BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

IN RE: PETITION TO AMEND WYOMING WATER QUALITY RULE, CHAPTER 2 APPENDIX H	)) Docket No. 05-312)	

JOINT RESPONSE TO PETITIONERS' FIRST STATUS REPORT

The undersigned Respondents, various oil and gas operators with coal bed methane ("CBM") operations in the Powder River Basin ("Respondents"), hereby file their response and opposition to the Petitioner's First Status Report ("Status Report"), filed on May 8, 2006 by the Powder River Basin Resource Council ("PRBRC") and various individual petitioners (collectively "Petitioners").

I. INTRODUCTION AND COURSE OF PROCEEDINGS

The Petitioners' Status Report is their *third* distinct petition for rulemaking under this docket. Petitioner's original petition, filed December 7, 2005, sought to have the Environmental Quality Council ("EQC") limit the quantity of oil and gas produced water discharges. The proposed rule would have applied to all produced water regardless of the type of gas being produced. After the EQC's February 16, 2006 informal hearing, Petitioners, apparently recognizing the strong opposition to their petition from agricultural interests who use and value produced water, submitted a second petition on March 2, 2006. This second petition sought to apply Petitioners' arbitrary limitation on produced water discharges only to CBM operations.[1]

[1] In both their second petition and their Status Report, Petitioners fail to adequately define CBM operations. Therefore, the scope of operations potentially affected by Petitioners' proposed rule is unclear. For example, if a well is completed in both coal and sand formations, is the well a CBM well subject to Petitioners' proposed rule, or a conventional well exempt from Petitioners' proposed rule?

On April 12, 2006, the Attorney General issued a formal opinion addressing the EQC's jurisdiction to promulgate a rule regulating the beneficial use of CBM discharge water as requested by Petitioners in their first two petitions. The Attorney General concluded that "the [Environmental Quality Act] does not authorize such an action." Attorney General's Opinion, p. 2 ("AG Opinion"). After the Attorney General's Opinion was issued, the undersigned Respondents filed their Joint Motion to Deny and Terminate Proceedings ("*Joint Motion*"), requesting that the EQC terminate rulemaking proceedings on the first two petitions. *Joint Motion to Deny and Terminate Proceedings on Petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H*, May 5, 2006.

On May 8, 2006, Petitioners filed their third petition, captioned "Petitioner's First Status Report," which, like the first two petitions, has the same underlying objective of limiting the quantity of produced water that may be discharged. However, in attempting to maneuver around the constraints of the Attorney General's Opinion, the Petitioners have suggested a new variation on their proposed Appendix I, which, if adopted, would both contradict and undermine the existing statutory and regulatory scheme of water quality regulation in Wyoming, and which would interject an impermissible quantity requirement into the water quality scheme.

This brief responds to Petitioners' two arguments: (1) the EQC should ignore the Attorney General's Opinion and proceed with the original Petition(s) because, notwithstanding the Attorney General's Opinion, current practice allegedly does not comply with the Clean Water Act ("CWA") and/or the Environmental Quality Act ("EQA"); or (2), the EQC should adopt a standardless "pollution" prevention approach that will embroil all parties, including the EQC, the Petitioners, the AG and the

Respondents, in endless litigation. Neither of Petitioners' invitations should be accepted. Finally, unless the EQC dismisses this action in its entirety, the EQA requires that the action be referred to the Administrator, the Water and Waste Advisory Board and the Director before any final action can be taken.

II. DISCUSSION

1. The EQC Should Deny and Terminate Proceedings on the Petitioners' First and Second Petitions.

Respondents' *Joint Motion* should be granted without delay as to the December 7, 2005 and March 2, 2006 Petitions, as the Attorney General's Opinion forecloses the possibility of legally promulgating the Petitioners' first two proposed rules. Respondents must respond, however, to Petitioners' contention that "the current practice under Chapter 2, Appendix H, violates the CWA and EQA…," including the Federal Effluent Guideline at 40 C.F.R. §§ 435.50-435.52 (" ELG"). This statement is inaccurate as a matter of law.

