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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Terri A. Lorenzon, Director
Environmental Quality Council

IN RE: WILLOW CREEK GENERAL PERMIT,)
PUMPKIN CREEK GENERAL PERMIT, and) Dockets No. 06-3816
FOURMILE CREEK PLAN.)

DEQ'S MEMORANDUM ON FOUNDATION AND ADMISSIBILITY OF EXHIBIT

The Wyoming Environmental Quality Council's (EQC) December 6, 2007 Amended Order to Reschedule Prehearing Conference in the above-captioned consolidated case directs the Parties to each file and serve a Prehearing Memorandum identifying their proposed exhibits by January 4, 2008, and to be prepared to discuss and enter into stipulations regarding foundation and admissibility of exhibits at the Prehearing conference on January 9, 2008. To aid in that process, Respondent Wyoming Department of Environmental Quality (DEQ), submits the following Memorandum on Foundation and Admissibility of Exhibit pertaining to "Pennaco Energy Inc.'s Response to DEQ's Combined Request for Discovery" (with related cover letter and signature page) in EQC Consolidated Doc. No. 02-3801, which is listed as a proposed exhibit in the DEQ's Prehearing Memorandum, and is *attached here as* ATTACHMENT A.

The "End-of-Pipe" Point of Compliance Issue

Petitioners Yates Petroleum Corporation ("Yates"), Marathon Oil Company ("Marathon"), and Citation Oil & Gas Corporation ("Citation") jointly filed a Notice of Appeal and Request for Hearing ("Petition") in EQC Doc. No. 06-3815, contesting the Pumpkin Creek WYPDES General Permit, the Willow Creek WYPDES General Permit, and the Fourmile Creek General Plan, which was subsequently consolidated under EQC Doc. No. 06-3816 with two Petitions filed by the Wyoming Outdoor Council ("WOC") contesting the same two WYPDES General Permits. The contested WYPDES General Permits ("Permits") require compliance with numeric effluent limitations for EC and SAR at the outfall(s) ("end-of-pipe").

The Yates/Marathon/Citation Petition raises end-of-pipe point of compliance as an issue in this case by identifying "C. End-of-Pipe Limitations" as the third of four claims constituting

the “Basis for the Appeal,” contending that “use of end-of-pipe effluent limitations without consideration of a mixing zone (as required 1 WWQRR § 9) is *inappropriate* as the effluent at the end of pipe is not representative of the water quality in the waterbody” (emphasis added). Yates/Marathon/Citation Petition, p.7.

The DEQ’s Proposed Exhibit

The proposed DEQ exhibit is “Pennaco Energy Inc.’s Response to DEQ’s Combined Request for Discovery” (with related cover letter and signature page) in EQC Consolidated Doc. No. 02-3801. DEQ’s Interrogatory No. 2 asked: “Specify where you believe compliance with limits for SAR and EC of such [CBM produced water] discharges should be determined to assure compliance with Chapter 1, Section 20.” Pennaco (“Marathon/Pennaco”) answered DEQ’s Interrogatory No. 2 as follows:

Pennaco believes that the point of compliance for SAR and EC should be imposed at the outfall, if produced water will reach the existing point of use The point of outfall is the only point at which it can be assured that the actual water quality being tested is from that operator and eliminates other potential sources (natural or otherwise) for degradation of water quality that occur once the water has been discharged from the outfall and travels down the drainage.

Relevance of the Proposed DEQ Exhibit

Chapter II, Section 8(c)&(h)(iii) of the DEQ Rules of Practice & Procedure recognizes the parties’ right to present evidence on all issues involved and authorizes the presiding officer to rule on offers of proof and receive relevant evidence. The Wyoming Rules of Evidence generally are invoked in contested case proceedings before administrative agencies. *Roush v. Pari-Mutuel Com’n of State of Wyo.*, 917 P.2d 1133, 1139 (Wyo. 1996). The Wyoming Rules of Evidence are based on a policy of conformity to federal practice, and, except as otherwise indicated, the Wyoming Rules of Evidence are the federal rules verbatim. Wyo. R. Evid., Committee note. Where the Wyoming rule is virtually identical to its federal counterpart, federal authority relative thereto is highly persuasive. *Kimbley v. City of Green River*, 642 P.2d 443, 445, n.3 (Wyo. 1982). All relevant evidence is generally admissible. Wyo. R. Evid. 402. Evidence is relevant if it tends “to establish a proposition to be proved in the case.” *Big Horn*

Coal Co. v. Commonwealth Edison Co., 852 F.2d 1259, 1266-67 (C.A.10 (Wyo.), 1988). Point of compliance is primarily a policy issue rather than a question of fact.

