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SECTION II. THE WYOMING WATER QUALITY ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972: A COMPARISON

Article 3 of the Wyoming Environmental Quality Act¹ is primarily concerned with water quality. It is the first comprehensive water pollution control act in the state, replacing the provisions of the 1929 Public Health Chapter² which dealt with public drinking water supply. The water quality article cannot be considered alone, but must be read in conjunction with the administrative procedures of the act in its entirety.³

There is no question that the impetus for the act and its structure was a direct consequence of the Federal Water Quality Act Amendments of 1972.⁴ The state act is brief and has few substantive provisions. Thus, the administration will have the flexibility to adapt state regulations to the ever-changing federal requirements. Hopefully, the administrator will be able to work closely with the regional administrator of the Environmental Protection Agency so that Wyoming water users will have a minimum of red tape.

The amendments to the Federal Water Pollution Control Act established a system called the National Pollutant Discharge Elimination System (hereafter referred to as NPDES).⁵ This system makes it illegal to make discharges without a permit, and creates guidelines as to when permits will be issued.

The federal act authorizes the state to administer its own permit program, which must conform to the federal act.⁶ The Wyoming administrator has been required by the Wyoming act to recommend such rules, regulations, standards, and permit systems authorized pursuant to the federal code.⁷ In order Wyoming to administer its own permit system, the governor must submit to the E.P.A. a full and complete description of the program.⁸ All procedures must be in the

1. WYO. STAT. § 35-502.18, 19 (1973).

2. WYO. STAT. §§ 35-184 to § 35-186, § 35-188 to § 35-195 (1957).

3. WYO. STAT. § 35-502.1 et. seq. (1973).

4. 33 U.S.C. § 1251 et. seq. (1973).

5. 33 U.S.C. § 1342 (1973).

6. 33 U.S.C. § 1342 (b) (1973).

7. WYO. STAT. § 35-502.19 (a) (v) (1973).

8. 33 U.S.C. § 1342 (b) (1973).

form of valid state statutes and regulations, and must be certified by the attorney general as adequate to meet the requirements of the federal law.⁹ The Environmental Protection Agency has released regulations on state program elements necessary for participation in the National Pollutant Discharge Elimination System.¹⁰ This article discusses the compliance of the Wyoming act with these regulations and sets out regulations which the Wyoming administrator must adopt in order to meet the federal criteria.

EFFLUENT LIMITATION STANDARDS

Although the central feature of both the Wyoming act and the federal is the permit system, before a discussion of the mechanics of the permit system it might be helpful to discuss the standards against which a permit is to be judged. These are the effluent limitations and water quality standards.

Wyoming law states that the administrator shall recommend effluent standards and limitations, specifying the maximum amounts or concentrations of pollution and wastes which may be discharged into the water of the state.¹¹ This simple statement is all that corresponds to four long sections concerning effluent limitations in the federal act.¹² This is one area where Wyoming must make rather lengthy regulations in order to comply with the federal standards.

The two acts differ from the beginning in the aspect of what type of pollution is to be controlled. The federal act applies its limitations only to point sources of pollution.¹³ Wyoming has in its statutes a definition of a point source¹⁴ but it does not specifically restrict the application of effluent limitations to point sources. Therefore, theoretically, Wyoming would control more pollution than the federal government. Since it is not practical to control non-point sources at this time, Wyoming is not likely to venture into this area.

9. 40 C.F.R. (§ 124.3 (1972)).

10. Regulations as authorized by 33 U.S.C. § 1314 (h) (2) (1973) are: 40 C.F.R. § 124; 37 Fed. Reg. 28390 (1973), as amended 38 Fed. Reg. 17999 (1973); and 38 Fed. Reg. 19894 (1973).

11. Wyo. STAT. § 35-502.19 (a) (ii) (1973).

12. 33 U.S.C. § 1311, § 1312, § 1316 and § 1317 (1973).

13. 33 U.S.C. § 1311 (e) (1973).