First, Petitioners overlook that the DEQ can only enforce the CWA in a manner consistent with its statutory authority under the Wyoming Constitution and the EQA. DEQ is a creature of State law and issues permits under the EQA. W.S. §§ 35-11-104, 35-11-109(a)(1), 35-11-110(a)(v) & (x). DEQ has only that authority granted by the Legislature—to carry out the purposes of the EQA, and, through that authority, to satisfy its obligations under the CWA. *Billings v. Wyo. Bd. of Outfitters and Guides,* 2001 WY 81, ¶ 24, 30 P.3d 557, 568-69 (Wyo. 2001) ("An administrative agency is limited in authority to powers legislatively delegated."); W.S. § 35-11-109(a)(1).

Second, pursuant to that authority, since 1974, DEQ has administered the federally-approved State National Pollution Discharge Elimination System ("NPDES")

program, the Wyoming Pollutant Discharge Elimination ("WYPDES") permitting program. The United States Environmental Protection Agency's ("EPA") approval of Wyoming's program necessarily endorsed DEQ's specific authority under the EQA as sufficient to comply with the CWA.[2] Thus, DEQ is administering the program consistently with the CWA.

Third, Petitioners suggest that the Attorney General's Opinion is internally inconsistent because the "passing antelope" test is a beneficial use test. It is not. It is a water quality test—is the quality of the water "good enough" to be used? Under Appendix H, the DEQ will not issue a WYPDES permit unless it determines that CBM produced water is "accessible to livestock and/or wildlife" and "meets" the water quality "criteria for the protection of livestock and wildlife" set forth in the WQRR. See WQRR, Chapter 2, Appx. H(d)(i). That determination fulfills the provision of the ELG that states that "use in agricultural or wildlife propagation means that the produced water is of good enough quality to be used for wildlife or livestock watering or other uses and that the produced water is actually put to such use during periods of discharge." 40 C.F.R. § 435.51(c).

Given the generally arid conditions in Wyoming, DEQ reasonably concludes that produced water "of good enough quality" is put to use "during periods of discharge" if it is accessible for wildlife, agricultural, and livestock purposes. WQRR, Chapter 2, Appx. H(d)(i). In addition, the DEQ also imposes a number of other numeric and narrative limits to ensure that produced water is of "good enough quality" to be used for

[2] A state which seeks to administer NPDES permits must submit, and EPA must approve, a full and complete description of the program it proposes to establish. 40 C.F.R. § 123.21. The NPDES program submission to EPA must include "all applicable State statutes and regulations." *Id.* § 123.21(a)(5). EPA has approved Wyoming's program. 40 Fed. Reg. 13026 (1975).

agricultural or wildlife uses. See WQRR, Chapter 2, Appx. H(b). The additional numeric and narrative limits make the Wyoming requirements even more stringent than the federal requirements.

Fourth, the ELG does not require that discharge be limited to the amount put to "beneficial use." Any confusion on this point was clarified when EPA amended the effluent limitation guideline in 1979, striking the "beneficial use" language. Through this amendment, EPA clarified that the ELG was never intended to limit discharge to an amount "beneficially used" as the term is understood in the state water law context. See 44 Fed. Reg. 22,069, 22,072 (1979). The Petitioners' proposed Appendix I would require the DEQ to assume the role of the State Engineer in the WYPDES context by attempting to inject a "quantity" element that the EPA expressly clarified in 1979 to preclude conflict with western water law.

2. <u>The EQC Should Deny Rulemaking on the Petitioners' Third Petition.</u>

a. Petitioners' Proposed Rule Requests A Complete Ban On the Discharge Of CBM Produced Water To Surface Waters, Contrary to the Letter and Spirit of the EQA.

The Petitioners' proposed "Appendix I" imports, verbatim, the EQA's definition of "pollution," and proceeds to make the statutory definition the applicable water quality standard by requiring an applicant to establish that there "shall not" be any pollution resulting from CBM produced water discharges. See Petitioners' Proposed Appendix I and W.S. 35-11-103(c)(i). In so doing, Petitioners are once again making an argument for the control of water quantity.

A regulatory provision crafted in the manner proposed by Petitioners cannot be harmonized with the controlling statutes and existing regulations addressing the

permitting of point source discharges to surface waters of the State. Contrary to Petitioners' rulemaking proposal, the EQA does not ban discharges into State waters, but instead regulates them through permitting systems promulgated by the Water Quality Division and embodied in DEQ rules, such as Chapters 1 and 2. The EQA provides:

> (a) The administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations, standards and permit systems to promote the purposes of this act. Such rules, regulations standards and permit systems shall prescribe:
>
> (i) **Water quality standards specifying 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 the waters of the state;
>
> (ii) **Effluent standards and limitations specifying the maximum amounts or concentrations of pollution and wastes which may be discharged into the waters of the state**.