Pennaco's Answer to DEQ's Interrogatory No. 2 is relevant to the point of compliance issue raised by the third "Basis of the Appeal" identified by Yates/Marathon/Citation in their Petition, because that answer expresses a different perspective on the same policy issue and is fairly attributable to Marathon. Evidence may be admissible as to one party, whether or not it is admissible as to another. Rule 105, Wyo. R. Evid. The DEQ's Interrogatory No. 8 asked: "Identify (name, business, and professional affiliation . . .) each and every individual who had input in preparing your answers to each of the above interrogatories and specify the nature of that input." Marathon/Pennaco answered DEQ's Interrogatory No. 8 as follows:

In addition to legal counsel, Joe Olson, former Manager of Hydrology, *Marathon/Pennaco* and Stephanie Olson, Health, Environment and Safety Manager, Powder River Business Unit, *Marathon/Pennaco* had input in preparing this answer with respect to Interrogatories 1 through 6. [Emphasis added.]

The notarized signature page for "Pennaco Energy Inc.'s Response to DEQ's Combined Request for Discovery" in EQC Consolidated Doc. No. 02-3801, dated June 3, 2003, is signed by "Stephanie Olson, HES Manager, Powder River Business Unit, *Marathon Oil Company/Pennaco Energy, Inc.*" (Emphasis added.)

Interrogatories served upon a corporation shall be answered by an officer or agent of the corporation. Wyo. R. Civ. P. 33(a). The proposed DEQ exhibit is a written statement which identifies the former Manager of Hydrology, *Marathon/Pennaco* and the Health, Environment and Safety Manager, Powder River Business Unit, *Marathon/Pennaco* as the individuals having input in preparing the answer to Interrogatory No. 2, and was signed by the "HES Manager, Powder River Business Unit, *Marathon Oil Company/Pennaco Energy, Inc.*"

The proposed DEQ exhibit is not inadmissible hearsay, because it is a written statement offered against a party (Marathon) and is either a statement by a person authorized by that party to make a statement concerning the subject, or a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the

relationship. Wyo. R. Evid. 801(d)(2)(C)&(D). Marathon's own website (see "Our History") states that Marathon acquired Pennaco Energy, "a leading coal bed methane asset," in 2001. Printout attached as ATTACHMENT B. A March 27, 2001 Newswire story listing Marathon Oil Company as the source (printout attached as ATTACHMENT C) states (§13) that:

Marathon's Pennaco operations will be run from Pennaco's office in Denver. Terry Dobkins, former vice president of Production for Pennaco will head the new unit and report to Steve Hinchman, Marathon's senior vice president of Worldwide Production.

Citations to Law Regarding Foundation and Admissibility of Proposed Exhibit

1. Discovery shall be available to the parties in all contested cases before the EQC. Chapter II, Section 10(a), DEQ Rules of Practice & Procedure.
2. The Wyoming Rules of Civil Procedure apply to matters before the EQC. Chapter II, Section 14, DEQ Rules of Practice & Procedure.
3. Answers to interrogatories may be used at trial to the extent permitted by the Rules of Evidence. Wyo. R. Civ. P. 33(c).
4. Where answers to interrogatories are a party's own answers, the right to cross-examine is not significant. *Pederson v. State ex rel. Wyoming Workers' Compensation Div.*, 939 P.2d 740, 744 (Wyo. 1997).
5. The pleading of a party in another action, if inconsistent with his position in the action on trial, is competent evidence against him. *Quealy Land & Livestock Co. v. George*, 18 P.2d 253, 255 (Wyo. 1933). A position taken by a man in one proceeding may be evidence in another, and inconsistent statements may be evidentiary as admissions, convincing, persuasive, or of little weight, according to the particular circumstances. *Parkinson v. California Company*, 233 F.2d 432, 438 (C.A.10 (Wyo.), 1956). In the 10th Circuit, inconsistent allegations contained in prior pleadings are admissible in subsequent litigation. *Dugan v. EMS Helicopters, Inc.*, 915 F.2d 1428, 1431-32 (C.A.10 (N.M.), 1990). Other circuits have allowed introduction of prior inconsistent pleadings as substantive evidence pursuant to Fed. R. Evid. 801(d)(2). *Id.* at 1432.
6. A statement is not inadmissible hearsay if it is offered against a party and is a

statement by a person authorized by that party to make a statement concerning the subject, or a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship. Wyo. R. Evid. 801(d)(2)(C)&(D).

7. Preliminary questions concerning admissibility of evidence shall be determined by the court (or hearing examiner). Wyo. R. Evid. 104(a).


