

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL STATE OF WYOMING

FILED

JUL 18 2005

IN THE MATTER OF THE APPEAL OF EDWARD H. SWARTZ, et al. Consolidated Docket No. 02-3801 Terri A. Lorenzon, Director Environmental Quality Council

ORDER DISMISSING CONTESTED CASE

THIS MATTER having come before the Environmental Quality Council (EQC) on a JOINT STIPULATION AND MOTION FOR DISPOSITION OF CONTESTED CASE, by Wyoming Department of Environmental Quality, Water Quality Division ("DEQ"), Edward Swartz and Troy Swartz ("Swartz"), Devon Energy Production Company ("Devon"), Redstone Resources, Inc. ("Redstone"), Pennaco Energy, Inc. ("Pennaco"), J.M. Huber Corporation ("Huber"), and Yates Petroleum Company ("Yates") (collectively the "Parties"); the EQC having heard from the Parties at a public meeting held on June 28, 2005; and after reviewing the record and being advised in the premises, the EQC:

HEREBY FINDS AND CONCLUDES:

- 1. NPDES Permit Nos. WY0036188, WY0036285, WY0036293, WY0036323, WY0036331, WY0036358, WY0036366, WY0036374, WY0036382, WY0038148, WY0038491, WY0038504, WY0048224, WY0048232, WY0047384, WY0047376, WY0048852, WY0039951, WY0039969, and WY0039977 were all appealed to the EQC.
2. The appeals of the above mentioned NPDES permits, which include Docket Nos. 02-3801, 02-3804, 02-3600, 02-3602, 02-3603, 02-3604, 03-3600, 03-3601, and 03-3602, were all consolidated by the EQC under Docket No. 02-2801 and the caption "IN THE MATTER OF THE APPEAL OF EDWARD H. SWARTZ, et. al." by an order dated May 9, 2003.
3. The Parties negotiated a Settlement Agreement dated on or about September 26, 2003, whereby they agreed to a stay of the proceedings and consented to the remand of the NPDES permits to the DEQ in accordance with the Settlement Agreement.
4. The Settlement Agreement and a STIPULATED JOINT MOTION FOR STAY, were heard by the Council at a public meeting on October 22, 2003.
5. On February 21, 2004, the EQC entered its ORDER remanding the permits to the DEQ in accordance with the Settlement Agreement, lifting the stay imposed by the EQC's May 9, 2003

AMENDED ORDER TO CONSOLIDATE, and retaining limited jurisdiction over the above mentioned NPDES permits to resolve any disputes that may arise from the settlement agreement and DEQ decisions regarding issuance of the permits.

6. DEQ has issued new permits and the time to contest them has elapsed, the terms of the Settlement Agreement have been or are being implemented, and there are no outstanding claims or disputes between the Parties relating to the appeals referenced in paragraph 2 above.

7. The Parties wish to withdraw their appeals of the above mentioned permits.

**HEREBY ORDERS:**

1. The consolidated contested case titled "IN THE MATTER OF THE APPEAL OF EDWARD H. SWARTZ, et. al.", Docket No. 02-2801 be and hereby is dismissed with prejudice.

DATED this 6<sup>th</sup> day of July, 2005.



\_\_\_\_\_, Hearing Examiner

Environmental Quality Council  
122 W. 25<sup>th</sup> St., Herschler Bldg., Rm. 1714  
Cheyenne, WY 82002  
Tel: (307) 777-7170  
Fax: (307) 777-6134

**CERTIFICATE OF SERVICE**

I, Joe F. Girardin, certify that at Cheyenne, Wyoming, on the 19<sup>th</sup> day of July, 2005, I served a copy of the foregoing ORDER by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Kate Fox  
Davis & Cannon  
2710 Thomes Ave.  
Cheyenne, WY 82003

Mike Wozniak  
Dorsey & Whitney LLP  
370 17<sup>th</sup> Street, Ste. 4700  
Denver, CO 80202-5647

Keith S. Burron  
Associated Legal Group  
1807 Capitol Avenue, Suite 203  
Cheyenne, WY 82001

Margo Harlan Sabec  
Williams, Porter, Day & Neville, P.C.  
P. O. Box 10700  
Casper, Wyoming 82602

Jack D. Palma, II  
Holland & Hart LLP  
2515 Warren Avenue, Suite 450  
P. O. Box 1347  
Cheyenne, WY 82001-3162

Ed Strenkowski  
Marathon Oil Company  
P.O. Box 3128  
Houston, TX 77253-3128

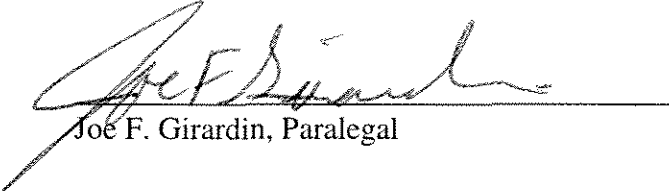
Tom Lubnau  
Douglas Dumbrill  
Lubnau, Bailey & Dumbrill  
P.O. Box 1028  
Gillette, WY 82717

Also to the following persons via interoffice mail:

John Corra, Director  
Department of Environmental Quality  
122 W. 25<sup>th</sup> St., Herschler Bldg.  
Cheyenne, WY 82002

John Wagner, Administrator  
Water Quality Division  
Department of Environmental Quality  
122 W. 25<sup>th</sup> St., Herschler Bldg.  
Cheyenne, WY 82002

Mike Barrash  
Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002

  
Joe F. Girardin, Paralegal