

FILED

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

JUL 30 2007

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL OF)
PENNACO ENERGY, INC. OF)
CONDITIONS IN RENEWAL OF)
WYPDES PERMIT NO. WY0048461)

DOCKET NO. _____

NOTICE OF APPEAL AND PETITION FOR HEARING

Pennaco Energy, Inc. ("Pennaco"), through its undersigned counsel, hereby appeals certain conditions contained in WYPDES Permit No. WY0048461 ("the Permit") issued by the Department of Environmental Quality ("DEQ") to Pennaco on May 30, 2007 and requests a hearing pursuant to the Environmental Quality Act, the Wyoming Administrative Procedure Act ("WAPA"), and the Rules of Practice and Procedure of the Environmental Quality Council ("EQC"). In support of this appeal, Petitioner advises the EQC as follows:

I. Information About the Petitioner

The petitioner filing this appeal is:

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

Petitioner is represented in this matter by Brent Kunz of Hathaway & Kunz, P.C., 2515 Warren Avenue, Suite 500, Cheyenne, Wyoming 82003 and by Duane Siler and John Martin of Patton Boggs LLP, 2550 M Street, Washington, D.C. 20037. Correspondence and information related to this appeal should be served on the undersigned counsel and on Mr. David T. Hill at Pennaco Energy, Inc. at the Gillette address above.

II. Action Being Appealed

1. Pennaco appeals the final end-of-pipe compliance limits for specific conductance, a.k.a., electrical conductivity (“EC”) and sodium adsorption ratio (“SAR”) that would become effective under the renewed permit as of May 30, 2007 on the following grounds:

(A) The Agricultural Use Policy, by means of which DEQ is implementing Section 20 of the Water Quality Regulations, and upon which these limits are based, and as in effect when this permit was issued, is not applicable to permit renewals for existing produced water discharges, absent a showing that existing discharges are harmful to humans or animals. No evidence suggests that the existing discharges under this permit are causing such harm. The proposed new and more stringent effluent and flow limits and impoundment requirements for Outfalls 001-006 are unauthorized and contrary to the Section 20 policy as in effect when the permit was written.¹

(B) DEQ could not lawfully apply the requirements of the Agricultural Use Policy, including the default final effluent limits on EC and SAR, to this permit because DEQ was required to first adopt the “policy” as a rule in accordance with the procedural requirements of the Water Quality Act and the Administrative Procedure Act.

(C) The renewal permit eliminates the existing requirement for water quality compliance at an irrigation compliance point (ICP) at six locations downstream, and imposes end-of-pipe effluent limits on CBNG produced water discharges. This is irrational because

¹ DEQ’s Statement of Basis for Pennaco’s permit renewal for Hay Creek B-5 says Pennaco “has chosen Option 2 of the coal bed methane permitting program” for the six outfalls covered by the expiring permit, 001-006. Pennaco’s permit renewal application states that Pennaco “is aware” that the current permit’s ICPs would be eliminated and replaced by EOP limits. Pennaco’s ‘choice’ was of course constrained by the categories dictated by DEQ in CBM permitting guidance and in the DEQ-prescribed permit application form. Pennaco had no real choice but to select one of WQD’s permitting ‘options.’ Pennaco’s ‘awareness’ that it would be subject to new and more stringent effluent limits in the renewal permit was based on instructions from DEQ. As Pennaco advised in its comments, dated May 21, 2007, neither this ‘choice’ nor ‘awareness’ should be misconstrued as consent by Pennaco or as a waiver of any objections to these new requirements in the renewal permit.

it presumes the effluent from these outfalls would impact irrigated lands or aquatic life, even though the discharges are impounded and cannot be released except during precipitation events with attendant dilution, and even then for not longer than 48 hours.

III. Relief Requested

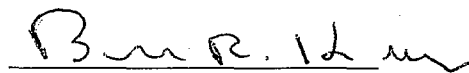
Petitioner respectfully requests that the EQC grant the following relief:

1. Grant Petitioner a contested case hearing on the challenged provisions of WYPDES Permit No. WY0048461 pursuant to the EQA, the WAPA, and the EQC's Rules of Practice and Procedure.

2. Finally determine Pennaco's application for renewal of WYPDES Permit No. WY0048461; reject the permit provisions referenced herein; and order that the renewed permit shall be finally issued without those provisions.

3. Provide such other relief as the EQC determines just and reasonable under the circumstances.

Respectfully submitted,



Brent R. Kunz
HATHAWAY & KUNZ, P.C.
2515 Warren Avenue, Suite 500
P.O. Box 1208
Cheyenne, Wyoming 82003
(307) 634-7723
(307) 634-0985 (fax)

Duane A. Siler
John C. Martin
PATTON BOGGS LLP
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000
(202) 457-6315 (fax)

Dated: July 30, 2007

CERTIFICATE OF SERVICE

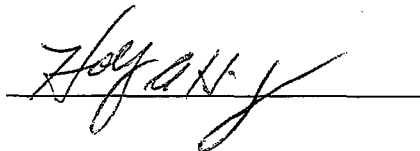
The undersigned certifies that on July 30, 2007, the foregoing Notice of Appeal and Petition for Hearing was served by hand as follows:

Original and 10 copies to:

Terri Lorenzon, Director
Environmental Quality Council
Herschler Building, Room 114
122 West 25th Street
Cheyenne, Wyoming 82002

Two copies to:

John Corra, Director
Department of Environmental Quality
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, Wyoming 82002

A handwritten signature in cursive script, appearing to read "Terri Lorenzon", is written over a horizontal line.