

**FILED**

**SEP 28 2006**

Terri A. Lorenzon, Director  
Environmental Quality Council

**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)

File No. 06-3802

**YATES PETROLEUM CORPORATION'S RESPONSE TO  
COUNCIL'S REQUEST FOR STATUS UPDATE**

The undersigned intervenor-party, Yates Petroleum Corporation ("Yates"), hereby files this Response to the Environmental Quality Council's (the Council) Request for Status Update, dated August 31, 2006.

Tear Drop Ranch, through Kirven & Kirven, P.C., filed a Petition for Review, Notice of Appeal and Request for Hearing (Petition for Review) on January 27, 2006 concerning the issuance of Yates WYPDES permit number WY0052761 (Yates-Nemesis POD). On March 29, 2006, Yates filed a Motion for Leave to Intervene and Respond in Opposition to Petition for Review, Notice of Appeal and Request for Contested Case Hearing. Yates' motion contended that the Petitioner failed to allege any meritorious claims as Yates' WYPDES permit application met all statutory and regulatory requirements. Yates' motion further noted that the permit issued by WDEQ provided adequate protection against the alleged potential injuries complained of by the Petitioner. Yates' Motion for Leave to Intervene was granted by the Council on April 6, 2006.

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. As of this date, Tear Drop has failed to provide any further justification for withholding issuance of the permit. In addition, Yates has had no contact or received any additional information from Tear Drop's representatives regarding the above-captioned matter.

Tear Drop has also failed to timely prosecute the case. Tear Drop has not filed additional motions, submitted information, sought a hearing date or otherwise taken steps to move forward in the matter. Under the law, the proponent of an appeal must take steps to prosecute its case. WY. R. CIV. P. 55 incorporated by 2 Rules of Practice & Procedure (RP&P) § 14.

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. In addition, Tear Drop has been dilatory in its efforts to prosecute the matter. For the foregoing reasons, Yates will submit under separate cover a motion to dismiss the Petition for failure to prosecute the appeal.

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 Response to Council's Request for Status Update 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:

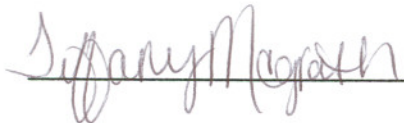
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