Water Quality Rules and Regulations of the DEQ.

s. The Permit's effluent limits will not protect plant life from adverse effects of the discharge, and water with the quality allowed by the Permit will cause a measurable decrease in crop and livestock production.

t. The Permit violates the anti-backsliding provisions of the Clean Water Act.

4. Request for Hearing. Clabaugh Ranch, Inc. requests a hearing before the Environmental Quality Council and requests that the Council reverse the decision to grant the Permit and grant the Petitioner such relief as he is entitled to by law or regulation.

Dated this 13<sup>th</sup> day of February, 2009.

Yonkee & Toner, LLP

By: Tom C Toner

Tom C. Toner, Bar No. 5-1319  
Attorneys for Protestant  
319 W. Dow St.  
P. O. Box 6288  
Sheridan, WY 82801-1688  
Telephone No. (307) 674-7451  
Facsimile No. (307) 672-6250

**Certificate of Service**

I certify that on the 13<sup>th</sup> day of February, 2009, I served a true and correct copy of the foregoing by depositing the same in the United States certified mail, return receipt requested, postage prepaid and addressed to:

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

Director, Department of Environmental Quality  
122 West 25<sup>th</sup> Street  
Herschler Building, Room 174  
Cheyenne, WY 82002

A handwritten signature in black ink, appearing to read "Tom C. Toner". The signature is written in a cursive style with a large initial "T" and "C".

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Tom C. Toner