

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

FEB 02 2007

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF )  
VIOLATION ISSUED TO: )

YATES PETROLEUM CORPORATION )  
105 SOUTH 4<sup>TH</sup> STREET )  
ARTESIA, NM 88210 )

DOCKET NO. 05-3218

WDEQ Docket No. 3795-05

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Water Quality Division (DEQ/WQD), Herschler Building, 122 West 25<sup>th</sup> Street, Cheyenne, WY 82002, and Yates Petroleum Corporation (Yates), 105 South 4<sup>th</sup> Street, Artesia, New Mexico, 88210, enter into this Settlement Agreement (Agreement) to fully and finally resolve without litigation the violation cited in DEQ Notice of Violation Docket No. 3795-05 (NOV). The NOV alleges that one of Yates Coal Bed Methane (CBM) water containment ponds located in Johnson County, Wyoming, failed causing an unauthorized discharge of produced waters in violation of the Wyoming Environmental Quality Act (Act), applicable Wyoming Water Quality Rules and Regulations (WWQRR) and permit number WY0052001.

WYO. STAT. ANN. § 35-11-901(a)(ii) authorizes stipulated settlement in lieu of litigation. To that end, Yates and the DEQ/WQD hereby stipulate and agree as follows:

1. The DEQ/WQD is responsible for enforcing the Act, the WWQRR, and permit number WY0052001.

2. On June 16, 2005, Yates notified the DEQ of a reservoir breach at the Burger Draw CS Federal facility. The reservoir that breached is called the "Up Top" reservoir and is located at outfall 010 of WYPDES permit number WY0052001 in the SESW Quarter, Section 11, Township 48 North, Range 77 West.

3. Prior to the breach, the reservoir held an estimated 1.5 to 2 acre feet of water.

4. Yates informed the DEQ/WQD that they did not believe the breach was weather related. Personnel from Yates, as a part of their normal operations, inspected the

Up Top reservoir on the morning of June 15, 2005, and did not notice any problems at the reservoir.

5. At 2:45 p.m. on June 15, 2005, Bureau of Land Management (BLM) notified Yates of the reservoir breach.

6. Yates also owns the "Who Roam" reservoir, which is located approximately 2000 feet downstream of the Up Top reservoir. According to the BLM's Report of Undesirable Event, the majority of the water washed down the drainage into the Who Roam reservoir. The water also deposited sediment along the flow path; however, all the sediment was contained above the Who Roam reservoir.

7. Yates immediately shut off the wells supplying produced water to the Up Top reservoir upon discovery of the breach.

8. Yates, through an engineering consultant, conducted an inspection of the Up Top reservoir to determine the cause of the breach.

9. Upon completion of the inspection and under the oversight of the engineering consultant, Yates reconstructed the reservoir between July 9, 2005 and August 29, 2005.

10. The DEQ/WQD issued Notice of Violation, Docket Number 3795-05, to Yates on September 9, 2005.

11. As a result of the breach at Yates' Up Top reservoir, the DEQ/WQD issued NOV, Docket number 3795-05 alleging a violation of part I.A.1 of WYPDES permit WY0052001 which states: "Discharges from the on-channel reservoirs are not allowed unless runoff from a storm event causes the reservoirs to fill and overtop."

12. DEQ/WQD and Yates agree that Yates will conduct an inspection of all containment reservoir within permit numbers WY0052001 and WY0051144 and which are located in the Van Houten Draw and Burger Draw. Yates shall complete its inspections and provide a report to the Wyoming Department of Environmental Quality, Water Quality Division, within one hundred eighty days (180) after the final signature has been affixed to this Agreement. The report shall provide a complete analysis of problems encountered for any reservoir which could potentially lead to a reservoir breach and unauthorized discharge, along with the corresponding plan of action to correct the problems. The report shall list each individual permit number, outfall number and reservoir name for those outfalls discharging into a man-made or natural reservoir. If no problems are noted at a reservoir, it shall be stated in the report. Yates shall mail the report to Brian Bohlmann, Department of Environmental Quality/Water Quality Division, 122 West 25<sup>th</sup> Street, Herschler Building, Cheyenne, Wyoming 82002.

13. DEQ/WQD shall not seek enforcement based solely on or derived solely from information submitted by Yates pursuant to paragraph 12 of this agreement.

14. Yates agrees that it shall withdraw its appeal in EQC Docket Number 05-3218 upon execution of this Settlement Agreement and the entry of the relevant Order approving this agreement by the EQC.

15. Yates, by entering into this Agreement, does not concede or admit to any liability or fault, and this Agreement constitutes no admission of fault.

16. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/WQD against Yates based on NOV Docket No. 3795-05.

17. Yates waives any statute of limitations which may apply to an enforcement action by the DEQ/WQD involving the specific matters described in NOV Docket No. 3795-05 in the event that Yates fails to fulfill its obligations under this Agreement.

18. This Agreement shall be admissible by either Yates or DEQ/WQD (hereinafter Yates and DEQ/WQD may be referred to individually as "Party" and collectively as "Parties") without objection by the other Party in any action between these Parties relating to the violations alleged herein; provided, however, that nothing herein constitutes an admission by Yates of liability or fault.

19. Neither Party shall have any claim against the other for attorneys' fees or other costs incurred with the allegations resolved, including costs incurred in the preparation of this Agreement. Each Party shall bear its own attorney fees and costs, if any, incurred through the date this Agreement is signed by both Parties. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

20. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the Parties shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

21. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

22. This Agreement, consisting of five (5) pages represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

23. The State of Wyoming and the DEQ/WQD do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

24. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The Parties to this Agreement intend and expressly agree that only Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

25. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

YATES PETROLEUM CORPORATION.:

By: David Lanning  
David Lanning  
Manager of Rocky Mountain Operations

7/31/06  
Date

APPROVAL AS TO FORM:

Matthew Joy  
Matthew Joy  
Attorney for Yates Petroleum Corporation

7/25/06  
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By: John Wagner  
John Wagner, WQD Administrator

8/8/06  
Date

By: John Corra  
John Corra, DEQ Director

8/8/06  
Date

APPROVAL AS TO FORM:

John S. Burbridge  
John S. Burbridge  
Senior Assistant Attorney General  
Attorney for DEQ/WQD

8.8.06  
Date

IT IS SO ORDERED:

John E. Brady  
Vice-Chairman  
Environmental Quality Council

01-30-07