

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
FOR THE STATE OF WYOMING

**FILED**

JAN 07 2003

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF THE APPEAL )  
OF EDWARD H. SWARTZ )  
FROM NPDES PERMIT NOS WY0039951, )  
WY0039969, WY0039977 )

No. 03-3601

**PETITION FOR HEARING**  
**AND NOTICE OF APPEAL**  
**DEVON ENERGY PRODUCTION COMPANY, L.P.**

Edward H. Swartz, by and through his undersigned counsel, files this Petition for Hearing pursuant to Wyo. Stat. Ann. § 35-11-112(a)(iv) (LexisNexis 2001) and Chapter I, Section 3 of the Rules of Practice and Procedure promulgated by the Environmental Quality Council ("Council"). In particular, Mr. Swartz ("Petitioner") protests the above-referenced Department of Environmental Quality's ("DEQ") Major Modification to Authorization to Discharge Under the National Pollutant Discharge Elimination System (the "Permits") issued on January 1, 2003. The basis for Petitioner's protest is that the Permit Modifications were issued:

- (1) In violation of the Wyoming Environmental Quality Act, Wyo. Stat. §§ 35-11-101 et seq. and the rules and regulations promulgated thereunder, specifically Quality Standards for Wyoming Surface Water, Chapter 1, § 20, which states:

All Wyoming surface waters which have the natural water quality potential for use as an agricultural water supply shall be maintained at a quality which allows continued use of such water for agricultural purposes.

Degradation of such waters shall not be of such an extent to cause a measurable decrease in crop or livestock production.

Unless otherwise demonstrated, all Wyoming surface waters have

Petitioner's Ranch is located on Wildcat Creek, downstream of numerous Coal Bed Methane wells which, since early October, 1999, have been permitted by the State of Wyoming Department of Environmental Quality to discharge large volumes of water into Wildcat Creek. In some cases, the water is not discharged directly into the Creek, but is stored in reservoirs of varying sizes before it is discharged either by overflow or by seepage into the subsurface groundwater. In other cases, the water is discharged directly into the watershed. The above-referenced Permits are only some of those discharging water into Wildcat Creek. Swartz appeals the January 1, 2003 permit modifications.

Swartz Ranch owns adjudicated water rights, which it has used historically to irrigate approximately 280 acres of hay meadows along the meanders of Wildcat Creek. These hay meadows form the heart of the ranching operation in this arid country. Since October of 1999, great volumes of CBM discharge water began to flow in the Wildcat Creek, causing demonstrable harm to the creek channel, and reasonably likely harm to the irrigated hay meadows, if the water were applied to irrigate them as it historically has been.

The permits require total containment of all CBM flows during the irrigation season (except for 25-year, 24 hour storm events). Because of the great number of on-channel reservoirs required to achieve that objective, the effect of the permits' total containment requirement is to deprive Swartz of all water for irrigation during the irrigation season.

Swartz requests the EQC deny these permit modifications, or to order that they be issued with substantially more stringent standards and enforcement provisions, and to grant all such other and further relief as the EQC deems appropriate.

Petitioner respectfully requests a hearing before the Council.

Dated this 7th day of January, 2003.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Petition for Hearing and Notice of Appeal this 7<sup>th</sup> day of January, 2003, addressed as follows:

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