

**FILED**

SEP 28 2006

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

IN THE MATTER OF THE APPEAL AND REVIEW OF )  
THE DECISION REGARDING THE PROPOSED )  
WYOMING POLLUTANT DISCHARGE ELIMINATION )  
SYSTEM (WYPDES) PERMIT WY0052761 )  
(YATES-NEMESIS POD), DATED DECEMBER 17, 2005)

Terri A. Lorenzon, Director  
Environmental Quality Council  
File No. 06-3802

**YATES PETROLEUM CORPORATION'S  
MOTION TO DISMISS FOR LACK OF PROSECUTION**

The undersigned intervenor-party, Yates Petroleum Corporation ("Yates"), hereby files this Motion with the Environmental Quality Council (the Council) requesting that the Council dismiss the petition filed on behalf of Tear Drop Ranch by Kirven & Kirven, P.C. for lack of diligent prosecution. As incorporated in the Environmental Quality Council's rules of practice and procedure, Rule 55 of the Wyoming Rules of Civil Procedure requires that "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided . . . and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." WY. R. CIV. P. 55. One seeking relief against judgment must show diligence on his behalf. *Kelley v. Eidam*, 231 P. 678 (Wyo. 1924). In this case, Tear Drop Ranch is seeking relief against the Department's adverse judgment that its objections are unfounded.


Tear Drop has failed to timely prosecute this case. After Yates' Motion for Leave to Intervene was granted by the Council on April 6, 2006, Yates has had no contact and has received no additional information from Tear Drop's representatives regarding the above-captioned matter. Tear Drop has failed to file additional motions, submit information, seek a hearing date or otherwise take steps to move forward in this matter.

Under the law, the proponent of an appeal must take steps to prosecute its case. WY. R. Civ. P. 55.

Further, in its Petition for Review, Tear Drop alleged that the draft permit should not be issued on several grounds. However, at the time Tear Drop filed its Petition for Review, it failed to substantiate any of its claims. For the reasons stated in Yates' response to the petition for review, Tear Drop failed to provide factual, scientific, or legal justification for withholding issuance of the draft permit.

The permit application submitted by Yates met all statutory and regulatory requirements governing information which must be included in the application and the permit issued by WDEQ provides protections against the allegations complained of by Tear Drop. Tear Drop failed to provide any justification for not issuing the draft permit as written and has failed to provide any additional justification since filing its Petition for Review. For the foregoing reasons, Yates respectfully requests that the EQC dismiss the Petition and decline to proceed to a contested case hearing on the matters raised by the Petitioner.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of September, 2006.



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ATTORNEYS FOR YATES PETROLEUM CORPORATION

## Certificate of Service

I certify that on this 27<sup>th</sup> day of September, 2006, service of a true and complete copy of this Motion to Dismiss for Lack of Prosecution in File No. 06-3802 was made upon each party or attorney of record herein as indicated below.

The ORIGINAL was filed by private carrier on September 27, 2006 with:

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COPIES were served by U.S. Mail on September 27, 2006 with:

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A handwritten signature in cursive script, appearing to read "John Wagner", is written over a horizontal line.