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Via Overnight Delivery

Mr. David Waterstreet
Environmental Program Supervisor
DEQ/Water Quality Division
Herschler Building – 4W
122 West 25th Street
Cheyenne, WY 82002

FILED

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Jim Ruby, Executive Secretary
Environmental Quality Council

Re: Comments on Revisions to Appendix H, Agricultural Use Protection Policy
Chapter 1 WWQRR Section 20

Dear Mr. Waterstreet:

Yates Petroleum Corporation (Yates) would like to take this opportunity to comment on the Wyoming Department of Environmental Quality's (WDEQ) proposed Chapter 1, Wyoming Water Quality Rules and Regulations (WWQRR), Appendix H – Agricultural Use Protection (Appendix H). These comments are in addition to comments submitted by or on behalf of Yates on earlier drafts of Appendix H, which are incorporated herein, and comments submitted separately by Yates regarding the most current iteration of the proposed rule.

We would like to reiterate that the scientific evidence demonstrates that default effluent limits for irrigation should be based on more state-specific data (such as the Bridger Plant Material Center study) and not generalized studies that do not take into account Wyoming soil characteristics. Appendix H currently relies on the Salt Tolerance Database published by the USDA Agricultural Research Service in establishing the Tier 1 "default" effluent limits applicable to irrigation uses. This is inconsistent with the Water and Waste Advisory Board's (WWAB's) recommendation that limits be adopted pursuant to two reports submitted by Kevin Harvey which proposed an effluent limit for specific conductance (EC) of 2700 $\mu\text{mhos/cm}$ and a cap on the sodium adsorption ratio (SAR) limit of 16. Mr. Harvey was able to conclude that these effluent limits were more appropriate in Wyoming based on a review of Wyoming soil characteristics rather than reliance on the generalization of soil characteristics in the USDA Database.

Since this information was first provided to DEQ and the WWAB, this rulemaking has gone through three more meetings in front of the WWAB. To the best of our knowledge, since the WWAB accepted Mr. Harvey's findings and recommended that they be incorporated into Appendix H, no other scientific evidence has been presented to either the WWAB or DEQ to

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refute the Mr. Harvey's findings. Instead, DEQ has wholly ignored Mr. Harvey's (and the WWAB's) recommendations stating only that "the DEQ/WQD disagrees with [the WWAB's] recommendation and maintains that the Salt Tolerance database published by the USDA Agricultural Research Service) National Salinity Laboratory is a more appropriate reference for this purpose." See, Rule Package, Appendix H, Red Line Strike-out, p. 5. No other justification was given. More recently, DEQ responded to concerns raised by industry regarding the failure of DEQ to even consider the WWAB's recommendation simply by responding that it did not agree with Mr. Harvey's (and the WWAB's) recommendation due to "differing opinions and interpretations of the scientific literature." See Rule Package, June 15, 2007 Response to Comments, Comment 26. Again, no other justification was given.

We find it disconcerting, to say the least, that DEQ has performed an end-run around the WWAB's recommendations as to the more appropriate effluent limits for EC and SAR. The statutory mandate of the WWAB 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, and variances therefrom." W.S. 35-11-114(b). Effectively, the DEQ has, in this case, unilaterally stripped the WWAB of this mandate.

We also reiterate our concerns regarding the definition of "naturally irrigated lands." "Naturally irrigated lands" should be limited to lands which are irrigated at least once a year and that the plants grown on "naturally irrigated lands" are cropped or otherwise managed to improve yields of desirable species. The term should also require that "naturally irrigated lands" consist of plants which are present in such quantity to provide significant economic value or animal nutritive value *and are actually used for such purposes.*

As always, Yates appreciates this opportunity to comment on Appendix H and looks forward to working with the Division in resolving these issues. Please contact me at (480) 505-3928 if you have any questions.

Sincerely,



Matthew Joy

Attorney for Yates Petroleum Corporation