

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

MAY 30 2008

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL)
AND REVIEW OF THE ISSUANCE)
OF WYOMING POLLUTATN)
DISCHARGE ELIMINATION SYSTEM) Docket No. 08-3801
(WYPDES) PERMITS WY0056146 AND)
WY0056201 (Yates Permits, Gauge and)
Wormwood) DATED February 4, 2008.)

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO
YATES' NOTICE OF APPEAL AND REQUEST FOR HEARING

Respondent Wyoming Department of Environmental Quality (DEQ), pursuant to the Wyoming Environmental Quality Council's (EQC) April 14, 2008 and May 8, 2008 Orders, submits this Response to Yates Petroleum Corporation's (Yates) Petition for Review and Request for Hearing (Petition) in the above captioned matter.

"I. Information About the Petitioner"

¶¶1-3. Paragraphs 1-3 are Petitioner's statements of "Information About the Petitioner." DEQ admits that Yates is registered with the Wyoming Secretary of State's Office as an active foreign corporation, and that DEQ issued WYPDES permits WY0056201 (Gauge) and WY0056146 (Wormwood) to Yates.

"II. Action Being Appealed"

¶4. Admit.

¶5. Admit that Yates identifies the grounds for its appeal of the Gauge permit as including effluent limits of 2200 umhos/cm for EC and 13 for SAR at outfalls above irrigation and that a landowner (Mr. John Iberlin) below those outfalls supplied a letter indicating he did not request protection of water quality for irrigation use.

¶6. Admit that Yates identifies the grounds for its appeal of the Gauge permit as including requirements for headcut and channel stability monitoring downstream of the discharges and that produced water be contained in on-channel reservoirs except for overtopping from precipitation events.

¶7. Admit that Yates identifies the grounds for its appeal of the Gauge permit as including requirements for end-of-pipe monitoring for the specified constituents. DEQ denies any other allegations in ¶7.

¶8. Admit that Yates identifies the grounds for its appeal of the Gauge permit as including requirements for submitting reports of various monitoring data by specified dates, which Yates calls “inconsistent.” DEQ admits that reporting dates vary according to the specific stations being monitored, and denies any other allegations in ¶8.

¶9. Admit that Yates identifies the grounds for its appeal of the Wormwood permit as including requirements for headcut and channel stability monitoring downstream of the discharges and that produced water be contained in on-channel reservoirs except for overtopping from precipitation events.

¶10. Admit that Yates identifies the grounds for its appeal of the Wormwood permit as including requirements for end-of-pipe monitoring for the specified constituents. DEQ denies any other allegations in ¶10.

¶11. Admit that Yates identifies the grounds for its appeal of the Wormwood permit as including requirements for submitting reports of various monitoring data by specified dates, which Yates calls “inconsistent.” DEQ admits that reporting dates vary according to the specific stations being monitored, and denies any other allegations in ¶11.

“III. Basis for Appeal”

¶12. Admit that Yates submitted application materials for the Wormwood permit on or around October 9, 2007 and for the Gauge permit on or around November 13, 2007. DEQ denies any other allegations in ¶12.

¶13. Admit that the draft permits were published in a WYPDES public notice beginning on December 17, 2007. DEQ denies that the draft permits were “issued” on December 17, 2007.

¶14. Admit that Yates submitted comments on permit conditions at issue in this appeal.

¶15. Admit that DEQ issued the final Wormwood and Gauge permits on or about February 4, 2008, and that DEQ responded to Yates’ comments at that time. DEQ denies any other allegations in ¶15.

¶16. Admit that one of Yates’ stated grounds for its appeal of the Wormwood and Gauge permits is *not* whether the permitted effluent limits of 2200 umhos/cm for EC and 13 for SAR at outfalls above irrigation are *technically* justified, but rather whether those limits are justified “where the downstream landowner” (Mr. John Iberlin) supplied a letter indicating he did not request protection of water quality for irrigation use. DEQ denies any other allegations in ¶16.

¶17. Admit that the Gauge permit includes effluent limits of 2200 umhos/cm for EC and 13 for SAR at outfalls above irrigation.

