

**FILED**

**AUG 10 2009**

**Jim Ruby, Executive Secretary  
Environmental Quality Council**

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

In the Matter of the Appeal of )  
Clabaugh Ranch, Inc. from ) Docket No. 09-3806  
WYPDES Permit No. WY0042102 )

**PENNACO ENERGY, INC.'S ANSWER TO PETITION**

Pennaco Energy, Inc. (Pennaco), by and through counsel, Holland & Hart LLP, submits the following answer in response to Clabaugh Ranch, Inc.'s (Clabaugh Ranch) Petition in appeal of DEQ's "renewal" of WYPDES Permit No. WY0042102 (Permit):

1. Upon the extent of Pennaco's information and belief, Pennaco admits the allegations contained in Paragraph 1 of Clabaugh Ranch's Petition.

2. Pennaco admits this is an appeal from the issuance of the major modification of WYPDES Permit No. WY0042102 to Pennaco, but denies the remaining allegations contained in Paragraph 2 of Clabaugh Ranch's Petition. This permit was renewed December 31, 2008. Major modifications to the permit are dated May 6, 2009.

3. Statement of Facts

a. Upon the extent of Pennaco's information and belief, Pennaco admits the allegations contained in Paragraph 3(a) of Clabaugh Ranch's Petition.

b. Pennaco denies the allegations contained in Paragraph 3(b) of Clabaugh Ranch's Petition. See Paragraph 2 above.

c. Pennaco admits that the Permit authorizes Pennaco to discharge water produced from coalbed methane wells located upgradient from Clabaugh Ranch into on-channel reservoirs of Wild Horse Creek which is a tributary to the Powder River. Pennaco denies the remaining allegations of Paragraph 3(c) of Clabaugh Ranch's Petition.

d. Pennaco admits that the outfalls are located up drainage of the Clabaugh Ranch. Pennaco denies the remaining allegations contained in Paragraph 3(d) of Clabaugh Ranch's Petition.

e. Pennaco denies the allegations contained in Paragraph 3(e) of Clabaugh Ranch's Petition.

f. Pennaco denies that its discharged treated water will pass through the bottomlands on the Clabaugh Ranch. Pennaco is without sufficient information or belief to admit or deny the remaining allegations contained in Paragraph 3(f) of Clabaugh Ranch's Petition and therefore denies the same.

g. Pennaco denies the allegations contained in Paragraph 3(g) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

h. Pennaco denies the allegations contained in Paragraph 3(h) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

i. Pennaco denies the allegations contained in Paragraph 3(i) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

j. Pennaco denies the allegations contained in Paragraph 3(j) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

k. Pennaco denies the allegations contained in Paragraph 3(k) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

l. Pennaco denies the allegations contained in Paragraph 3(l) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

m. Pennaco denies the allegations contained in Paragraph 3(m) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

n. Pennaco denies the allegations contained in Paragraph 3(n) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

o. Pennaco denies the allegations contained in Paragraph 3(o) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

p. Pennaco denies the allegations contained in Paragraph 3(p) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

q. Pennaco denies the allegations contained in Paragraph 3(q) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

r. Pennaco denies the allegations contained in Paragraph 3(r) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

s. Pennaco denies the allegations contained in Paragraph 3(s) of Clabaugh Ranch's Petition. The Permit complies with applicable requirements of the Wyoming Environmental Quality Act and Wyoming Water Quality Rules and Regulations.

t. To the extent Paragraph 3(t) of Clabaugh Ranch's Petition calls for a legal conclusion, it requires no response. Pennaco denies any remaining allegations contained in Paragraph 3(t) of Clabaugh Ranch's Petition.

4. Pennaco denies that Clabaugh Ranch is entitled to a hearing or the remaining relief requested in Paragraph 4 of Clabaugh Ranch's Petition.

#### **GENERAL DENIAL**

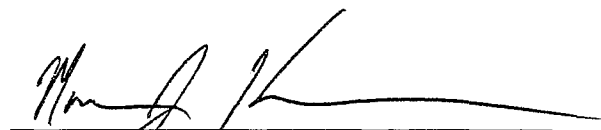
Pennaco denies each and every allegation not specifically admitted herein.

**AFFIRMATIVE DEFENSES**

1. The Environmental Quality Council lacks subject matter jurisdiction over Clabaugh Ranch's Petition.
2. Clabaugh Ranch lacks standing to bring this Petition.
3. Clabaugh Ranch has failed to state a claim on which relief may be granted.
4. The statute of limitations bars that part of Clabaugh Ranch's appeal relating to the December 31, 2008 renewal of the permit. Only the major modifications to the permit dated May 6, 2009, may be appealed by Clabaugh Ranch.

WHEREFORE, Pennaco respectfully requests the Environmental Quality Council dismiss the Petition and/or affirm issuance of the Permit.

Respectfully submitted August 10, 2009.



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ATTORNEYS FOR PENNACO  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August \_\_\_\_, 2009, I served the foregoing **Pennaco Energy, Inc.'s Answer to Petition** to the following by:

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