8. For purposes of foundation for the admission of a statement under Rule 801(d)(2), a court (or hearing examiner) in making a preliminary factual determination may examine the statement sought to be admitted, and is not required to consider only independent evidence. *United States v. Potts*, 840 F.2d 368, 371 (C.A.7, 1987).

9. Other party's response to interrogatories can provide foundation for an exhibit. *Thanongsinh v. Board of Education, District U-46*, 462 F.3d 762, 779 (C.A.7, 2006). Authenticating document as foundation for document's status as an admission by a party-opponent under Rule 801(d)(2), Fed. R. Evid. is governed by 901(a), which requires proof that document is what proponent claims it to be ("not . . . a particularly high hurdle"). *Id.*

10. Rule 1002, Wyo. R. Evid. requires the original document to prove the contents of that document, but Rule 1003 makes a duplicate (as defined in Rule 1001) admissible to the same extent as an original, unless a genuine question is raised as to its authenticity.

The DEQ's proposed exhibit of "Pennaco Energy Inc.'s Response to DEQ's Combined Request for Discovery" (with related correspondence and signature pages) in EQC Consolidated Doc. No. 02-3801 is a photocopy that constitutes a duplicate, which satisfies the foundational requirement of authenticity for purposes of Rules 104(a), 901(a), 1002 & 1003, Wyo. R. Evid. If this exhibit is admitted as evidence, the EQC would still decide what weight to give it.

Dated this 4 day of January, 2008.


Mike Barrash
Senior Assistant Attorney General
123 State Capitol Building
Cheyenne, Wyoming 82002
307-777-6946

CERTIFICATE OF SERVICE

True and correct copies of the foregoing DEQ'S MEMORANDUM ON FOUNDATION AND ADMISSIBILITY OF EXHIBIT were served on or before the 4th day of January, 2008, by United States Mail, first class postage prepaid, and by facsimile transmission and/or e-mail, addressed as follows:

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steve@wyomingoutdoorcouncil.org



Attorney General's Office

From: Mike Barrash
To: Joy, Matthew; steve@wyomingoutdoorcouncil.org
Date: 1/2/2008 7:48:07 AM
Subject: Proposed DEQ Exhibit

Counsel- attached PDF of Pennaco Energy's Response to DEQ's Interrogatories in EQC Doc. No. 02-3801 is one of the proposed exhibits we are considering listing in DEQ's Prehearing Memorandum. The Answer to Interrogatory #2 is the one of primary interest. If necessary, we can discuss it at the Prehearing Conference. Since I am e-mailing it to you ahead of schedule, I won't send it again if we do decide to list it.

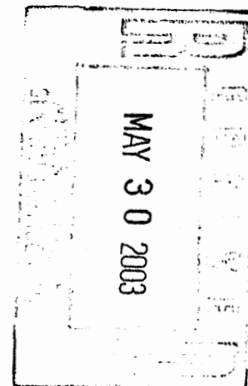
Mike Barrash
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(307) 777-6946

The information provided in this communication is confidential and protected, may be attorney client privileged, may constitute inside information, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately at (307) 777-6946

CC: DiRienzo, Bill

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL) Consolidated
OF EDWARD H. SWARTZ, et al.) Docket No. 02-3801



**PENNACO ENERGY INC.'S
RESPONSE TO DEQ'S COMBINED REQUEST FOR DISCOVERY**

PENNACO ENERGY INC.'S (hereinafter "Pennaco") hereby responds to
Petitioner DEQ's request for discovery as follows:

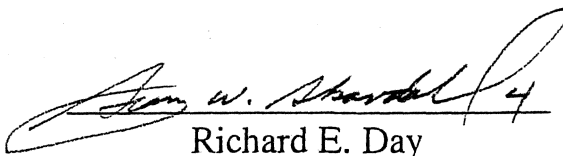
GENERAL OBJECTION

The verification herein is limited inasmuch as multiple individuals may have provided input to these responses. The verification therefore merely affirms that Pennaco has attempted to exhaust all potentially responsive documents and to consult all persons who might have knowledge of the matters addressed herein. Because it is impossible for one individual to have knowledge of all matters herein, the verification must be limited.

Further, Pennaco objects to the "Definitions" and "Instructions" insofar as they create obligations and requirements beyond the requirements of the Wyoming Rules of Civil Procedure. Pennaco further objects to the discovery requests insofar as they seek trade secrets, proprietary information, work product, attorney/client privilege, data and

information obtained in anticipation of litigation or other privileged materials. Further, in the event any otherwise privileged material has been inadvertently produced by Pennaco, such production shall not constitute a waiver of any privilege available to Pennaco.