- ¶18. Admit that the Gauge permit includes effluent limits of 2200 umhos/cm for EC and 13 for SAR at outfalls above irrigation.
- ¶19. Admit that there currently is such language in the Agricultural Use Protection Policy. DEQ admits that Chapter 1, Section 20 is currently a rule, and denies that the Agricultural Use Protection Policy is currently a rule.
- ¶20. Admit that outfalls ##003 – 010 & 017 under the Gauge permit are located upstream from the Iberlin Ranch LP, which is the only identified current irrigation use on North Prong Pumpkin Creek.
- ¶21. Admit that Mr. John Iberlin has submitted such a letter to DEQ.
- ¶22. Deny that DEQ failed to comply with Chapter 1, Section 20 by imposing the default limits. Deny that the “Section 20 Policy” supersedes Chapter 1, Section 20 itself. Deny that the effluent limits for EC and SAR at outfalls above irrigation in the contested permits were based on the “Section 20 Policy.” DEQ affirmatively alleges that the effluent limits for EC and SAR at outfalls above irrigation in the contested permits were based on Chapter 1, Section 20, and that the “Section 20” [Agricultural Use Protection] Policy is currently in the rulemaking process, and that any issues raised here by Yates involving that policy should be decided in the current rulemaking process, not in this permit appeal.
- ¶23. Admit that the EQC’s intentions are expressed in the EQC’s “Statement of Principal Reasons” (SOPR) for Adoption of Chapter 1, dated February 16, 2007.
- ¶24. Deny that conditions at issue in the contested permits are based on the Agricultural Use Protection Policy. DEQ denies any other allegations in ¶24.
- ¶25. Admit that the Gauge permit requires Yates to monitor annually and quarterly for flow at three channel stability monitoring stations (CSM1, CSM2, and CSM3), and the Wormwood permit requires Yates to monitor annually and quarterly for flow at CSM1.
- ¶26. Admit. DEQ affirmatively alleges that Yates elected to meet assimilative capacity obligations by applying to contain produced water in on-channel reservoirs up to a storm event that causes overtopping as an alternative to using assimilative capacity credits for intentional releases with DEQ approval.
- ¶27. Deny that discharge of produced water from on-channel reservoirs during “dry” conditions constitutes a violation of the contested permits provided Yates has and uses assimilative capacity credits for intentional releases with DEQ approval.
- ¶28. Deny the allegations in ¶28 for the same reason given in response to ¶27 above.
- ¶29. Admit.

¶30. Admit.

¶31. Deny.

¶32. Admit that the language quoted in Petitioner's ¶32 is an excerpt from WWQRR Chapter 1, Section 8(a).

¶33. Deny.

¶34. Deny.

¶35. Deny.

¶36. Deny that "[t]he anti-degradation process is intended to protect water quality in the on-channel reservoir." DEQ does not have sufficient knowledge or information to admit or deny, and therefore denies, the other allegations in ¶36.

¶37. Deny that the effluent limits and monitoring requirements for the constituents specified in Petitioner's ¶37 are for anti-degradation protection of the ephemeral receiving tributaries of Pumpkin Creek or Pumpkin Creek itself.

¶38. Deny.

¶39. Admit that the language quoted in Petitioner's ¶39 is an excerpt from WWQRR Chapter 1, Section 9. DEQ denies that WWQRR Chapter 1, Section 9 applies to ephemeral tributaries.

¶40. Admit that the language quoted in Petitioner's ¶40 is an excerpt from WWQRR Chapter 2, Section 3(b)(xcix), and affirmatively allege that "Water quality based effluent limitations" are further governed by WWQRR Chapter 2, Section 5(c)(iii)(C).

¶41. Admit that the language quoted in Petitioner's ¶41 is contained in WWQRR Chapter 2, Section 3(b)(ci).

¶42. Admit that the Statements of Basis for the two contested permits identify specified limits for dissolved chloride, cadmium, lead, copper and zinc based on WWQRR Chapter 1 chronic values for protection of aquatic life. DEQ denies any other allegations in ¶42. Chapter 1, Section 3(b)(vi).

¶43. Deny.

¶44. Deny.

¶45. Admit that the language quoted in Petitioner's ¶45 is an excerpt from the Antidegradation Implementation Policy.

¶46. Deny that Petitioner's ¶46 accurately characterizes the Antidegradation Implementation Policy.

¶47. Deny.

¶48. Admit the statement in Petitioner's ¶48, but affirmatively allege that the referenced produced water quality sample was *not* from any of the outfalls in the two contested permits.

¶49. Admit the statement in Petitioner's ¶49 regarding certain constituent concentrations in the referenced produced water quality sample, but affirmatively allege that the referenced sample was *not* from any of the outfalls in the two contested permits.

¶50. Deny.

¶51. Deny.

¶52. Admit.

¶53. Admit.

¶54. Admit.

¶55. Admit.

¶56. Deny that the two different due dates (15th and 28th of the following month) for quarterly reporting of various required monitoring are "unnecessarily burdensome," because the permits do not prevent the operator from submitting all reports by the earlier (15th) due date.

¶57. Petitioner's ¶57 is not an allegation of fact to which an answer is required.

Petitioner's Requests for Relief

Petitioner's requests for relief are not allegations of fact to which an answer is required.

DATED this 30th day of May, 2008:



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CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO YATES' NOTICE OF APPEAL AND REQUEST FOR HEARING was served this 30th day of May, 2008, by United States mail, first class postage prepaid, and by email, addressed as follows:

Eric Hiser
Matthew Joy
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Scottsdale, Arizona 85251
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A handwritten signature in black ink, appearing to read "M. Joy", is written over a horizontal line.