14. Wyo. STAT. § 35-502.3 (a) (x) (1973).

The federal government has set its goal to end discharges of pollutants into our waters by 1985.¹⁵ To achieve this objective, Congress set up a timetable of limitations on effluents. By July 1, 1977, the following limitations will apply:

1. Effluents shall not be discharged in amounts that will cause water quality to fall below the applicable water quality standards.¹⁶
2. Publicly owned treatment facilities will meet secondary treatment requirements.¹⁷
3. Other sources will use the best available technology.¹⁸ The E.P.A. will determine the best practicable control technology considering the cost in relation to the benefits of pollution reduction, and will also consider factors such as age of equipment and non-water quality environmental impact.¹⁹ Any source discharging into a treatment plant must meet pre-treatment standards.²⁰

By 1983 the following limitations will apply:

1. Public treatment works will use the best available technology including elimination of discharges.²¹
2. All other sources will achieve the best available technology economically available for the class of pollutants.²²

One thing must be noted about the 1983 limitations: the best technology referred to is that for the class. Individual problems because of old equipment and other local factors will not be taken into account. This may conflict with the reasonableness provision of the Wyoming statute,²³ which seemingly requires individual leadership to be considered in all cases. This

15. 33 U.S.C. § 1251 (a) (1973).

16. 33 U.S.C. § 1311 (b) (1) (C) (1973).

17. 33 U.S.C. § 1311 (b) (1) (B) (1973); the EPA has set requirements for secondary treatment. They are contained in 40 C.F.R. § 133; 38 Fed. Reg. 22298 (1973).

18. 33 U.S.C. § 1311 (b) (1) (A) (1973).

19. 33 U.S.C. § 1314 (b) (1973).

20. The administrator of the EPA will set standards for pre-treatment of effluents discharged into public treatment works so that no new source will inject a pollutant that will interfere with or pass through a treatment work. 33 U.S.C. § 1317 (b), § 1316 (f) (1973).

21. 33 U.S.C. § 1311 (b) (2) (B) and § 1281 (g) (2) (A) (1973).

22. 33 U.S.C. § 1311 (b) (2) (A) (1973).

23. Wyo. STAT. § 35-502.19 (vi) (1973).

provision must be narrowly construed in order to meet the federal requirements.

The standards for new sources of pollution are more stringent. New sources must meet the federal standards of performance as they are established.²⁴ These federal standards will limit effluents to the minimum amount achievable with the best process and best current available technology.

The act sets a goal that discharge of toxic pollutants in toxic amounts be prohibited.²⁵ The E.P.A. is authorized to set effluent standards for any toxic pollution.²⁶ Those regulations may prohibit any discharge of a toxic pollutant or combination of pollutants. The federal act absolutely forbids the discharge of any chemical or biological warfare agent or any high level radioactivity.²⁷ There is no such provision in the Wyoming statutes; this is another regulation that will be required.

As can be seen from this discussion, the Wyoming act is woefully vague. All of the specific limitations on effluents are required for the state to administer water quality, and none are spelled out in the act. Since there is little statutory framework, these standards must be set by regulation; however, the authority to make such regulations is very general. The administrator can set standards and regulations, and can set standards for construction, installation, modification and operation of public treatment works.²⁸ It would seem that some guidance for the formulation of these regulations, or at least the form they would take, should have been given by the legislature. The Environmental Quality Council has too great an authority for a body that is by nature both legislative and judicial. Perhaps, in this instance, the legislature has abdicated some of its responsibility.

WATER QUALITY STANDARDS

The administrator shall, after consultation with the advisory board, recommend water quality standards specifying

24. 33 U.S.C. § 1316 (1973).

25. 33 U.S.C. § 1251 (a) (3) (1973).

26. 33 U.S.C. § 1317 (a) (1973).

27. 33 U.S.C. § 1311 (f) (1973).

28. WYO. STAT. § 35-502.19 (a) (iii) (1973).

the maximum short term and long term concentrations of pollution, the minimum permissible concentrations of dissolved oxygen and other matter, and the permissible temperatures of waters of the state.²⁹ These standards are also required by the federal act.³⁰ Wyoming has had standards for interstate waters since 1968,³¹ but as of October 1973, standards for intra-state streams had not been promulgated by the E.P.A. However, this is not significant, as most Wyoming waters are interstate waters, and as such the interstate standards are adequate.

According to the federal act, water quality standards shall consist of the designated uses of the waters involved and the water quality criteria for such uses.³² Standards shall take into account such uses as public water supplies, propagation of fish and wildlife, recreational purposes, agriculture, industrial and other uses. Public hearings must be held at least every three years to review the state water quality standards.³³

The state is required to have a continuous planning process which sets up a plan to combat water pollution.³⁴ The purpose of the continuous planning process is to provide states with the water quality assessment and program management information to make centralized and coordinated water quality management decisions.³⁵ Although a state water quality program will not be approved without such a plan, Wyoming has no provision for it in its water quality act.

