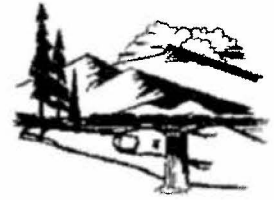




# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



Matthew H. Mead, Governor

Todd Parfitt, Director

**FILED**

**JUN 16 2015**

Jim Ruby, Executive Secretary  
Environmental Quality Council

TO: Environmental Quality Council

FROM: Todd Parfitt, Director, Department of Environmental Quality

DATE: June 10, 2015

SUBJECT: Recommendation to Deny Powder River Basin Resource Council (PRBRC) and Citizens United for Responsible Energy Development (CURED) Petition for Rule Making

I have reviewed the petition for rule making submitted by the PRBRC and CURED for the Environmental Quality Council to initiate rulemaking proceedings to:

1. Require DEQ to accept electronic comments: 1) prior to the agency's adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy as described in the Wyoming Administrative Procedures Act, and prior to issuing permits as described in the Wyoming Environment Quality Act.
2. Allow acceptance of email comments as the form of electronic comment.
3. Modify the Rules of Practice and Procedure, Chapter 3, Section 4 (b) to change the public comment period from 30 days to 45 days.

I do recognize the growing interest in allowing electronic comments to be submitted to the agency and have committed resources to developing those capabilities. The Department has diligently explored appropriate methods for making electronic submittals a viable option for both the public and the Department. The system we are piloting is designed to achieve maximum efficiency and



effectiveness in furthering the objectives of the Department given constrained state resources and budgets.

Because the agency is well on its way to providing an electronic means of receiving public comment for rules and eventually for permits, it is my view that the public would not benefit from the development of a rule requiring what we are already pursuing without a rule. At best, a rule making process will unnecessarily strain our staff time and resources and constrain our current efforts of facilitating enhanced electronic participation in the day-to-day activities of the Department. In addition, any regulation in this area has the potential to inhibit the Department's ability to quickly make adjustments to new technologies without first modifying the rule, further constraining the ability to implement more efficient and effective electronic delivery systems.

I do not support the use of email comments for the reasons explained in the attached May 1, 2015 letter to the Water and Waste Advisory Board.

With respect to the requested change in the standard public comment period from 30 to 45 days, which I support, the change would most appropriately be addressed and integrated into existing rulemaking efforts that are already underway. Those efforts are focused on incorporating changes to the Council and Department's administrative hearings procedures through integration of the Office of Administrative Hearing's standardized procedural rules finalized in 2014.

Therefore, it is my recommendation that the Environmental Quality Council deny the Powder River Basin Resource Council (PRBRC) and Citizens United for Responsible Energy Development (CURED) Petition for Rule Making.



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Matthew H. Mead, Governor

Todd Parfitt, Director

May 1, 2015

Marge Bedessem, Chairman  
Water and Waste Advisory Board  
1252 Commerce Drive  
Laramie, WY 82070

RE: Acceptance of Email Comments – Letter Request Response

Dear Chairman Bedessem:

Thank you for your letter of March 13, 2015 and your interest in the Department of Environmental Quality (DEQ) modernizing the methods by which the public and regulated community can submit comments to the agency, particularly through electronic submittals.

The DEQ has had a long standing policy of not accepting email comments, preferring the certainty of standard mail and our associated internal process for ensuring effective public participation, but I recognize the growing interest in allowing electronic comments to be submitted to the agency and therefore have committed to developing those capabilities. To that end, the DEQ has been exploring the appropriate means to make electronic submittals a viable option that not only works for the public but also works in a way that achieves maximum efficiency and effectiveness in furthering the objectives of the department. Email, being a subset of the total universe of possible electronic options for submitting information to the agency, has been considered in these efforts.

I have explored the idea of electronic submittal of comments with each of DEQ's division administrators, the State of Wyoming Chief Information Officer, his agency, Enterprise Technology Services (ETS), and with others. Through that evaluation process, the following concerns were raised regarding acceptance of email correspondence as an electronic method for accepting public comment:

- Although sending an email to the agency may be a relatively easy task for the public, the administrative handling of submitted email comments must also be considered, particularly the consideration of maximum efficiency and effectiveness in furthering the objectives of the department and the risk of inadvertent loss of individual comments.
- The state has a robust quarantine and spam filter. The possibility of a public comment being captured in the quarantine and spam system is high and something that could inadvertently disenfranchise a commenter because the comment is never received by the agency. Such a result would deprive the agency of the benefit of the lost comment.

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ADMIN/OUTREACH (307) 777-7758 FAX 777-7687	ABANDONED MINES (307) 777-6145 FAX 777-6467	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-5073	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5073	WATER QUALITY (307) 777-7781 FAX 777-5073
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- The possibility of a quarantined or spam filtered comment could undermine the administrative public process and potentially subject a permit or rule to extended processing. This would add time and resources to the process.
- DEQ manages a much larger universe of public notices and public comment for rules and permits than most other agencies in the state. The average number of DEQ rules and permits subject to public comment is 140 per month.
- Allowing receipt of email comments would have a significant financial impact on the agency. An individual email address would need to be established for each public noticed rule or permit. One of the criteria ETS uses to calculate charges to state agencies is the number of email addresses the state uses. Considering the estimated cost per transaction provided by ETS, the estimated cost to the agency would be significant. These funds are not within our existing budget.
- Email comments do not have a structured format that would lend itself to compiling information when compared to other electronic submittal alternatives.
- An issue experienced with other state and federal agencies for significant rules and permits has been the receipt of thousands of “automated comment submittals” – these submittals have the potential to burden the administrative process and create inefficiencies in record generation and response. A large volume of auto generated forms could overwhelm the agency’s email system and even possibly the state system. This in turn would require time and resources to address, creating administrative challenges for the department.

Despite the challenges of accepting email comments, DEQ is moving forward with accepting electronic comments in a measured approach that balances the convenience of commenting with the needs for structure and efficiencies. What we are proposing is an online database system as an electronic option for public comment. This system will allow the submission of attachments and unlimited text, and enables the agency to assemble, organize, and respond to comments efficiently and effectively. The proposed database approach is based on a similar system currently used to manage public records requests coming into the agency.

This online database and form system allows the public to submit comments and upload supporting documents in reference to public notices directly from our website. As we send out public notices from our new website, a link would be provided on each notice that directs the public to the public comment form. Public members commenting will receive an email and web page confirmation that their comments were received. This system collects all comments and places them into a database that is searchable and can be accessed within the Google Drive application.

This method of accepting electronic public comment is a better option than accepting email comments and helps the agency achieve maximum efficiency and effectiveness in furthering the objectives of the department while promoting more accessible public participation in the administrative process.

The DEQ expects to begin using this system in a test phase with our next rule making package in the Solid and Hazardous Waste Division later this summer. Based on the results of that trial process, we anticipate expanding its use over time.

Sincerely,

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

Todd Parfitt  
Director

cc: Governor's Office  
Kevin Frederick, WQD  
Luke Esch, SHWD/ISD  
Steve Dietrich, AQD  
Kyle Wendtland, LQD  
James Uzzell, ADMIN  
Alan Edwards, AML, Deputy Director