

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

MAY 11 2021

~~ENVIRONMENTAL QUALITY COUNCIL~~
~~STATE OF WYOMING~~
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF
VIOLATION AND ORDER ISSUED TO
ANDREAS PETROLEUM.
516 ANDERSON STREET
BIG TIMBER, MT 59011

) DOCKET NO. 6050-20

NOTICE OF APPEAL AND PETITION FOR HEARING

Andreas Petroleum ("Andreas Petroleum" or "Petitioner"), hereby appeals the Notice of Violation and Order issued by the Department of Environmental Quality under Docket No. 6050-20 and requests a hearing pursuant to the Environmental Quality Act, the Administrative Procedures Act and the Environmental Quality Council's ("EQC") Rules of Practice and Procedure. In support of this appeal, Petitioner advises the EQC as follows:

I. INFORMATION ABOUT THE PETITIONER:

1. The Petitioner filing this appeal is:

Andreas Petroleum
516 Anderson Street
Big Timber, MT 59011

Petitioner is represented in this matter by:

Richard S. Baron
Foley, Baron, Metzger & Juip, PLLC
38777 Six Mile Road Suite 300
Livonia, MI 48152

David E. Shields
Williams, Porter, Day and Neville, P.C.
159 N. Wolcott St., Suite 400
PO Box 10700
Casper, WY 82602

Correspondence and information related to this appeal should be served on the undersigned and Richard S. Baron of Foley, Baron, Metzger & Juip, PLLC.

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II. ACTION BEING APPEALED:

2. Petitioner appeals the Notice of Violation ("NOV") and Order under DEQ Docket No. 6050-20, which alleges that a violation has not been corrected and hydrocarbons remain onsite. Said order seeks to require Petitioner to submit a work plan to delineate and remove hydrocarbons.
3. Petitioner challenges the NOV and Order on the following grounds:
 - a. The claimed delays in subsurface assessment are not due to any delays of Andreas Petroleum, but rather are due, in significant part to the inability of regulators and stakeholders at the Wyoming DEQ (WDEQ), U.S. Department of the Interior (DOI), the National Park Service (NPS) and United States Environmental Protection Agency (U.S. EPA) (collectively, the Stakeholder Entities) to reach a consensus position on the response activities which should be initiated and/or continued at the release location within the Yellowstone National Park (the Site).
 - b. The WDEQ and NPS have provided inconsistent direction as to the appropriate and permissible response activities at the Site.
 - c. In November of 2020, following Site investigation pursuant to the approved Investigation Work Plan, discussions were had with WDEQ officials regarding the use of a Permeable Reactive Barrier (PRB) to assist in remediation of the Site. WDEQ indicated its support for this remediation option.
 - d. Based on support from the WDEQ, consultants on behalf of Petitioner began to source the materials and labor necessary to implement a PRB at the Site.
 - e. On November 19, 2020, Petitioner, through its consultants, informed both WDEQ and NPS of an order it had placed for Forty Thousand Dollars (\$40,000.00) of activated carbon for use with the PRB.
 - f. On November 20, 2020, Petitioner was informed by the WDEQ that NPS refused to allow the use of a PRB and that the WDEQ did not assert control over the Site to allow Petitioner to implement the proposed remedy.
 - g. On November 23, 2020, Petitioner's consultants verbally proposed the use of a self-contained RSI to operate a SVE/AS remediation system.
 - h. A call was proposed to discuss this remediation option further with the wider group of stakeholders; however, the WDEQ ultimately canceled this

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call due to NPS' refusal to participate in the call. Petitioner was informed that NPS refused to participate because it had asked the U.S. EPA to assist it in this matter and the U.S. EPA needed time to get up to speed regarding this issue.

- i. With the introduction of the U.S. EPA onto the scene in January 2021, the issues associated with inconsistent direction from the regulators became even more apparent.
- j. On January 13, 2021 Andreas counsel requested that the regulators address multiple demands being placed on Andreas by the various Stakeholder Entities.
- k. On January 21, 2021 counsel for the U.S. EPA acknowledged the request by Andreas that "the federal and state regulators coordinate their additional interactions with Andreas Petroleum" and that they "commit to avoid, wherever possible, inconsistent communications or approaches" and that DOI/NPS and WDEQ "agree to move forward in a unified fashion whenever feasible".
- l. On January 27, 2021 the U.S. EPA and Petitioner's consultants conducted a meeting regarding the Site and plans for same.
- m. On April 9, 2021, the U.S. EPA provided Petitioner with a list of "Required Actions," to include a plan for temporary mobilization of a pump and treat system at the Site.
- n. On April 15, 2021, the U.S. EPA notified Petitioner's consultants that they should cease work on a treatment system design and proceed with a work plan for monitoring and groundwater extraction.
- o. On April 20, 2021, a proposed work plan was provided to the U.S. EPA and NPS which would achieve the U.S. EPA and NPS' stated goals for the Site.
- p. On April 22, 2021, Petitioner's consultants submitted an application for a Chapter 3 Permit to Construct for the proposed monitoring wells and recovery sumps outlined in the April 20, 2021 work plan.
- q. Despite the submission of a work plan which addressed the U.S. EPA's "Required Actions," and an application for a permit to implement this work plan, Petitioner was served with the NOV from the WDEQ on April 26, 2021.

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- r. The NOV is dated April 16, 2021 and appears to have been sent without any knowledge of requests made by the U.S. EPA or NPS, or of Petitioner's response to same.
- s. Given the multitude of examples of the failure of the Stakeholder Entities to agree on a path forward for remediation at the site, including the conflicting guidance received by Petitioner from those Stakeholder Entities, Petitioner is unlikely to be able to satisfy the requirements of the NOV within the time frames established therein; thereby resigning Petitioner to inevitable failure.
- t. Petitioner reserves the right to supplement this petition based on new or revised grounds between the date of filing and the hearing.

WHEREFORE, Petitioner requests that the EQC grant the following relief:

1. Grant Petitioner a contested case hearing on its appeal pursuant to the Environmental Quality Act, W.S. § 35-11-112, the Administrative Procedures Act and the EQC's Rules of Practice and Procedure.
2. Disapprove, revoke and repeal the DEQ's Notice of Violation and Order in this matter.
3. Provide such other and further relief as the EQC determines just and equitable in the premises.
4. Pursuant to W.S. § 35-11-701(c)(ii), Petitioner is entitled to a stay of the DEQ's Order as a matter of right upon the filing of this request, and Petitioner hereby requests and invokes the statutory stay of the Order pending the EQC's determination of this appeal.

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RESPECTFULLY SUBMITTED, this 6th day of May, 2021.

FOR ANDREAS PETROLEUM



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true, full and correct copies of this Notice of Appeal and Request for Hearing was served upon the following this 6th day of May, 2021 in the manner indicated below:

John Corra	<input checked="" type="checkbox"/>	U. S. Mail (prepaid)
Chairman	<input type="checkbox"/>	Overnight Delivery
Wyoming Environmental Quality Council	<input type="checkbox"/>	Hand Delivery
122 West 25th Street	<input type="checkbox"/>	Electronic Mail
Room E423A, Herschler Building, 4 th Floor		
Cheyenne, WY 82002		

Todd Parfitt	<input checked="" type="checkbox"/>	U. S. Mail (prepaid)
Director	<input type="checkbox"/>	Overnight Delivery
Wyoming Department of Environmental Quality	<input type="checkbox"/>	Hand Delivery
200 W. 17th Street, 4th Floor	<input type="checkbox"/>	Electronic Mail
Cheyenne, WY 82002		


David E. Shields