

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE APPEAL )  
AND REVIEW OF THE ISSUANCE OF )  
WYOMING POLLUTANT DISCHARGE )  
ELIMINATION SYSTEM (WYPDES) )  
GENERAL PERMITS )

Docket No. 06-3815

**FILED**

MAY 14 2007

Terri A. Lorenzon, Director  
Environmental Quality Council

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WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S  
PRELIMINARY RESPONSE TO NOTICE OF APPEAL AND REQUEST FOR  
HEARING AND MOTION FOR ORDER TO CORRECT PETITION

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Wyoming Department of Environmental Quality (DEQ), pursuant to the DEQ Rules of Practice and Procedure (DEQ Rules) and the Environmental Quality Council's (EQC or Council) April 17, 2007 Order in the above-captioned matter, submits this preliminary response to Yates Petroleum Corporation's, Marathon Oil Company's and Citation Oil & Gas Corporation's (Petitioners) Notice of Appeal and Request for Hearing (Petition) concerning WYPDES Pumpkin Creek Watershed General Permit, Willow Creek Watershed General Permit, and Fourmile Creek Watershed General Permit Plan (permits and plan), and moves the Council to order that Petitioners correct their Petition for the reasons set forth below.

1. Petitioners filed a 9 page Petition in the above-captioned matter contesting various terms of the permits and plan.
2. Chapter I, Section 3(c)(iii) of the DEQ Rules calls for a petition to set forth a statement in ordinary, but concise language of the facts on which the protest is based,

including whenever possible particular reference to the statutes or rules that the applicant alleges have been violated.

3. The "Basis for the Appeal" in this case is Section "III" of the Petition.
4. Section III (6 pages) is broken down into 4 general allegations (A-D).
5. The un-numbered, lengthy paragraphs under each of the 4 general allegations contain a mixture of factual allegations, opinions, and legal argument.
6. DEQ responds to the 4 general allegations as follows:
  - A. DEQ denies that the Category IC effluent limitations are not justified given background soil and water characteristics.
  - B. DEQ denies that the 50-year containment for Category II discharges is arbitrary & capricious and fails to provide operators with a viable option.
  - C. DEQ denies that end-of-pipe effluent limitations are inappropriate.
  - D. DEQ denies that any additional requirements for coverage under these watershed general permits and plan relating to assimilative capacity in the Powder River violate due process.
7. DEQ further denies that Petitioners are entitled to the relief requested in their Petition.
8. Chapter II, Section 13(a) of the DEQ Rules allows for the correction of any pleadings in a contested case before the Council.
9. Chapter II, Section 14(a) of the DEQ Rules makes the Wyoming Rules of Civil Procedure (W.R.C.P.) applicable to matters before the Council.

10. Rule 8(e)(1), W.R.C.P. requires that each averment of a pleading shall be simple, concise, and direct.

11. Rule 10(b), W.R.C.P. requires that all averments of claims shall be made in numbered paragraphs, the contents of which shall be limited as far as practicable to a statement of a single set of circumstances.

12. Rule 12(e), W.R.C.P. allows a party to move for a more definite statement before responding to a pleading if the pleading is so vague or ambiguous that the responding party cannot reasonably be required to frame a responsive pleading.

13. Petitioners' Petition:

- a. fails to set forth statements in ordinary, but concise language of the facts on which the protest is based, in accordance with Chapter I, Section 3(c)(iii) of the DEQ Rules;
- b. fails to present each averment simply, concisely, and directly, as Rule 8(e)(1), W.R.C.P. requires;
- c. fails to present all averments in numbered paragraphs, the contents of which are limited as far as practicable to a statement of a single set of circumstances, as Rule 10(b), W.R.C.P. requires;
- d. is in a format that makes it so vague or ambiguous that the responding party cannot reasonably be required to frame a responsive pleading, for purposes of Rule 12(e), W.R.C.P.

14. Correction of Petitioners' Petition, as provided in Chapter II, Section 13(a) of the DEQ Rules and Rule 12(e), W.R.C.P., to present their averments in a format that complies with Chapter I, Section 3(c)(iii) of the DEQ Rules, and Rules 8(e)(1) and 10(b), W.R.C.P., will clarify their pleadings, simplify identification of issues, and enable Respondent DEQ to frame a responsive pleading beyond this preliminary response.

15. To the extent that Section III of the Petition engages in argument, the more appropriate opportunity for that is in motions, in briefs and in opening statements and closing arguments at the hearing. DEQ Rules, Chapter II, Sections 3(a) and 4(a)(ii), 4(a)(vii) & 4(b).

WHEREFORE, Respondent DEQ requests that the Council order Petitioners to correct their Petition to comply with Chapter I, Section 3(c)(iii) of the DEQ Rules, and Rules 8(e)(1) and 10(b), W.R.C.P., and then afford DEQ sufficient time to respond following service of the corrected Petition. DEQ further requests a hearing on this motion, if the Council deems that necessary.

Respectfully submitted this 11th day of May, 2007.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of May, 2007, a true, full and correct copy of the foregoing **WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S PRELIMINARY RESPONSE TO NOTICE OF APPEAL AND REQUEST FOR HEARING AND MOTION FOR ORDER TO CORRECT PETITION** was served via United States Mail, first class postage prepaid, and by facsimile transmission and/or e-mail, addressed as follows:

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