

Environmental Quality Council  
Meeting Minutes  
June 27 and 28, 2005  
Casper College, College Center Room 217  
Casper, Wyoming

Members Present: Mark Gordon, Chair  
Jon Brady, Vice-Chair  
Richard C. Moore, P.E., Secretary  
Sara Flitner  
Wendy Hutchinson  
Dennis Boal

Others Present: Terri A. Lorenzon, Director; Joe Girardin, Paralegal; Mary Throne, Hickey & Evans; Senior Assistant Attorney General Mike Barrash, Wyoming Attorney General's office; Steve Jones, Wyoming Outdoor Council; Ed Harris, Holland & Hart; Rick Chancellor, Administrator Land Quality Division, Department of Environmental Quality; Kate Fox, Davis & Cannon; and Margo Sabec, Williams, Porter, Day & Neville, P.C.

1. Call to Order:

Chairman Gordon called the meeting to order at approximately 9:04 a.m., in the College Center Room 217, Casper College, Casper, Wyoming. Chairman Gordon introduced the Council and staff present and stated there was a quorum of members present.

2. Approval of Minutes:

Mr. Boal moved to approve the minutes from the April 11, 2005, meeting. Ms. Hutchinson seconded the motion. There being no discussion, all were in favor of approving the motion.

Chairman Gordon suspended the meeting to proceed with the Land Quality Coal Rule Packages 1P and 1T hearings.

After the Land Quality hearings Chairman Gordon resumed the meeting.

3. Motions for Approval:

a. Joint Motion and Stipulation for Withdrawal and Dismissal of Appeal, Wyoming Outdoor Council (WOC) v. Wyoming DEQ and Petroleum Association of Wyoming (CUAA), Docket No. 02-3803 (WQ). Mr. Steve Jones represented the Wyoming Outdoor Council. Mr. Ed Harris, of Holland and Hart, represented the Petroleum Association. Mr. Mike Barrash, Wyoming Attorney General's Office, represented the Wyoming DEQ. Mr. Jones explained the motion to the Council. Mr. Jones stated this motion will cover both Docket No. 02-3803 and Docket No. 02-3802. He asked the Council to allow him to discuss both cases since they really were a package deal. He also asked the Council to act on the settlement or the stipulation with regard to both dockets at this time. Mr. Jones reminded the Council of the summary judgment hearing held in February and stated since that

time, the parties have settled the matter. WOC is withdrawing their objection to the classification of the waters as Class 4 waters. Mr. Jones stated with respect to the general permit issued for the same off channel total containment ponds, the Department will basically not issue any more authorizations under this permit. The permittees that have been authorized up to this point will be allowed to continue under that permit because it is a five year permit that will expire in 2007. No new permittees will come under the general permit and the ones who have applied but not had a permit issued will be processed by the Department in the normal manner. The next part of the agreement and stipulation is there will not be a new general permit issued for the off channel containment ponds.

Ms. Lorenzon stated she could not find anything in the proposed Order that referred to Docket No. 02-3802. Mr. Barrash agreed she was correct, but stated the Department has since filed a parallel joint stipulation. Ms. Lorenzon stated that document was not filed in time for this meeting. Ms. Hutchinson questioned if this agreement would preclude the Division from being able to propose a new general permit that deals with off channel containment. Mr. Barrash stated the issue had come up and was addressed in the agreement. Both Mr. Harris and Mr. Barrash explained how the agreement was reached.

Mr. Moore stated he agreed with the parties that both cases should be considered together and he understood why Docket No. 02-3802 could not be considered during this meeting. Discussion was held between the Council and the parties on the relationship between the two cases. Ms. Hutchinson stated she thinks the Council is good to go on the CUA item but that doesn't immediately guarantee the other item will be approved. Since the Council does not have the documents in front of them, it is hard to say whether the other stipulation will be approved when it is brought before the Council. Mr. Jones questioned why both cases could not be considered at the present time. Ms. Lorenzon stated the Council is trying to be very careful due to the Open Meetings law. The second case was not on the published agenda, therefore no advance notice was given that the item would be heard. Mr. Jones stated he is content with what has been said and he will appear before the Council on the next docket.