The continuous planning process is directed toward attainment of water quality standards discussed above. Planning requires, as its basis, the inventory of all sources of pollution. Maximum loads of various pollutants that will meet the standards are determined, and areas are noted where these

29. WYO. STAT. § 35-502.19 (a) (i) (1973).

30. 33 U.S.C. § 1313 (a) (1973) requires standards for all navigable waters of the state.

31. Wyoming Department of Public Health Water Quality Standards for Interstate waters in Wyoming, adopted October 28, 1968. These have been adopted by the EPA in 40 C.F.R. § 120.10 (1973).

32. 33 U.S.C. § 1313 (c) (2) (1973).

33. *Id.* Regulations covering revisions are in 40 C.F.R. § 122 (1972).

34. 33 U.S.C. § 1313 (3) (1) (1973).

35. 40 C.F.R. § 130.1 (b); 38 Fed. Reg. 8034 (1973. Environmental Protection Agency Interim Regulations on the state continuing planning process under the federal water pollution control act.

loads are exceeded. More stringent effluent limitations are set for these areas until water quality standards are met.

Water quality standards give us a measure against which to check our waters to determine levels of pollution. Continued revision upward of the standards will give us steps toward the elimination of pollution.

THE PERMIT SYSTEM

The central provision of both the federal and Wyoming acts is the permit system. Any state program participating in the NPDES must have a statute (or regulations), enforceable in state courts, which prohibits discharges of pollutants by any person except as authorized pursuant to an NPDES permit.³⁶ The Wyoming statutes have almost exactly this provision, stating that no person, except when authorized by a permit issued pursuant to the provisions of this act shall cause, threaten or allow the discharge of any pollution or water into the waters of the state.³⁷

However, Wyoming may be in danger of non-compliance with this section. The definition of pollution in the Wyoming act excludes waters diffused across meadow lands or croplands for irrigation purposes or return flows, whether diffused or collected in drains from such waters diffused across meadow or croplands.³⁸ More simply stated it means that irrigation return flows are not pollution and cannot be regulated as such.

Federal regulations recognize irrigation flow as pollution, but generally exclude it from the application of the permit system as long as it is not a point source draining more than 3000 acres.³⁹ Irrigation return flows which the state or federal administrator determine to be a significant contributor of pollution may also be regulated by permit.⁴⁰

Irrigation return flows are not pollution in Wyoming by statutory definition. The federal water pollution control act

36. 40 C.F.R. § 124.10 (1972).

37. WYO. STAT. § 35-502.18 (a) (i) (1973).

38. WYO. STAT. § 35-502.3 (c) (i) (1973).

39. 40 C.F.R. § 124.11 (h) (4) (1973).

40. 40 C.F.R. § 124.11 (h) (5) (1973).

requires irrigation return flows to be regulated in certain instances. Unless Wyoming changes its statute, this will constitute a non-conformity which would keep Wyoming from administering this portion of the NPDES.⁴¹

In addition to most irrigation return flows, federal regulations exempt certain other discharges from the necessity of a permit. It is to be anticipated that Wyoming regulations will make these same exclusions.

APPLICATIONS FOR PERMITS

Every applicant for a NPDES permit shall file his application on a NPDES application form.⁴³ Form A is for public wastewater treatment facilities. Short form A may be used unless the facility discharges more than 5,000,000 gallons any day, serves more than 10,000 people, or receives industrial waters of 50,000 gallons or toxic wastes of any amount. Form C is for manufacturing establishments and mining. Form D is for services, and wholesale and retail trade. Short form card D may be used unless the discharge is 50,000 gallons per day, or contains any toxic pollutants. Wyoming has adopted the federal forms.

Any one commencing discharges after July 16, 1973, must file application six months in advance of the first discharge.⁴⁴ The application must be signed by either the proprietor of a proprietorship, a general partner of a partnership, or a corporate official of at least vice presidential rank in a corpora-

41. It has been suggested that irrigation return flows could be regulated by the use of water appropriation statutes. The major problem in this area, of course, is salinity of the runoff. This might be alleviated by varying the amount of water and the manner in which it is put on the land. Drainage would have to be carefully controlled. The appropriation right is a vested property right. In view of the legal quagmire that might result from attempting to alter these rights with (probably) statutory changes, it would be easier to first amend the Environmental Quality Act.

