



## PETROLEUM ASSOCIATION OF WYOMING

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August 26, 2008

Mr. David Waterstreet  
Water Quality Division  
Department of Environmental Quality  
122 West 25th Street  
Cheyenne, Wyoming 82002

Dear Mr. Waterstreet:

The Petroleum Association of Wyoming (PAW) welcomes this opportunity to present comments to the Department of Environmental Quality, Water Quality Division (Division) regarding the proposed Chapter 1, Appendix H rules and the Agricultural Use Protection Policy (Ag Use Policy).

PAW is Wyoming's largest oil and gas trade association, members of which account for over 90% of the natural gas and 80% of the crude oil produced in the state. We have reviewed the proposed Chapter 1, Appendix H rules and Ag Use Policy, both of which will directly affect our membership if adopted.

### **Livestock Watering:**

We do not understand why, after many years as a rule, the Division proposes to delete the background water quality exemption and livestock watering waiver from the Chapter 1, Appendix H(b) rule. PAW strongly requests that the Division adopt the recommendations of the Water and Waste Advisory Board (WWAB), made during the March 28, 2008 meeting, and include the background water quality exemption and livestock waiver in both Chapter 1, Appendix H(b) and the Ag Use Policy. The background water quality exemption and the livestock watering waiver provisions should apply to all livestock watering standards, whether in rule or policy, and thus should be included in both. The WWAB did not recommend that the exceptions to the livestock

watering standards apply only to the metals constituents in the Ag Use Policy. These exceptions are extremely important, as they assure that effluent limits won't be more stringent than background water quality and they allow agricultural producers the flexibility to make sound management decisions for their stock.

PAW believes that, when background water quality is of poorer quality than the limits in either Chapter 1, Appendix H or the Ag Use Policy, the Division should be required to set effluent limits to background water quality. We also believe that, in drainages where there were pre-1998 discharges, background should be considered to be the poorer of the pre-1998 effluent limits or background water quality. These decisions should not lie within the Division's discretion. With regard to the livestock watering waiver, we believe that, if a landowner or livestock producer submits a waiver, then the Division should be required to set effluent limits in accordance with the waiver unless other landowners or livestock producers who are reasonably expected to receive direct flow from the discharge submit objections and provide evidence showing probable harm from the discharge to their livestock. PAW proposes that these revisions be made to the background exemption and the livestock watering waiver in both Chapter 1, Appendix H(b) and the Ag Use Policy.

PAW supports the WWAB's recommendation that only the current livestock watering standards be included in Chapter 1, Appendix H(b). Those limits are 5,000 mg/L TDS, 3,000 mg/L Sulfate, and 2,000 mg/L Chloride. We oppose any new livestock watering standards, whether by rule or policy. Very little data is available on the new metals constituents proposed in the Ag Use Policy, so it is unclear whether they would impact existing or future discharges. However, the Division acknowledges that there has been overwhelming public comment asking that the current standards not be changed. Also the Division said that maintaining the current standards will not cause significant adverse environmental impacts. We believe the evidence is clear that the current livestock watering standards are adequate to protect stock and wildlife. In fact, the evidence shows that agricultural production and wildlife populations have increased with discharges under the current standards. Therefore, we don't believe there is a need to adopt new standards in the Ag Use Policy and, since so little data is available on the impact they will have on oil and gas operations, we propose that the Ag Use Policy not be adopted.

If the Ag Use Policy is adopted, then we believe it should be amended to clarify that the new metals constituents will be incorporated into WYPDES permits only when it is demonstrated they will cause a measurable decrease in livestock production and no livestock watering waiver has been submitted. The Ag Use Policy is intended to implement the Chapter 1, Section 20 narrative rule which protects against degradation of the water quality of the receiving stream when it will cause a measurable decrease in crop or livestock production. Therefore, the metals constituents should become effluent limits only when they will cause a measurable decrease in livestock production—and the landowner or livestock producer has not submitted a livestock watering waiver. Also, if the Ag Use Policy is adopted, it should be clarified that the new metals

constituents will not be incorporated into WYPDES permits in drainages where there were pre-1998 discharges.

We oppose any new standards for livestock watering, whether by rule or policy, including any new standards for sulfate or sodium. To that end, please find enclosed two reports by Penny Hunter for your review. These are literature reviews and risk analyses on water quality thresholds to be protective of livestock and wildlife. The reports identify acceptable water quality thresholds for sulfate and sodium. These reports show that the WWAB's recommendation to maintain the current livestock watering standards is supported by science.

**Irrigation:**

With regard to Chapter 1, Appendix H(c), PAW believes that if a landowner tells the Division he does not have "naturally irrigated lands", the Division should be required to accept the landowner's statement. Also, if a landowner waives the irrigation limits for EC and SAR, then the Division should be required to set effluent limits in accordance with the waiver. Therefore, we request that Appendix H(c)(vii) be amended to say an exception to EC or SAR limits established under Tier 1, 2 or 3 *will* be made when affected landowners request use of the water and accept potential risks to crop production.

**Non-Severability:**

PAW requests the Division submit a "non-severability" request to the U.S. Environmental Protection Agency (EPA) when submitting the Chapter 1 rules for final approval by EPA. PAW suggests the Division request non-severability to ensure the Chapter 1, Appendix H rule and the Ag Use Policy remain intact, as the EPA would have to approve or deny all documents together.

PAW appreciates this opportunity to comment on the proposed Chapter 1, Appendix H rules and the Ag Use Policy. Thank you in your consideration of these comments and suggestions.

Sincerely,

*/s/ John Robitaille*

John Robitaille  
Vice President