

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Wyoming Outdoor Council,)
Petitioner)
v.)
Wyoming Department of Environmental Quality,)
Respondent,)
and)
Petroleum Association of Wyoming,)
Intervenor.)

Docket No. 02-3803

FILED

MAY 03 2005

**Terri A. Lorenzon, Director
Environmental Quality Council**

**JOINT MOTION AND STIPULATION FOR
WITHDRAWAL AND DISMISSAL OF APPEAL**

On or about April 22, 2002, the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) issued a "Final Determination Regarding the Categorical Classification of Isolated, Effluent Dominated Waters" based on the DEQ/WQD's December 7, 2001 "Categorical Use Attainability Analysis for Isolated, Effluent Dominated Waters" (the CUA). On or about June 18, 2002, the Wyoming Outdoor Council (WOC or Petitioner) filed with the Wyoming Environmental Quality Council (EQC or Council) a "Petition for Review of the Categorical Use Attainability Analysis of Wyoming Department of Environmental Quality" (WOC Petition). The Petroleum Association of Wyoming (PAW) subsequently intervened.

The parties (WOC, DEQ, and PAW) each filed motions for summary judgment, briefs and response briefs on three stipulated issues in January, 2005. The Council heard oral arguments on the summary judgment motions on February 18, 2005 and directed the parties to submit a proposed hearing schedule by February 25, 2005. On or about February 22, 2005, the parties filed a "Joint Motion for Extension of Time to Submit Proposed Hearing Schedule," in

JOINT MOTION AND STIPULATION

which they represented to the Council that they had agreed to meet on February 25, 2005 to explore a possible settlement. The Council granted the parties a one week extension to submit a proposed hearing schedule on or before March 4, 2005, which they did.

Since then, the parties continued to work on terms for disposition of this contested case prior to a hearing, and have now reached an agreement. Wyo. Stat. Ann. § 16-3-107(n) and Chapter I, § §11 of the DEQ Rules of Practice & Procedure provide for disposition of contested cases by stipulation of the parties upon approval of the Council. To that end the parties, Petitioner Wyoming Outdoor Council, Respondent Wyoming Department of Environmental Quality, and Intervenor Petroleum Association of Wyoming, jointly move and stipulate as follows:

1. The DEQ will allow General Permit No. WYG39, the general permit at issue in a companion case to this matter (Docket No. 02-3802) to expire by its terms on April 19, 2007, and will not renew said general permit.
2. The DEQ will accept for processing any new notices of intent to come under General Permit No. WYG39 that are submitted on or before the date of this Joint Stipulation.
3. The notices of authorization for any existing permittees that already have been issued or are issued on or before the date of this Joint Stipulation shall remain in effect until April 19, 2007.
4. Applications submitted on or before the date of this Joint Stipulation by potential permittees to come under the said general permit shall be processed, and notices of authorization to operate under the said general permit may be issued, in the ordinary course of events. DEQ shall issue notices of authorization under the terms of the general permit, if appropriate and if the

permittees will fully comply with the terms of the general permit. DEQ shall not issue notices of authorization under the terms of the general permit, if it is not appropriate or it appears that the permittees will not be able to comply with the terms of the general permit.

5. Of the additional potential permittees, it is the DEQ's intention at this time to recommend to the permittees whose applications have already been returned to them for being incomplete or technically inadequate that they submit applications for individual permits, rather than proceed with requesting authorizations for authority pursuant to the off channel general permit, which will be sunsetted pursuant to this Joint Stipulation.

6. The Petitioner shall be provided a full list of all existing permittees under the general permit, and a complete list of the current applicants for authorization under the general permit, and shall further be provided with copies of all relevant permit application materials and correspondence relating to the permit application file, by DEQ in a timely fashion to allow the Petitioner to object to notices of authorization being issued to any particular permittee.

7. The Petitioner withdraws their appeal of the Categorical Use Attainability Analysis (Docket No. 02-3803), and their appeal in this matter shall not be refiled.

8. After the date of the approval of this Joint Stipulation, and except as provided in paragraph 4 above with regard to current applications and any applications submitted before the date of approval of this Joint Stipulation, the DEQ will henceforth issue permits for discharges of coal bed methane produced water only on an individual basis with respect to discharges to off channel total containment ponds. Provided, however, that where a watershed-based plan or general permit is developed through a watershed-based permitting committee process, isolated,

effluent-dominated, off-channel total containment ponds shall be permitted individually under the terms specified in such watershed-based plan or general permit.

9. The DEQ will analyze all proposed discharges to off channel total containment ponds for any constituents of concern, based upon a relevant water sample of the proposed discharge water.

10. The DEQ will further analyze and consider how discharges to unlined total containment ponds may affect or contaminate groundwater, and, subject to proper and timely appeal, will impose requirements on a case by case basis, if deemed appropriate and within their authority by the DEQ, so as to protect groundwater resources that may be impacted by the discharge to the total containment ponds.

11. It is understood by the parties that the Petitioner retains the right to challenge individual WYPDES discharge permits on any and all factual and legal grounds available to them, including but not limited to challenging the legitimacy of the water classification for the off channel total containment pond receiving the proposed discharge, except that the Petitioner shall not challenge the issuance of the permits on the grounds that the off channel containment ponds are treatment works or disposal systems as defined by Wyo. Stat. Ann. § 35-11-103(c)(iv) and (v). If Petitioner challenges the classification for the water body receiving the proposed discharge, DEQ and PAW reserve the right to raise the issue of whether or not the water classification can be challenged directly in the context of an individual WYPDES permit appeal.

12. It is further understood by the parties that, notwithstanding its entry into this Joint Stipulation, the PAW does not waive, but fully retains, its rights to challenge DEQ decisions to grant, deny, or impose conditions through any individual WYPDES discharge permits on any

and all factual and legal grounds, and to challenge DEQ decisions to issue, deny, or impose conditions on any notices of authorization issued pursuant to paragraph 4 above, and to challenge such requirements described in paragraph 10 above, as may be imposed by DEQ.

13. The parties request that the Environmental Quality Council enter an Order approving, incorporating, and binding the parties to this Joint Stipulation.

14. This Joint Stipulation shall be binding upon the parties and their successors or assigns.


15. Each party shall bear its own costs and attorney fees incurred through the entry of an Order by the Council approving and incorporating this Joint Stipulation.

WHEREFORE the parties (WOC, DEQ, and PAW) respectfully request that the Council enter an Order under Wyo. Stat. Ann. § 16-3-107(n) and Chapter I, § 11 of the DEQ Rules of Practice & Procedure approving, incorporating, and binding them to this Joint Stipulation and dismissing Petitioner WOC's appeal in this matter in accordance herewith.

The undersigned counsel or representatives certify that they are authorized to bind their respective parties to this Joint Stipulation in EQC Docket No. 02-3803.

Dated this 29th day of April, 2005.

For Wyoming Outdoor Council:


Steve Jones
Watershed Protection Program Attorney
Wyoming Outdoor Council

[Signatures continued on next page]

[Signatures continued from previous page]


**For the State of Wyoming, Department of
Environmental Quality:**


John V. Corra, Director, Department of Environmental Quality


John F. Wagner, Administrator, Water Quality Division


Mike Barrash, Senior Assistant Attorney General

For the Petroleum Association of Wyoming:


Jack D. Palma, II, P.C.
Holland & Hart, LLP
Attorneys for Petroleum Association of Wyoming

3371976_3.DOC