42. 40 C.F.R. § 124.11; 37 Fed. Reg. 28390 (1972), *as amended*, 38 Fed. Reg. 17999 (1973) and 38 Fed. Reg. 19894 (1973). Included are: 1) sewerage from a boat; 2) water injected into or diverted from an oil or gas well, or disposed of in a state-approved disposal well; 3) approved aquaculture projects; 4) dredged or fill materials discharged in navigable waters; 5) current additions of sewerage to publicly owned treatment works; 6) uncontaminated storm runoff and 7) animal confinement facilities (*e.g.*, a feedlot) containing less than 1,000 feeder cattle, 700 dairy cattle, or 2,500 swine or 55,000 turkeys.

43. 40 C.F.R. § 124.21 (1973).

44. 40 C.F.R. § 124.21 (d) (1973).

tion.⁴⁵ Both these requirements are federal regulations that must be adopted by the state.

PUBLIC NOTICE AND PUBLIC PARTICIPATION

The federal regulations on state program elements necessary for participation in NPDES contain a very definite standard of public participation. There is no such standard in the Wyoming act.

Federal regulations require the state to make a proposed determination whether to grant or deny an application. If the determination is to issue a permit, proposed effluent limitations and a proposed schedule of compliance must be set. This shall be organized into a draft NPDES permit.⁴⁶

Public notice of every complete NPDES permit shall be circulated by posting and publication near the source of the discharge and in the cities near it. Notice must be mailed to any group upon request; groups can request to be placed on a mailing list to receive all NPDES permit⁴⁷ public notices. A public notice will contain the name and address of each applicant, a brief description of the operation resulting in the discharge, a brief description of the affected waterway and whether or not the tentative determination was to issue the permit. At least 30 days will be allowed for public comment.

Every proposed discharge of over 500,000 gallons on any day shall require a fact sheet.⁴⁸ The fact sheet shall have a detailed description of the location, a detailed description of the discharge in pounds per day of pollutants, a description of the uses of the waters affected, and the procedures for requesting a public hearing. A mailing list to receive all fact sheets shall be established and any group may request to be on it.

In addition to public notice, as above, other government agencies must be satisfied.⁴⁹ Any other state whose waters may be affected has a right to receive notice and make objection.

45. 40 C.F.R. § 124.24 (1973).

46. 40 C.F.R. 124.31 (1973).

47. 40 C.F.R. 124.32 (a) (1973).

48. 40 C.F.R. 124.33 (1973).

49. 40 C.F.R. 124.34 (1973).

The district director of the Corps of Engineers also has this right.

The Wyoming Environmental Quality Act requires publication notice of an application for a strip mining permit, but there is no specific provision requiring notice for a water permit.⁵⁰ The power to require notice must come from the general power to make regulations.⁵¹ Lack of requirement for public participation and notice would be serious grounds for holding the Wyoming act to be in non-compliance with NPDES requirements. The general power to recommend regulations may be enough, but one can only wish that the legislature had been more specific in the statute.

The state must allow opportunity for the applicant, any affected state, the regional administrator of the E.P.A. or any person or group of person to request a public hearing with respect to an NPDES application.⁵² A petition for public hearing must be received during the thirty day period for public comment. Public hearings shall be held if there is significant public interest in such a hearing. Instances of doubt should be resolved in favor of a public hearing.

Wyoming statutes require a hearing if an applicant's request for a permit is denied.⁵³ The rights of others to a hearing may not be quite so clear. The Wyoming Administrative Procedure Act gives guidelines for hearings in contested decisions;⁵⁴ there are provisions for hearings in the Strip Mine Act, but that provision does not apply to water quality questions;⁵⁵ There is sort of an inverse authorization for public hearing in the permit section: a decision on a permit does not have to be made in sixty days if the federal government requires public hearings.⁵⁶

50. WYO. STAT. § 35-502.24 (e) (1973).

51. WYO. STAT. § 35-502.10 (1973).

52. 40 C.F.R. § 124.40 (1973).