W.S. § 35-11-302(a)(i)(ii) (emphasis added). The federally delegated WYPDES program is the mechanism through which the DEQ permits point source discharges to waters of the state. W.S. § 35-11-302(a)(v). Chapter 2 of the WQRR implements the federally delegated program and provides for the issuance of WYPDES permits "which specify maximum amounts or concentrations of pollution and wastes which may be discharged into surface waters of the state." WQRR, Chapter 2, Section 1(c). Maximum amounts or concentrations of pollution or waste are determined by evaluating the existing or designated uses of water and the water quality standards for the stream segment, and setting effluent limits that ensure those uses will be protected and that standards will not be not exceeded. Chapter 2 requires an applicant to provide detailed information about the nature of a proposed discharge, the receiving water body, existing uses, discharge water quality characteristics and other information to enable the DEQ to evaluate the potential of the discharge to exceed applicable water quality standards or impair existing

or designated uses established under Chapter 1 of the WQRR. See, generally, WQRR, Chapter 2, Section 5.

Likewise, Chapter 2 currently gives the DEQ wide latitude to require a permit applicant to submit detailed information to enable the DEQ to evaluate the potential effects of the discharge and to impose permit conditions that will ensure the objectives of the EQA and Chapter 1 will be achieved. In fact, Section 5 of Chapter 2, which governs "the application for, development of, and issuance of effluent permits" spans twenty pages of the regulations, all of which are directed to achieving the water quality objectives of the EQA and Chapter 1 of the WQRR. These regulatory provisions would be superfluous as applied to the permitting of CBM discharges if the Petitioners' proposal to ban any "pollution" from such discharges were adopted.

b. A Ban on Discharges of CBM Water Would Eliminate A Valuable Source of Water for Agricultural Use.

Respondents have already submitted extensive evidence in this proceeding demonstrating that produced water from both conventional oil and gas and CBM production has been used beneficially for agricultural purposes in Wyoming, in some cases for decades. Several farmers and ranchers testified on February 16, 2006 concerning how long they have used produced water to water livestock and irrigate crops and how greatly they depend on that source of water.

By completely banning produced water discharges from CBM operations, Petitioners' new petition is even more draconian than earlier proposals and would have even more detrimental effects. This new petition would entirely deny agricultural users the benefits of additional CBM produced water for irrigation and year-round livestock

watering. As such, the proposed ban would be bad public policy and very damaging to the interests of Wyoming agriculture.

c. If Petitioners' Proposed Rule Is Not A Complete Ban On Discharges, It Is Too Vague and Indefinite To Form The Basis Of A Meaningful Regulation.

Even assuming that Petitioners' suggest their proposed rule is intended as something less than a categorical ban, the suggested language in Petitioners' Appendix I is too vague and indefinite to form a meaningful regulation. In particular, the Petitioners' proposed Appendix I purports to require a permit applicant to show the following using "credible data":

* That "the quantity of produced water shall not cause, or have the potential to cause unacceptable water quality;" and

* "That the produced water shall not cause [pollution]."

Petitioners' term "unacceptable water quality" is borrowed from one sentence in the eight page Attorney General's Opinion, wherein the Attorney General summarizes the limitations on the DEQ's regulatory authority. AG Opinion, p. 2. By linking the phrase "unacceptable water quality" to their Appendix I, Petitioners are misusing the Attorney General's Opinion to try to suggest that the DEQ has "broad regulatory latitude" over water quantity issues. Status Report, p. 3. However, Petitioners' assertion of broad authority is not supported by the Attorney General's Opinion.

In explaining the water quantity-water quality relationship, the Attorney General was careful to delineate the instances in which there is a regulatory link between quantity and quality, which occurs *only* in the context of evaluating dilution factors and waste load allocations. See AG Opinion, p. 5. ("DEQ uses [quantity] information to determine

effluent limits, based on the amount of water to be discharged and the dilution which is likely to occur from discharging that water into a waterway. DEQ makes this kind of determination using stream flow conditions, but it does not require the maintenance of any particular stream flow.") Thus, to the extent that Petitioners attempt to stretch the Attorney General's Opinion and modify their Petition to bring their water quantity concerns before the EQC under the guise of water quality considerations, they have exceeded any reasonable reading of the Attorney General's Opinion.