Mr. Moore moved to approve the Joint Motion and Stipulation for Withdrawal and Dismissal of Appeal, Docket No. 02-3803 and to authorize the Chairman to sign. The motion was seconded by Ms. Hutchinson. The motion was passed. Mr. Moore thanked the parties for working together to resolve this appeal.

b. Joint Stipulation for Withdrawal of Appeal and Dismissal with Prejudice, Snowy Range Properties, LLC, DEQ Docket No. 3629-04, EQC Docket No. 05-3201 (WQ). Chairman Gordon asked if the parties were present to discuss this case. Mr. Barrash represented the Wyoming DEQ. Snowy Range Properties was not represented. Mr. Barrash gave the Council an overview of the case including the issue of the timeliness of the appeal. The parties have negotiated a joint stipulation for withdrawal and dismissal of the appeal. Mr. Barrash asked the Council to approve the stipulation and the Administrative Order on Consent. Mr. Boal moved to approve and adopt the Joint Stipulation for Withdrawal of Appeal and Dismissal with Prejudice and also to approve the Administrative Order on Consent of Docket No. 05-3201. Ms. Hutchinson seconded the motion and all were in favor. The motion passed.

d. Withdrawal of Objection and Stipulated Motion to Dismiss, Rock Springs Mineral Processing (Philp Sheep Company), Docket No. 05-4801 (LQ). Rick Chancellor gave the Council an overview of the case. Ms. Hutchinson moved to approve the Withdrawal of Objection and Stipulate Motion to Dismiss in Docket No. 05-4801. Mr. Boal seconded the motion. All present were in favor of the motion. Ms. Flitner was not present during the vote. The motion passed.

e. Motion to Intervene and Motion to Dismiss, Appeal & Review of Decision Regarding Reclassification of 8 Main Stream Drainages, Docket No. 05-3203 (WQ). Chairman Gordon stated that since Mr. Morris was not present and he is the hearing examiner, he postponed this matter.

f. Motion to Amend Administrative Order on Consent, Duke Energy, Patrick Draw, DEQ Docket No. 3141-99, EQC Docket No. 00-5401. Mary Throne appeared on behalf of Duke Energy and explained the background of the case. Ms. Throne stated the purpose of this motion was to add Western Gas as a party to the Administrative Order on Consent since they purchased Duke Energy. Mr. Moore asked for a clarification from Ms. Throne regarding the name of the company that purchased Duke Energy because the paperwork states "Mountain" Gas. Ms. Throne stated Mountain Gas is the correct name. Mr. Barrash stated the Department agrees with Ms. Throne's motion. Mr. Boal moved to approve the Motion to Amend Administrative Order on Consent, EQC Docket No. 00-5401, seconded by Mr. Moore. All were in favor and the motion passed.

4. Orders for Approval:

- a. Doud BTS, Order Approving NOV and Order, DEQ Docket No. 3651-05, EQC Docket No. 05-3401 (WQ)
- b. Hayes Construction, Inc., Order Approving NOV and Order, DEQ Docket No. 3665-05, EQC Docket No. 05-3402 (WQ)
- c. KLT Gas, Inc., Order Approving NOV and Order, DEQ Docket No. 3671-05, EQC Docket No. 05-3403 (WQ)
- d. Texaco Exploration & Production, Inc., Order Approving NOV and Order, DEQ Docket No. 3697-05, EQC Docket No. 05-3404 (WQ)
- e. Pioneer Oil & Gas, Order Approving NOV and Order, DEQ Docket No. 3686-05, EQC Docket No. 05-3405 (WQ)
- f. K & H Construction, LLC., Order Approving NOV and Order, DEQ Docket No. 3669-05, EQC Docket No. 05-3406 (WQ)
- g. Cortez Energy, Inc., Order Approving NOV and Order, DEQ Docket No. 3460-03, EQC Docket No. 03-3407 (WQ)
- h. WESCO, Order Approving NOV and Order, DEQ Docket No. 3576-04, EQC Docket No. 04-3417 (WQ)

Mr. Moore moved to approve Items 4a through 4h, Mr. Boal seconded the motion. All were in favor and the motion passed.

Mr. Moore and Mr. Boal requested that all approval of orders, unless the order should be discussed separately for any unspecific reason, be submitted to the Council on a consent list in the future.

The Council took a short break. When the Council reconvened, Item No. 5 was held back as counsel for Devon Energy was not present.

6. Correction Order:

Malvin and Susan Coal, Petition of Designation of Jackson Canyon. Ms. Lorenzon stated this Order was to correct a typographical error. Mr. Boal moved to approve the Correction Order and Ms. Flitner seconded the motion. All were in favor and the motion passed.

7. Bond Forfeiture:

N.A. Corporation, Permit No. 678s, Docket No. 04-4403, final (LQ). Mr. Chancellor stated this is a request for a final action on the small mine permit of N.A. Corporation. The Attorney General's office has tried to serve notice and was unsuccessful. Chairman Gordon asked Mr. Chancellor how many N.A. Corporation permits there were. Mr. Chancellor stated this is the second and final one. Mr. Moore moved to approve the Bond Forfeiture Order, Docket No. 04-4403, Ms. Hutchinson seconded the motion. All were in favor and the motion passed.

