

Environmental Quality Council may address decision at next week's meeting

## DEQ scraps CBM water rules

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CHEYENNE -- The Wyoming Department of Environmental Quality has scrapped proposed rules to regulate groundwater discharges from coal-bed methane producers in the Powder River Basin amid concerns that the rules are based on flawed formulas and bogus science.

However, the Wyoming Environmental Quality Council, the DEQ's governing body, may still consider the rules proposal at the council's meeting next week.

The proposed rules were withdrawn by DEQ on Wednesday. Last week, a report by two out-of-state consultants found that much of the proposed regulations was "not reasonable nor scientifically valid."

DEQ has already issued at least a dozen water-discharge permits under the "agricultural use protection" rules, which were created in an attempt to determine pollution limits for coal-bed methane water discharges. The pollution limits in the permits issued under the rules, however, can be adjusted at any time.

In order to produce methane gas from coal, large volumes of water are pumped from coal aquifers and dumped on the surface. The concern is whether the discharged water will load soil with sodium, which can inhibit crop and herd production.

DEQ's methodology for setting discharge water regulations has evolved over the past 10 years. However, growing evidence and testimony showed that the agency's salinity pollution limits were based on miscalculations. The "Tier II" soil sampling method of determining background water quality was also proven to be scientifically flawed.

Independent consultants brought in by DEQ from New Mexico to study the proposed rules largely confirmed those findings in a report released Sept. 17.

Instead, the report recommended that the state should focus on monitoring and regulating the quantity -- rather than the quality -- of discharged water, as uncontrolled water discharges have raised the water table and have likely raised soil salinity.

DEQ agreed with the report's findings that the current methodology is "insufficient," said John Wagner, administrator of the agency's water quality division.

But, Wagner said, it's difficult for DEQ to find a better system, as the consultants offered no alternative rule proposals other than to recommend regulating water flow -- a job that only the state engineer has the authority to perform, he said.

Wagner said DEQ will "go back to the drawing board" by convening a panel to study the issue.

The agency will continue to issue water-discharge permits until the panel makes its recommendations, which likely will take about a year, Wagner said.

That delay worries Jill Morrison of the Powder River Basin Resource Council, a landowners' advocacy group.

"The concern for us is the DEQ is going to use it as a policy, as they've done for the past three to four years," Morrison said.

Even though DEQ withdrew the proposed rules, it might still be premature to pronounce them dead.

Environmental Quality Council Chairman Dennis Boal said the proposed rules -- along with DEQ's letter withdrawing them -- will be on the agenda for the council's Wednesday meeting.

Boal said he has asked the state attorney general's office to rule whether DEQ's withdrawal of the proposal automatically removes it from the council's agenda. While the council has in the past not taken up proposals withdrawn by the agency, he said, none of those addressed issues as controversial as coal-bed methane water-discharge regulation.

Boal said it was "premature" to say if any council members would be willing to bring up the proposed rules at the meeting.

Any rules passed by the council must be signed by Gov. Dave Freudenthal before taking effect.

Freudenthal said in a media release Wednesday that he supported DEQ's decision to withdraw the proposed rules.

"(Last week's) report echoes the serious concerns we've had for some time regarding the state's permitting policy," Freudenthal said.

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