The addition of the general language in the Petitioners' Appendix I does not provide any apparent water quality protection over and above that already in place. Instead, the proposed language would only serve to create uncertainty and ambiguity. There are no guidelines associated with the terms "unacceptable water quality," "adverse effect" and other terms to allow a permit writer to evaluate the sufficiency of the data submitted in an application. Petitioners' proposed rule can arguably be read to prohibit discharges that change water quantities if Petitioners perceive a quantity-related "nuisance" or a quantity-based "adverse effect" to "the environment," without regard to objective water quality standards.

Adopting these vague and ambiguous phrases as regulatory standards for CBM discharges would also undermine certainty and predictability in the regulatory process and would not provide any guidance to the EQC or a court should they be called upon to review a DEQ decision to issue or deny a WYPDES permit.

To summarize, the Petitioners' attempt to expand the Attorney General's Opinion should be rejected because it is not supported by a reasoned reading of the Opinion. Petitioners' objectives have not changed. They still seek to regulate the quantity of

discharged water where there is no relationship to water quality. The Attorney General's Opinion does not support that objective. In addition, the general and ambiguous phrases proposed by the Petitioners do not add any meaningful guidance or standards to the regulations. In view of the detailed regulatory analysis already conducted under Chapter 2, the ambiguous text proposed by Petitioners would only create uncertainty for all parties. For these reasons, the Petition for rulemaking should be denied.

d. The Proposed Rule Seeks to Regulate Water Quantity Without Reference to Water Quality.

Petitioners have argued that the quantity of produced water both "creates a nuisance" and "adversely affects the environment" even where the quality of produced water supports designated uses. Nothing in Petitioners' proposed rule limits or links the concepts of "nuisance" or "adverse effect to the environment" to unacceptable water quality and therefore the proposed rule would exceed the EQC's jurisdiction under the EQA.

Petitioners' proposed rule seeks to prohibit discharges that change water quantities if Petitioners perceive a quantity-related "nuisance" or quantity-based "adverse effect to the environment." However, these alleged effects could occur regardless of the quality of the water and hence cannot be said to be "quality" related. As a result, the proposed rule runs afoul of the Attorney General's Opinion which determined that the "EQA does not grant the authority to" regulate "water quantity unrelated to water quality." AG Opinion, p. 6. The EQC should reject Petitioners' proposed rules because it would require the EQC to take the action specifically forbidden by the Attorney General: "issue rules regulating water quantity in the absence of some water quality concern recognized in the EQA." AG Opinion, p. 8.

e. The Proposed Rule Change Fails To Consider Mandatory Rulemaking Considerations Under W.S. § 35-11-302(a)(vi).

In enacting the water quality statutes, the Legislature recognized the need to evaluate public policy considerations when determining how point source discharges should be regulated. To that end, W.S. § 35-11-302(a)(vi) specifies several mandatory factors that the Water Quality Administrator and the Advisory Board must consider prior to the adoption of any rule or the issuance of any permit, irrespective of whether proceeding in response to a citizen petition for rulemaking. Section 302(a)(vi) provides:

> (vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board **shall consider** all the facts and circumstances bearing upon the reasonableness of the pollution involved including:
>
> (A) The character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected;
>
> (B) The social and economic value of the source of pollution;
>
> (C) The priority of location in the area involved;
>
> (D) The technical practicability and economic reasonableness of reducing or eliminating the source of pollution; and
>
> (E) The effect upon the environment.

W.S. § 35-1-302(a)(vi) (emphasis added). The Petitioners' proposed regulations do not address these considerations, nor do they provide any foundation upon which the Advisory Board, Administrator, DEQ Director or EQC could address these considerations. Indeed, a categorical ban on pollution would certainly not be supportable under any of the criteria specified in the statute. In their zeal to prohibit all discharges of CBM produced water, Petitioners greatly overstate the "effect on the environment" of producing water which, for over a hundred years, has been used for livestock watering and other agricultural uses. Further, Petitioners ignore the "social and economic" value

of CBM development and the "economic reasonableness of reducing or eliminating" CBM produced water.