53. WYO. STAT. § 35-502.48 (1973).

54. WYO. STAT. § 9-276.25 (1973) provides for procedure in contested cases. WYO. STAT. § 9-276.19 (b) (1973) defines a contested case as a proceeding in which legal rights are determined after a hearing. Even if this section is applicable, there is still no requirement for a public hearing if it is not included in the Water Quality act.

55. WYO. STAT. § 35-502.24 (h) (1973).

56. WYO. STAT. § 35-502.47 (b) (1973).

The authority for requiring public hearings rests again on the general power of the administrator to recommend regulations.⁵⁷ It would seem that the legislature did not wish to give the public any more input into water pollution control than is absolutely required by the federal government. This may result in the danger that Wyoming statutes will not comply with federal requirements.

The final requirement under public participation is that the public must have access to any NPDES forms for inspection and copying.⁵⁸ The state must insure the availability of a reasonably priced copy machine, or coordinated duplicating services. Some information may be found to be confidential; this is information that would divulge trade secrets or secret processes. The information held confidential will not be disseminated outside the department. Effluents are not considered confidential information.

There is a Wyoming statute that parallels these requirements almost verbatim.⁵⁹ In this area of public participation requirements Wyoming complies with federal standards.

Terms and Conditions of Permits

The state cannot issue a permit which allows the discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste into the waters.⁶⁰ Discharges that would impede navigation and those in violation of the continuous planning process are also forbidden. The administrator must recommend regulations that will prohibit such permits.

The terms of permits must not exceed authorized discharges under the applicable effluent standards and limitations.⁶¹ The standards of performance for new sources must be met for all applications for new discharges. More stringent requirements must be included if necessary to meet water quality standards.

57. WYO. STAT. § 35-502.19 (1973).

58. 40 C.F.R. § 124.35 (1973).

59. WYO. STAT. § 35-502.58 (1973).

60. 40 C.F.R. § 124.41 (1973).

61. 40 C.F.R. § 124.42 (1973).

Effluent limitations in permits will be expressed in average number of pounds per day allowed and maximum number of pounds per day.⁶² Temperature will be stated in amount of effluent to be discharged at a specified maximum temperature. Regulations approximating these must be adopted by Wyoming.

The Wyoming statutes have no provisions concerning the length of time a permit may be in force. Federal regulations provide that permits may not be in force for a period of time to exceed five years.⁶³ Any permit, prior to re-issuance, must not only comply with the applicable effluent limitations and water quality standards, but must have complied with the requirements of the permit the entire time it was in force.⁶⁴ Monitoring and reporting data must be up to date. Wyoming has no specific provisions for renewal in its statutes, and regulations will be needed to bring Wyoming law into compliance in this area.

All permits under the Wyoming Environmental Quality Act allow variances, with the exception of the Water Quality permits.⁶⁵ This provision will bring Wyoming into compliance with the federal regulations, which do not allow variances, but have "schedules of compliance."⁶⁶ If the discharge is not within the applicable effluent standard or water quality standard, it will be given the shortest possible time to come into compliance with them. If this period is in excess of nine months, a schedule will be included in a permit showing interim dates for completion of various requirements. A schedule of compliance may be modified for good cause, *i.e.*, an act of God which prevents compliance.⁶⁷

Other terms and conditions that must be included in a permit are listed in federal regulations.⁶⁸ These provide that a permit may be modified or revoked for cause, including violation of terms, misrepresentation in application, a change in

62. 40 C.F.R. § 124.43 (1973).

63. 40 C.F.R. § 124.51 (1973).

64. 40 C.F.R. § 124.52 (1973).

65. Wyo. STAT. § 35-502.45 (1973).

66. 40 C.F.R. § 124.44 (1973).

67. 40 C.F.R. § 124.72 (b) (1973).

68. 40 C.F.R. § 124.45 (1973).

conditions allowing a reduction in the discharge. The Wyoming act has no corresponding provisions.

Any increased or additional discharge must be covered by a new application for a separate permit.⁶⁹ The Wyoming act has a similar provision forbidding an increased discharge without a permit.⁷⁰

Another condition of a permit is that the state must be allowed access to the pollution works for official monitoring procedures.⁷¹ Wyoming provides for this inspection by giving power to the director to appoint inspectors who will have access to plants and records.⁷² This provision should be adequate to insure compliance.

