

**FILED**

**APR 03 2008**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF THE APPEAL )  
AND REVIEW OF THE ISSUANCE OF )  
WYOMING POLLUTANT DISCHARGE )  
ELIMINATION SYSTEM (WYPDES) ) Docket No. 07-3621  
PERMIT WY0049271 )  
(Yates, Taylor - Wild Horse Creek), )  
DATED July 30, 2007 )

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) March 4, 2008 Response Order, 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 renewal WYPDES permit WY0049271 was issued to Yates.

"II. Action Being Appealed"

¶4. DEQ admits that renewal WYPDES permit WY0049271 issued to Yates on or about July 30, 2007 authorized discharges subject to the terms and conditions in the permit.

¶5. DEQ admits that Yates' Petition states allegations as the "grounds" for its appeal, but denies those allegations.

¶6. DEQ admits that Yates' Petition also states other allegations as the "grounds" for its appeal, but denies those other allegations.

¶7. DEQ admits that renewal WYPDES permit WY0049271 was issued to Yates on or about July 30, 2007. DEQ denies any other allegations in ¶7.

¶8. DEQ admits that renewal WYPDES permit WY0049271 contains monitoring requirements for total dissolved solids (TDS).

¶9. DEQ denies the allegations in ¶9.

### “III. Basis for the Appeal”

¶10. DEQ admits that Yates submitted a renewal application with additional documents on or about May 3, 2007. DEQ denies any other allegations in ¶10.

¶11. DEQ admits that it published notice of opportunity for public comment on draft renewal WYPDES permit WY0049271 on or about June 15, 2007, but denies that it “issued” the draft permit.

¶12. DEQ admits that Yates and CBM Associates submitted comments on draft renewal WYPDES permit WY0049271 during the comment period. DEQ denies any other allegations in ¶12.

¶13. DEQ admits that it issued final renewal WYPDES permit WY0049271 to Yates on or about July 30, 2007. DEQ denies any other allegations in ¶13.

¶14. DEQ admits that the basis for the numeric effluent limits for irrigation protection in this permit to meet the narrative standard in Chapter 1, Section 20 is described in the Statement of Basis. DEQ denies any other allegations in ¶14.

¶15. DEQ admits that the policy says what it says, but denies that the policy is a rule or that the basis for the numeric effluent limits for irrigation protection in this permit to meet the narrative standard in Chapter 1, Section 20 is other than as described in the Statement of Basis.

¶16. DEQ denies that its authority to set permit conditions under WYO. STAT. ANN. § 35-11-801(a), including numeric effluent limits for discharge permits, derives from the referenced policy, and denies any other allegations in ¶16.

¶17. DEQ denies the allegations in ¶17.

¶18. DEQ denies that numeric effluent limits for irrigation protection in the contested permit are inconsistent with the referenced policy, and denies any other allegations in ¶18.

¶19. DEQ admits that the latest draft Statement of Principal Reasons for the proposed amendment of Chapter 1 (p.15) describes “Tier 2” in similar terms to those in Petitioner’s ¶19. DEQ denies that the basis for the numeric effluent limits for EC and SAR in the contested permit to meet the narrative standard in current Chapter 1, Section 20 is other than as described in the Statement of Basis. DEQ denies any other allegations in ¶19.

¶20. DEQ denies that its authority to set permit conditions under WYO. STAT. ANN. § 35-11-801(a), including numeric effluent limits for discharge permits, derives from the referenced policy, or that numeric effluent limits for irrigation protection in the contested permit are inconsistent with the referenced policy. DEQ denies any other allegations in ¶20.

¶21. DEQ denies that the extent of the Section 20 analysis data presented by the applicant was conclusive in itself to determine the actual mean soil EC for the Wild Horse Creek drainage. DEQ denies any other allegations in ¶21.

¶22. DEQ admits that the Statement of Basis for the contested permit discusses an assumption about the “actual mean root zone salinity” being 3,532 in setting the permit’s effluent limit for EC to protect downstream irrigation. DEQ denies any other allegations in ¶22.

¶23. DEQ denies that the extent of the Section 20 analysis data presented by the applicant was conclusive in itself to determine the actual mean soil EC for the Wild Horse Creek drainage. DEQ denies any other allegations in ¶23.

¶24. DEQ admits that the Statement of Basis says that while the “*sampled population*” (emphasis added) indicates the actual mean root zone salinity for the whole field likely falls within the range of 3,532 to 4,636, but denies that the extent of the Section 20 analysis data (the “sampled population”) presented by the applicant was conclusive in itself to determine the actual mean soil EC for the Wild Horse Creek drainage. DEQ denies any other allegations in ¶24.

¶25. DEQ denies that the permit’s effluent limits for EC and SAR set using the root zone salinity data for the “sampled population” presented by the applicant are “artificially low.”

¶26. DEQ denies the allegations in ¶26.

¶27. DEQ admits that the EQC did not adopt the Agricultural Use Policy as a rule at the February, 2007 hearing or meeting. DEQ admits that whether or not the Agricultural Use Policy should be adopted as a rule has been a subject of discussion. Inasmuch as this case is a proceeding before the EQC, the EQC itself can take notice of what desire it expressed collectively or individually. DEQ denies any other allegations in ¶27.

¶28. DEQ denies the allegations in ¶28.

¶29. DEQ denies the allegations in ¶29.

¶30. DEQ admits the allegations in ¶30.

¶31. DEQ denies the allegations in ¶31.

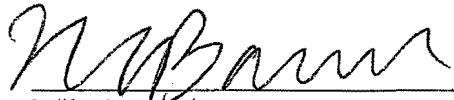
¶32. DEQ admits that the contested permit does not contain a separate explanation for the TDS monitoring requirement. DEQ denies that the TDS monitoring requirement is redundant or unjustified.

¶33. DEQ denies the allegations in ¶33.

Yates' Requests for Relief

- #1. DEQ does not object to Yates' request for a hearing before the EQC.
- #2. DEQ disagrees with Yates' request that the EQC disapprove the contested permit.
- #3. DEQ disagrees with Yates' implication that the effluent limits for EC and SAR in the contested permit are not based on the limited available data.
- #4. DEQ disagrees with Yates' request that the TDS monitoring requirement be rescinded.
- #5. DEQ cannot respond to Yates' request for unidentified "other relief."

DATED this 3rd day of April, 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 in Docket No. 07-3621 was served this 3rd day of April, 2008 by United States Mail, first class postage prepaid, and by facsimile transmission and/or e-mail, addressed as follows:

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Wyoming Attorney General's Office