These statutory factors must be weighed by the Administrator and the Advisory Board prior to the adoption of any rule or the issuance of any permit. The EQA cannot be read to exempt these policy factors from consideration under a citizen petition for rulemaking. In the absence of contemplation of these statutory considerations by the Administrator and the Advisory Board, any resulting rule would be arbitrary and capricious.

f. The Petitioners' Use of the Statutorily Defined Term "Credible Data" as the Standard of Proof Is Inappropriate In the Context of WYPDES Permitting for CBM Discharges.

Petitioners incorporate the term "credible data" as defined in W.S. § 35-11-103(c)(xix) into their proposed Appendix I and request that it be made part of the discharge permit application process. This requested change is inappropriate. By statute, "credible data" is to be used in a narrowly defined context of determining whether water bodies are attaining their designated uses. The Legislature did not intend or provide for the "credible data" standard to be used for permitting point source discharges. Second, the "credible data" standard is inappropriate and infeasible to use in the context of permitting point source discharges of CBM produced water.

Petitioners cite the statutory definition of credible data found at W.S. § 35-11-103(c)(xix), but they fail to point the EQC to the companion legislation from the 1999 Session Laws, which is found in W.S. §§ 35-11-302(b) (i) and (ii). When the Legislature enacted the "credible data" definition, it was part of a package of legislation promulgated to comply with mandatory provisions of the CWA. The balance of the legislative

package, which contains the substantive direction prescribing the use to which credible data is to be put, is found in Section 302 of the EQA. It provides:

> The Administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director, rules, regulations and standards to promote the purposes of this act. The rules, regulations and standards shall prescribe:
>
> (i) A schedule for the use of credible data **in designating uses of surface water consistent with the requirements of the [CWA].** The use of credible data shall include consideration of soils, geology, hydrology, geomorphology, climate, stream succession and human influence on the environment....;
>
> (ii) The use of credible data in **determining water body's attainment of designated uses**.

W.S. § 35-11-302(b)(i) and (ii). See also, Session Laws, 1999, Ch. 99. The DEQ has followed this statutory charge and enacted Chapter 1, Section 35 of the WQRR, which mandate the use of credible data only in these prescribed circumstances. Petitioners' attempt to expand the "credible data" definition beyond its statutory purpose is inappropriate and unworkable. The standard was never intended to be used as a permitting tool for point source discharges.

The DEQ already requires that the best available data be submitted in permit applications and this standard, developed particularly for application to the permitting context, is most appropriate. By contrast, the limitations on the use of "credible data" recognized by the Legislature make it an inappropriate standard for permitting CBM discharges. Section 302 of the EQA and Section 35 of Chapter 1 of the WQRR, expressly recognize "exceptions" to the use of credible data in "instances of ephemeral or intermittent water bodies where chemical or biological sampling is not practical or feasible", W.S. § 35-11-302, and "in those instances where numerical standards

contained [in Chapter 1] are exceeded," WQRR, Chapter 1, Section 35. In many instances, especially in the Powder River Basin, CBM development takes place in ephemeral and intermittent drainages and often natural water quality in these areas exceeds numeric standards. Petitioners' proposed rule fails to recognize these express statutory limitations, which makes their proposed rule unworkable for WYPDES permitting.

3. Prior to Promulgating Any New Regulation Pertaining to Water Quality, the EQC Must First Refer the Matter to the DEQ to Obtain the Recommendations of the Advisory Board, the Administrator and the Director.

By their three different petitions, Petitioners have succeeded in keeping this matter in a state of procedural and substantive uncertainty. At its February 16, 2006 prehearing conference, the EQC voted to initiate rulemaking on the original petition. Since that time, the petition has been amended twice and bears no resemblance to the original petition accepted by EQC. No written order confirming or articulating the EQC's February 16, 2006 action has issued. At its May 11, 2006 meeting, the EQC voted to set the Respondents' *Joint Motion* for hearing at its next meeting in July. In a subsequent public notice, the EQC indicated that it will consider the *Joint Motion* and Petitioners' third petition for rulemaking at its July 17, 2006 meeting.

Respondents urge the EQC to use the July 17, 2006 meeting as an opportunity to bring these proceedings in line with the statutory requirements for rulemaking under the Wyoming Administrative Procedure Act ("WAPA") and the EQA. If the petitions are not dismissed outright, as proposed by Respondents, then statute requires that they be referred to the DEQ for consideration by the Water Quality Advisory Board, the Water Quality Division Administrator, and the Director of DEQ for recommendations on the

proposed rules prior to further rulemaking proceedings before the EQC. W.S. § 35-11-112(a)(i).