8. Bond Adequacy presentation by Rick Chancellor. Mr. Chancellor reminded the Council that he had been asked approximately a year ago to prepare a presentation to the Council on the bond adequacy amounts. Mr. Chancellor reviewed the history of the bond program and recommended DEQ continue to watch the program since only about half of the bonds have been inadequate.

9. Ms. Hutchinson reviewed the rule making survey comments and results and explained how the report had been compiled in preparation for the discussion tomorrow with John Corra.

10. Schedule next meeting. Ms. Lorenzon went over the upcoming calendar of activities so the Council could plan for the next meeting. Discussion was held on possible dates for a meeting in September. It was decided the next meeting would be held in Jackson on September 13 and 14, 2005. Additional discussion was held on possible dates for upcoming tours.

Chairman Gordon recessed the meeting until 9:00 a.m. June 28<sup>th</sup>.

Chairman Gordon reconvened the meeting at 9:04 a.m., June 28<sup>th</sup> and introduced the members of the Council. Ms. Hutchinson requested the September meeting dates be changed to August 14 and 15. Everyone was in agreement.

3. c. Joint Stipulation and Motion for Disposition of Contested Case, Edward H. Swartz, et al., Consolidated Docket No. 02-3801 (WQ). Kate Fox appeared representing Swartz and stated the permits that had originally been issued in this case have since expired which is the reason why the Joint Stipulation asking for dismissal was filed. Margo Sabec appeared representing Devon. Mike Barrash appeared representing DEQ. Ms. Hutchinson abstained from voting. Chairman Gordon stated he remembered one of the problems was determining where the pollution was coming from. Ms. Fox said that was part of the settlement and there is a method for allocating liability among the operators. Chairman Gordon asked for a copy of Appendix D which is where this is discussed. Mr. Boal moved to approve the Joint Stipulation and Motion for Disposition of Contested Case, Docket No. 02-3801 and to allow the Chairman to sign the Order, Mr. Brady seconded the motion. All were in favor and the motion passed with Ms. Hutchinson abstaining from the vote.

5. DEQ Status Report for Devon Energy, Docket No. 00-3717.

Mike Barrash, representing the DEQ, and Margo Sabec, representing Devon Energy, were present to update the Council on the status of this report. Mr. Barrash stated the last item before the Council in this case was Devon's Motion for an Order of Compliance and Dismissal. Mr. Barrash reminded the Council that at the October meeting he reported progress was being made on a resolution and that was still being worked on. Ms. Sabec stated Devon has applied for a modified permit and part of that modified permit they are putting into place off channel storage. DEQ is in the process of responding to public comment on the permit for the off channel storage. Mr. Barrash agreed with Ms. Sabec that he thinks this storage will resolve the issue. Mr. Barrash stated the parties are hoping the case will be resolved by September and if a hearing is scheduled, the parties request it not be set until January. Mr. Boal moved to set this matter for hearing sometime after January 10, 2006, and that a pre-hearing schedule be submitted if the matter has not been resolved by September 15. Mr. Moore seconded the motion. Chairman Gordon asked if the water shed involved in any of the analysis of water shed permitting. Ms. Sabec stated she did not believe that Spotted Horse is not yet engaged in that process. Chairman Gordon asked if there was reasonable expectation that this matter will be resolved. Ms. Sabec stated that she hopes this will be resolved long before September. All were in favor and the motion passed.

4. I. Two Elk Generation Partners, action on Order regarding Air Quality permit, EQC Docket No. 02-2601. Mr. Barrash asked the Council to table this matter until Assistant Attorney General Nancy Vehr could be present. Mr. Harris, representing Two Elk, agreed and stated Ms. Vehr told him she would be in attendance today.

The Council took a short break.

9. DEQ Update by John Corra and discussion of rulemaking survey. John Corra from DEQ, provided an update on DEQ activities. DEQ is currently working with a group of companies in the Pinedale area to develop a monitoring system for air quality. Air Quality is requesting a supplemental budget for additional personnel. The IT project is on track to start in August. Water Quality is also looking to add more personnel due to permit workload. DEQ is still wrestling with the groundwater issue from seepage. There is a draft internal policy currently in place. The Solid and Hazardous Waste Citizens Action Group was reconvened in May. This group was formed to deal with significant Hazardous Waste issues around the state. They are working on presenting a proposal to the Joint Minerals Committee on July 25<sup>th</sup>. Ms. Flitner asked what the budget requirements are for this proposal. Mr. Corra stated it will be close to \$1 million. Land Quality has a number of rule packages in the works. Land Quality has heard from some uranium miners who are interested in restarting old mines now that uranium prices are higher. The Industrial Siting Council is busy now with several power plant projects.