Federal regulations require that the state be able to monitor discharges if necessary.⁷³ All discharges in excess of 50,000 gallons per day, on any day of the year, and those containing toxic pollutants must be monitored. Wyoming statutes provide that monitoring is within the provinces of the administrator.⁷⁴ Under his statute the owner or operator may be required to: 1) establish and maintain records; 2) make reports; 3) install, use and maintain monitoring equipment or methods; 4) sample effluents, discharges or emissions; 5) and provide other information as may reasonably be required.

By federal regulation, those required by the administrator to monitor discharges will be required to keep records of the data for a minimum of three years.⁷⁵ Results must be reported on the proper federal form with a frequency of at least once per year.⁷⁶ Current practice is that public treatment works are required to report quarterly. Since there are only two commercial laboratories in Wyoming, the administrator has suggested that an ongoing contract might be negotiated with a laboratory for all testing, thus insuring that reports are received on schedule.

69. 40 C.F.R. § 124.45 (1973).

70. WYO. STAT. § 35-502.18 (a) (iv) (1973).

71. 40 C.F.R. § 124.55 (c) (1973).

72. WYO. STAT. § 35-502.9 (a)3 (vi) (1973).

73. 40 C.F.R. § 124.61 (1973).

74. WYO. STAT. § 35-502.10 (a) (vii) (1973).

75. 40 C.F.R. § 124.62 (1973).

76. 40 C.F.R. § 124.63 (1973).

Enforcement

To qualify for participation in the NPDES, the state must have sufficient recourse to civil, criminal and civil injunctive remedies to insure compliance with the Federal Water Quality Act. The necessary powers are spelled out in the Federal Regulations.⁷⁷

In order to comply with the regulations, the state must have the power to act for an immediate injunction to stop pollution, that is, in an emergency, causing a danger to the health and safety of any person.⁷⁸ The Wyoming director has this power under the Environmental Quality Act.⁷⁹ The state must also have the power to levy civil fines for violation of permits and orders.⁸⁰ State law seemingly complies with this in the section on penalties.⁸¹ Any person who violates any provision of the act or any rule, regulation, standard, permit, or order pursuant to any rule, regulation, standard, or permit shall be subject to a fine of up to \$10,000 per day that the violation continues. This is the same penalty for civil fine in the federal act.⁸² The state is required to have the power to levy criminal penalties against those who willfully violate standards,⁸³ permit limitations, or willfully neglect to make NPDES filings. The Wyoming act levies up to \$25,000 per day of violation and one year in prison.⁸⁴ This penalty doubles for repeat offenders. Although the Wyoming act does not mention the failure to make filings, since the wording is almost identical to that of the federal act, there should be no federal complaint.⁸⁵ The Wyoming and federal acts have identical provisions for up to \$10,000 in fines and six months in prison or both for making any false statement in relation to a permit.⁸⁶

The director must be able to sue in courts of competent jurisdiction for injunctive relief to prevent any threatened

77. 40 C.F.R. § 124.73 (1973).

78. 40 C.F.R. § 124.73 (b) (1973).

79. Wyo. STAT. § 35-502.15 (1973).

80. 40 C.F.R. § 124.73 (e) (1973).

81. Wyo. STAT. § 35-502.49 (a) (1973).

82. 33 U.S.C. § 1319 (d) (1973).

83. 40 C.F.R. § 124.73 (f) (1973).

84. Wyo. STAT. § 35-502.49 (c) (1) (1973).

85. 33 U.S.C. § 1319 (c) (1) (1973).

86. Wyo. STAT. § 35-502.49 (d) (1973); 33 U.S.C. § 1319 (c) (2) (1973).

or continued violations of terms of NPDES permits without first revoking the permit.⁸⁷ Wyoming does not have this exact provision, but a type of injunctive relief may be had by the Environmental Quality Council. If an order to cease and desist a violation of the act has been issued by the director, the council may affirm the cease and desist order. It may then apply to the District Court for its order, violation of which may be punished as contempt.⁸⁸ This is a much more cumbersome procedure than is considered in the federal regulation. A seven-man council will not have the decisiveness to get to the District Court in a hurried situation, since the Council does meet with some infrequency. This may be another area where Wyoming runs a substantial risk of non-compliance with the federal act. The lack of an important item such as injunctive relief would cause the E.P.A. to retain jurisdiction over the NPDES.