Though WAPA permits interested persons to "petition an agency requesting the promulgation, amendment or repeal" of a rule, W.S. § 16-3-106, the Legislature did not give the EQC the authority to promulgate or amend regulations on the Council's own initiative or directly in response to a citizen petition. Rather, the EQA requires that before the EQC promulgates a rule, the Council first seek and receive the recommendation of the DEQ. W.S. § 35-11-112(a)(i) (The EQA directs the Council to "promulgate rules and regulations necessary for the administration of this act, **after recommendation from the director of the department, the administrators of the various divisions and their respective advisory boards**." (emphasis added)).

As a corollary, the Legislature directed that one of the duties of the Advisory Boards is to "recommend **to the council** through the administrator and director the adoption of rules, regulations and standards to implement and carry out the provisions and purposes of this act which relate to their divisions." W.S. § 35-11-114(b) (emphasis added). Moreover, in their second and third petitions, the Petitioners' request EQC to create different rules for different types of oil and gas operations. However, in establishing the roles of the DEQ and the EQC in promulgating rules, the Legislature assigned the Administrator, after consultation with the Advisory Board, the function of recommending rules requiring differentiation "as between particular types, characteristics, quantities, conditions and circumstances of … water … pollution." W.S. § 35-11-110(a)(ix). There are no exceptions to these procedural requirement for citizen petitions.

The purpose in requiring a recommendation by the DEQ for the promulgation of a rule is to avoid just the type of situation in which the EQC, Petitioners, and Respondents now find themselves. At this point, three petitions have been presented to the EQC, with each successive petition suggesting fundamentally distinct provisions. Yet, no party—not Petitioners, Respondents nor the public—knows what draft rule the EQC intends to consider. The ability of Petitioners to promote and the Respondents to oppose a rule that has yet to be articulated is difficult at best. If properly referred, however, DEQ may consider and make any relevant recommendations relating to Petitioners' concerns, taking into consideration existing regulations, the constraints placed on the agency's authority by the EQA, and the Attorney General's Opinion.

None of the statutory rulemaking provisions, separately or as a whole, contemplates that the EQC can promulgate or amend regulations directly in response to a petition. Rather, the Legislature established interdependent authorities under which DEQ, with Advisory Board input, may recommend the adoption or amendment of rules, after which the EQC may decide in a rulemaking to accept, reject or modify the DEQ's recommendation. In light of these procedures, Respondents request that, if the EQC does not dismiss these proceedings outright at their July 17, 2006 meeting, the EQC refer the matter to the DEQ for appropriate proceedings to develop a recommendation concerning any proposed new rules.

4. **Rulemaking to Revise Effluent Limits for Barium, Sulfate and TDS Should be Denied.**

Respondents' February 10, 2006 opposition to Petitioners' original petition addressed the inadvisability of proceeding to rulemaking to revise effluent limits for barium, sulfate and total dissolved solids. See *Joint Response In Opposition to Petition*

to Amend, February 10, 2006, pp. 19-23. In that response, Respondents pointed out that Petitioners' previous efforts at revising effluent limits for these constituents was fully reviewed and rejected by the DEQ in earlier proceedings. At the February 16, 2006 hearing, numerous landowners from around the state testified to the benefits they receive from using produced water, which has been discharged for decades under the existing standards and limitations with no adverse effect to livestock. The record discloses a substantial body of evidence demonstrating that the existing limits are protective of designated uses and a change in the standard is not warranted.

Since the date they filed their original petition, Petitioners have provided no new information to contradict the existing body of evidence or the comments of the numerous landowners demonstrating the existing standards are protective. Therefore, Petitioners have failed to carry their burden of demonstrating that rulemaking is necessary and the EQC should decline to proceed with rulemaking on the proposed new limits.

III. CONCLUSION

For the foregoing reasons, Respondents urge the EQC to deny Petitioners' three separate petitions for rulemaking and terminate these proceedings.

RESPECTFULLY SUBMITTED this 16th day of June, 2006.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true, full and correct copy of the foregoing Joint Response to Petitioners' First Status Report was served upon the following in the manner indicated on this 16th day of June, 2006.

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