

SUPREME COURT OF WYOMING

Wyoming Department of Environmental Quality v. Wyoming Outdoor Council

286 P.3d 1045 (Wyo. 2012) · No. S-12-0002; S-12-0008 · Decided October 19, 2012

SUMMARY

The Wyoming Supreme Court considered whether the Wyoming Department of Environmental Quality was required to use statutory rulemaking procedures when issuing general permits for coal bed methane produced-water discharges. The court held that the permits were properly issued under procedures established by regulation and were not required to be promulgated as administrative rules. The court also held that the Wyoming Outdoor Council was entitled to administrative review of the permit decision by the Environmental Quality Council.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Burke, Justice; Burke; Golden; Hill; Kite; Voigt
JURISDICTION	Wyoming
DECIDED	October 19, 2012
DOCKET	S-12-0002; S-12-0008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from a district court's judicial review of Environmental Quality Council proceedings concerning two general permits issued by the Wyoming Department of Environmental Quality.
STANDARD OF REVIEW	The court reviewed the statutory-interpretation issues de novo. Under Wyo. Stat. Ann. § 16-3-114(c), the relevant question was whether DEQ acted in excess of statutory jurisdiction, authority, or limitations, or without statutory right.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Wyoming
PARTIES	Wyoming Department of Environmental Quality, Yates Petroleum Corporation, Marathon Oil Company v. Wyoming Outdoor Council

TOPICS

environmental law

administrative law

rulemaking

judicial review of agency action

statutory interpretation

PRACTICE AREAS

Environmental law

Administrative law

Water quality permitting

Appellate procedure

QUESTIONS PRESENTED

1. Whether DEQ was required to use the Wyoming Administrative Procedure Act's statutory rulemaking procedures to issue general permits.
2. Whether the Wyoming Outdoor Council was entitled to administrative review before the Environmental Quality Council of DEQ's decision to issue the general permits.

HOLDINGS

1. DEQ was not required to promulgate the Pumpkin Creek and Willow Creek general permits as administrative rules. General permits could be issued as licenses under the procedures established by DEQ's general-permit regulations.
2. The Wyoming Outdoor Council was entitled to seek administrative review before the EQC of DEQ's decision to issue the general permits. Statutory silence did not clearly and convincingly preclude such review.

KEY QUOTATIONS

"The legislature could hardly have provided a more explicit expression of its intent that general permits do not need to be promulgated as rules." (286 P.3d at 1052)

"The Wyoming Environmental Quality Act may be silent about the right of an interested third party to seek EQC review of DEQ decisions, but that silence should not be read to preclude EQC review." (286 P.3d at 1053)

FACTUAL BACKGROUND

In 2006, DEQ issued two general permits for produced-water discharges from coal bed methane operations in northeastern Wyoming, covering the Pumpkin Creek and Willow Creek watersheds. The permits imposed effluent limitations, water-quality requirements, monitoring obligations, and a requirement that operators obtain DEQ approval before discharging under a permit. DEQ used regulations governing general permits, including public notice, public comment, responses to comments, public meetings, and possible EQC hearings. The Wyoming Outdoor Council challenged the permits, while Yates Petroleum and Marathon Oil challenged particular permit conditions.

PROCEDURAL HISTORY

The DEQ issued general permits governing produced-water discharges from coal bed methane operations in the Pumpkin Creek and Willow Creek watersheds. The Wyoming Outdoor Council sought review before the

Environmental Quality Council and argued that the permits were administrative rules requiring statutory rulemaking procedures. The district court held that the permits were void because DEQ had not used rulemaking procedures, but also held that the Outdoor Council was entitled to administrative review before the EQC. The DEQ, Yates, and Marathon appealed, and the two matters were consolidated.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The opinion does not state separate remand instructions. It reverses the district court's ruling that DEQ had to promulgate the general permits as administrative rules and affirms the ruling that the Wyoming Outdoor Council was entitled to EQC review.

CASES CITED

- Sinclair Oil Corp. v. Wyo. Dep't of Revenue, 2010 WY 122, 238 P.3d 568 (Wyo. 2010)
- Natural Resources Defense Council, Inc. v. Costle, 568 F.2d 1369 (D.C. Cir. 1977)
- Sheridan County Comm'n v. V.O. Gold Properties, LLC, 2011 WY 16, 247 P.3d 48 (Wyo. 2011)
- Tri-State Generation and Transmission Ass'n v. Wyoming Public Service Comm'n, 735 P.2d 718 (Wyo. 1987)
- Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964)
- State ex rel. Wyo. Dep't of Revenue v. UPRC, 2003 WY 54, 67 P.3d 1176 (Wyo. 2003)
- Qwest Corp. v. State ex rel. Wyo. Dep't of Revenue, 2006 WY 35, 130 P.3d 507 (Wyo. 2006)
- Petroleum Inc. v. State Bd. of Equalization, 983 P.2d 1237 (Wyo. 1999)
- Exxon Mobil Corp. v. Dep't of Revenue, 2009 WY 139, 219 P.3d 128 (Wyo. 2009)
- Department of Revenue and Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979)
- Caton v. State, 709 P.2d 1260 (Wyo. 1985)
- Moncrief v. Wyoming State Bd. of Equalization, 856 P.2d 440 (Wyo. 1993)
- Romero v. Hoppal, 855 P.2d 366 (Wyo. 1993)
- State Bd. of Equalization v. Stanolind Oil & Gas Co., 54 Wyo. 521, 94 P.2d 147 (1939)
- Holding's Little America v. Board of County Commissioners of Laramie County, 670 P.2d 699 (Wyo. 1983)
- United States Steel Corp. v. Wyoming Environmental Quality Council, 575 P.2d 749 (Wyo. 1978)
- Walker v. Board of County Commissioners, Albany County, 644 P.2d 772 (Wyo. 1982)
- Keslar v. Police Civil Service Commission, City of Rock Springs, 665 P.2d 937 (Wyo. 1983)
- Sierra Club v. Wyoming Dep't of Env'tl. Quality, 2011 WY 42, 251 P.3d 310 (Wyo. 2011)
- Powder River Basin Res. Council v. Wyoming Env'tl. Quality Council, 2010 WY 25, 226 P.3d 809 (Wyo. 2010)
- Powder River Basin Res. Council v. Wyoming Dep't of Env'tl. Quality, 869 P.2d 435 (Wyo. 1994)

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