4. I. Two Elk Generation Partners, action on Order regarding Air Quality permit, EQC Docket No. 02-2601. Nancy Vehr was present representing DEQ. Mr. Harris gave a short status report on the Two Elk project. It is a \$500 million investment in Wyoming using coal that might otherwise have gone to waste. Approximately two years ago, Two Elk filed a petition with EQC over the issue of whether Two Elk had started construction on their permit in a timely manner. A settlement was reached and since that time Two Elk has begun construction. The requirements of the permit were explained and the construction process was discussed. Ms. Vehr stated the State has determined Two

Elk has met the requirements of the permit. Discussion was held on what construction has been completed and what contracts have been completed for the construction. Mr. Moore requested a status report of the project's status sometime in the next year or so.

Discussion was held on what procedure the Council could follow at this point. Mr. Boal moved to grant the Motion to Dismiss as submitted to the Council, Ms. Hutchinson seconded the motion. After some discussion, a recess was held so the Council could read the documents presented at the meeting. Mr. Harris stated the parties discussed having monthly updates given to the Council on the progress of the project. Mr. Boal amended his motion to add the monthly updates suggested by the parties. Ms. Hutchinson was agreeable with the amendment. Ms. Hutchinson moved to insert the phrase "DEQ has determined that Two Elk has completed construction" to Item 4 and to Item 5 add "now that Air Quality of DEQ has determined that construction has commenced." Mr. Boal seconded Ms. Hutchinson's motion. Mr. Boal moved to grant the Motion to Dismiss as provided by the parties with the exception that it is DEQ that has determined construction has commenced and also to add the provision that Two Elk be required to provide monthly status reports to the Air Quality Division and the Council to outline engineering, financing and construction progress. Mr. Moore changed the motion to require monthly reports to DEQ and quarterly reports to EQC until a time in the future when it is determined the monthly reports are not needed. A roll call vote was held and the motion carried.

9. (con't) Mr. Corra and the Council discussed the DEQ rule survey. Mr. Corra will share the information from the discussion and the survey with his Administrators. The Council requested the DEQ submit eight copies of all rule packages that contain the following:

1. A memo from the Director to the Council, introducing the rule package. The memo will state a brief reason why the changes are needed and request the Council hold a hearing to approve the rule package;
2. Stand alone Statement of Reasons or Statement of Reason that include the changes and explanations depending on the Divisions requirements and complexity of the rule package;
3. Rule Chapter[s] with changes in strike and cap form and explanations at the end of the Chapter[s];
4. Advisory Board minutes where in the Board recommended the rules go to the Council;
5. A summary of any actions of the Advisory Board regarding the rules in the minutes listed above with the page number of where the action occurred in the minutes;
6. A copy of the presentation that the DEQ will use to present the rules to the Council;
7. Comments and the DEQ's response to comments; and
8. One page summary of the Rule Package covering the controversies and/or concerns that appeared before the DEQ and Advisory Board..

The Council's office will receive a single clean copy, incorporating the changes, of the Rule Chapter[s] from the DEQ. The DEQ will supply a CD rom to the Council's office with the following:

1. All documents provided in the list above;
2. All previous versions of the proposed rule in strike and cap format;
3. All Advisory Board Minutes where the Advisory Board has discussed the proposed minutes; and
4. All comments that have been received concerning the proposed Rule Package.

The Council's staff will identify each Council member's individual needs and supply the information to each member. Mr. Corra had some concerns about supplying the comments in an electronic format but stated the DEQ would look into it.

Mr. Corra asked that he be allowed to discuss the results of this meeting and the Rule Survey with his Administrators and the DEQ rule making group. Mr. Corra will then appear before the Council with their comments and suggestions. Chairman Gordon agreed that would be most productive.

Mr. Corra stated that the rule making process is very tedious and his staff has a tendency to save minor changes for major rule packages that result in overly complex packages. Ms. Lorenzon explained that the Administrative Procedure Act does not require a hearing for rule making unless 25 or more people request one. That the Council has always preferred that any rule changes be approved through a public hearing. If the Council would like to start doing some of the minor changes that will not create controversy without the public hearing, they can do that. Ms. Flitner asked that Terri look at that possibility and create a process for it.

There being no further business to come before the Council, Chairman Gordon adjourned the meeting.

RESPECTFULLY SUBMITTED,

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Richard C. Moore P.E., Secretary

Approved by:

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Mark Gordon, Chairman

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Date