

Title: EQC Adopts New Smoke Management Rules

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Our firm currently represents a coalition of five irrigation districts (Wheatland Irrigation District, Goshen Irrigation District, Pathfinder Irrigation District, Shoshone Irrigation District and Midvale Irrigation District) to address the Department of Environmental Quality, Air Quality Division (“DEQ/AQD”) a proposal to adopt rules and regulations affecting their ability to conduct open burning of their irrigation ditches and canals. Our clients’ goal is to convince the DEQ/AQD that, because agricultural burning activities in Wyoming do not represent a significant source of emissions, they should be exempt from the new regulations, as they are in other states, such as Utah. We are currently working with the DEQ/AQD to collect data necessary to support such an exemption before the portions of the new rules (Section 4) become effective on January 1, 2005.

The purpose of this article is to provide Wyoming attorneys with information regarding how the DEQ/AQD’s new rules and regulations will impact certain commonly conducted activities that were previously unregulated. For example, because previous burning regulations have never been enforced against private individuals, the new rules and regulations represent a significant change in the regulation and enforcement of open burning activities in the state of Wyoming. This article contains an introduction, provides background information, and summarizes the new regulations.

Introduction and Background

On March 30, 2004, the Environmental Quality Council (“EQC”) adopted rules and regulations amending Chapter 10 (Smoke Management) of the Wyoming Air Quality Standards and Regulations. The amendments affect certain burning practices such as refuse burning, open burning of trade wastes, open burning for salvage operations, fire hazards and fire training, and open burning of vegetative materials. While there are four sections in the revised Chapter 10, only Sections 2 and 4 are at issue in the March 30th rulemaking. Section 2, which addresses open burning restrictions, was modified and Section 4, which contains smoke management requirements, was added. The action taken by the EQC was a follow-up rulemaking on modifications made to Chapter 10 in December, 2003, under the EQC’s emergency rulemaking provisions. The modifications made to Wyoming’s Air Quality Standards and Regulations stem from the Environmental Protection Agency’s Regional Haze Final Rule adopted on July 1, 1999, which required States to submit a State Implementation Plan (“SIP”) by December 31, 2003.

Provisions of the Rules and Regulations

Section 1 of Chapter 10 is an introductory section that describes the restrictions and requirements imposed on specific burning practices by the remaining sections of the rule.

Section 2 of Chapter 10 addresses open burning restrictions. It states “[n]o person shall burn prohibited materials using an open burning method, except as may be authorized by permit.” Open burning is defined as, “a fire where any material is burned in the open or in a receptacle other than a furnace, incinerator, or other equipment connected to a stack or chimney.” The definition of open burning does not include “burns for recreational purposes, cooking of food, providing warmth for human beings, branding of animals, handheld fire extinguisher training and other similarly insignificant burning activities.” Section 2 also contains restrictions on refuse burning (no open burning of trash after daylight or within 500 feet of a population), trade wastes, salvage operations, or fire fighting training.

Section 3 of Chapter 10 regulates wood waste burners. The section contains limits on the amount of emissions of any air contaminant from any wood waste burner (an opacity of 20 percent as determined by a qualified observer), the operational requirements for all wood waste burners (a thermocouple, recording pyrometer and a daily written log of all operations), and limitations on the startup and building of fires (particulate, opacity and darkness limits may be exceeded for not more than sixty minutes in eight hours).

Section 4 of Chapter 10 was added to regulate open burning of vegetative materials. Vegetative material is defined in the regulations to mean “untreated unprocessed wood, including, but not limited to, trees, tree stumps, tree limbs, bark, chips, duff, grass, grass clippings, leaves, conifer needles, bushes, shrubs, weeds, clippings from bushes and shrubs, and agricultural plant residue.”

Section 4 describes three categories of burners. First, if a burner produces less than 1/4 ton PM10 emissions per day, they are governed by Section 2 of the revised rules and regulations (summarized above). The rule does not quantify how many acres of burning produces that amount of emissions, but DEQ/AQD can provide such information. DEQ/AQD estimated during the rulemaking process that our clients could burn approximately 12.5 acres of weeds to remain in this category of burners.

The second category of burners are referred to as SMP-I Burners. This category burns more than 1/4 ton of PM10 emissions, but less than 2 tons of PM10 emissions per day. Again, the rule does not provide any guidance determination of these emissions based on the material being burned. If a burner is classified as an SMP-I Burner, they must (1) notify DEQ/AQC prior to ignition of their planned burn project; (2) communicate burn information to the public (by notifying the jurisdiction fire authority and anyone located within half a mile of the planned burn project); (3) conduct burn operations during daytime hours, when there is a slight breeze and no population within .5 mile of the planned burn project; (4) attend and observe to determine dispersion, direction and impacts of smoke; and (5) provide a report to DEQ/AQD no later than six weeks after the burn to document that all of the foregoing listed requirements were met. The provisions also state that, for

ten business days after the report form is received, DEQ/AQD has the right to enter and inspect a property where a burn project is located to determine compliance.

The third category of burners are referred to as SMPT-II burners. This category burns more than 2 tons of PM 10 emissions per day. To qualify for this category, a burner has a planned burn project of approximately 100 acres. If a burner is classified as a SMP-II Burner, they must (1) register with DEQ/AQD; (2) review of smoke management educational material; (3) consider use of alternatives to burning; (4) implement at least one emission reduction technique (defined as manual, mechanical, chemical or biological treatments); (5) ignite only when dispersion ventilation category is “good” or better or “fair” if there is no population within ten miles of the planned burn project; (6) monitor (by conducting and documenting visual monitoring or using ambient air quality monitoring); (7) notify DEQ/AQD prior to ignition; (8) notify the public (by notifying the jurisdictional fire authority and all people living within a ten mile radius of the planned burn project); (9) provide a report to DEQ/AQD no later than six weeks after burn that contains documentation that all previously listed requirements were met. As with the SMP-I Burners, for ten business days after the report form is received, the DEQ/AQD has the right to enter and inspect a property where a burn project is located to determine compliance.

Conclusion

During its hearings, the EQC added a provision to Section 4 which delays its effective date until January 1, 2005. The revisions to Section 2 will be effective upon signature of the Governor, which is expected some time in June. In the meantime, our clients, along with another irrigation district and the Farm Bureau are working cooperatively with DEQ/AQD to obtain the data necessary to support an agricultural exemption. If we are not able to secure an agricultural exemption, traditional burning activities of private individuals will become a heavily regulated activity in Wyoming.