Miscellaneous Provisions

The federal act and regulations provide that the state must insure that the directors, administrators, and board members have not in the last two years received a substantial portion of their income from permit holders or applicants.⁸⁹ A substantial portion of income would be 10%. The Wyoming statute restricts party membership but does nothing about such conflicts of interest.⁹⁰ This is one problem that regulations cannot remedy, since it is doubtful that agency regulations are binding on the governor. Perhaps the E.P.A. will not object if the council members do not violate the federal regulations even though there is no assurance that this will continue to be so. But this is another area of questionable compliance.

The disposal of pollutants into wells is not covered by the permit system, but is a source of concern to both the E.P.A. and the state. Federal regulations require that the state control the underground disposal.⁹¹ There is no statute covering

87. 40 C.F.R. § 124.73 (c) (1973).

88. WYO. STAT. § 35-502.12 (c) (iii) (1973).

89. 40 C.F.R. § 124.94 (1973).

90. WYO. STAT. § 35-502.11, 13 (1973).

91. 40 C.F.R. § 124.80 (1973).

this, but regulations could be made, again under the general regulatory power.

The Wyoming statutes cover several areas not considered under federal law. There are minor provisions, but they may help in some way to control water pollution in Wyoming. One such area is the licensing of treatment facility operators.⁹² This will help to insure the compliance of public treatment works with the terms of their permits. Another such provision is the tax incentive for pollution control equipment.⁹³ Property used for control of air, water or land pollution is exempt from ad valorem tax for six years from date of installation. This may be a small amount of money in some cases, but every dollar may serve as an incentive.

Summary and Conclusion

The Wyoming Water Quality Act may fail to conform to the federal requirements in several areas. These have been noted; the most important are the lack of the ability of the director to seek injunctive relief against violations of rules and regulations, the lack of statutory authority for public participation in the process of granting and denying of permits and the classification of agricultural runoff as pollution. These problems can be remedied best by statutory changes.

There are other problems with meeting the federal regulations. These are areas where the federal requirements call for regulations for which no specific authority exists, and the administrator must rely on his general rule making authority. If the regional administrator accepts this authority, then Wyoming can administer its water pollution statutes.

The Environmental Protection Agency will retain much control over water pollution in Wyoming even if the state is administering the NPDES. All NPDES permits proposed to be issued must be submitted to them.⁹⁴ The administrator may object to any permit proposed to be granted by the state within ninety days. While these provisions may be waived, the

92. WYO. STAT. § 35-502.19 (a) (iv) (1973).

93. WYO. STAT. § 35-502.35 (1973).

94. 40 C.F.R. § 124.46 (1973).

regional administrator may withdraw approval of the state program at any time if he finds that the state is not carrying out the provisions of the Federal Water Quality Act.⁹⁵

Since the program is to be administered to conform to a federal statute, in compliance with the federal method of operation, and with federal supervision, the question arises of why not let the federal government administer its own program. A taxpayer savings would result from less duplication of effort, and the Wyoming polluter would be spared another level of bureaucracy.

The balancing factors that keep the state in the pollution control business are pride, the feeling that citizens will get more fair treatment at the state level and the fact that the state is a powerful body that can have some weight in attempting to moderate the position of the E.P.A. The legislature has made the decision that these factors outweigh the benefits of one program.

Aside from meeting the federal requirements, there are other problems with the Wyoming act. The array of directors, administrators, councils, and advisory boards with their individual duties would be difficult to make more confusing. The citizen attempting to decide who is responsible for what may have a problem: to whom does he apply?

The brevity of the act gives a positive benefit in the great flexibility that it provides an administrator faced with changing federal requirements; but a lack of guidelines as to what the legislature intended removes the law making power one step further from the people. All in all, acts that provide definite guidelines are preferable to those broad acts with no guidelines. We need only to look at the recent trouble in Washington to see problems that one encounters with administrators who have no checks on them.

One who is relying on a permit for his operation would wish that the system for this permit were based on a solid foundation of statutory law rather than on administrative regulation. One need only look to the federal act to see an act that contains a substantial amount of legislative control.

95. 33 U.S.C. § 1342 (c) (3) (1973).

One cannot help but feel that the state legislature took a shortcut with the law.

On the positive side, the state act can provide Wyoming with a substantial amount of pollution control. Given a good set of regulations and wise administrators, the act can do what it was designed to do: clean up Wyoming's waters. The federal government will see to the good regulations, the governor to the wise administrators, and Wyoming will likely have cleaner water.

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