OBJECTION:



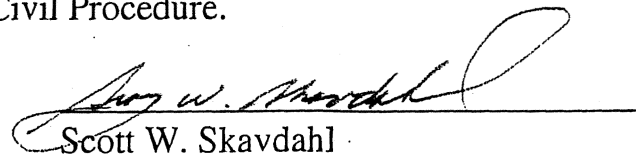
Richard E. Day

INTERROGATORIES

INTERROGATORY NO. 1: Specify what numeric limits for SAR and EC respectively you believe should apply to coalbed methane (CBM) process water discharges in the Wildcat Creek drainage under NPDES permits issued by the DEQ in order to comply with Chapter 1, Section 20 of the Wyoming DEQ Water Quality Rules & Regulations by not causing a measurable decrease in irrigated alfalfa production at the Swartz ranch, and explain in detail the basis for your answer.

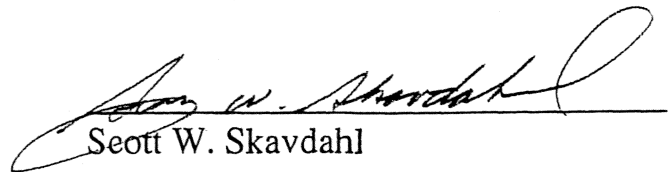
ANSWER: Pennaco objects to this request to the extent that it seeks attorney work-product information and is vague and ambiguous. Pennaco further objects to the extent that this interrogatory asserts or assumes that the water quality discharged pursuant to NPDES permits is required to meet standards necessary for the irrigation of alfalfa, as opposed to not degrading the natural water quality in Wildcat Creek. Without waiving the foregoing objections, as a preliminary matter, Pennaco states that numeric limits, other than the conductivity limit of 7500 umhos/cm for EC under current rules, regulations and guidance are inappropriate. Notwithstanding the absence of any regulatory authority to set numeric limits for SAR and EC, Pennaco states that it has not identified any specific numeric limit for SAR or EC and any recommendation, as to a specific limit, would be dependent upon a number of variables, including, but not limited to, the soil type and composition in the drainage, conveyance loss, the gradient of the drainage, the surface area of the drainage and the location in the

drainage of the specific NPDES discharge at issue. Thus, the SAR and EC limits should be dependent upon the unique and individualized issues as to that specific NPDES discharge location and not a uniform, basin-wide numeric limit that fails to consider the many variables that impact natural water quality at different locations within a drainage. Pennaco is continuing to review discovery responses, data and information relevant to this issue and reserves the right to supplement this response in accordance with the Wyoming Rules of Civil Procedure.


Scott W. Skavdahl

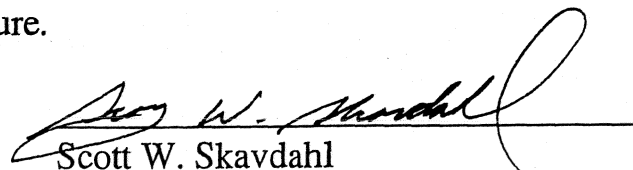
INTERROGATORY NO. 2: Specify where you believe compliance with limits for SAR and EC of such discharges should be determined to assure compliance with Chapter 1, Section 20 of the Wyoming DEQ Water Quality Rules & Regulations by not causing a measurable decrease in irrigated alfalfa production at the Swartz ranch, and explain in detail the basis for your answer:

ANSWER: Pennaco objects to the extent that this interrogatory seeks attorney work-product information, is vague and ambiguous. In addition, Pennaco objects to the extent that this interrogatory implies or assumes that any water discharged pursuant to NPDES permits is required to exceed the natural water quality existing in the Wildcat Creek drainage. Without waiving the foregoing objections, Pennaco believes that the point of compliance for SAR and EC should be imposed at the outfall, if the produced water will reach an existing point of use. If it can be demonstrated that the CBM discharge water will not reach a documented existing point of use when runoff from snowmelt or rainfall is absent, then the limits should be set pursuant to protection for the stream class initially receiving the produced water. The point of outfall is the only point at which it can be assured that the actual water quality being tested is from that operator and eliminates other potential sources (natural and otherwise) for degradation of water quality that occur once the water has been discharged from the outfall and travels down the drainage. Pennaco is continuing to review discovery responses, data and information relevant to this issue and reserves the right to supplement this response in accordance with the Wyoming Rules of Civil Procedure.


Scott W. Skavdahl

INTERROGATORY NO. 3: Do you believe that the specific restrictions on releases of CBM discharge water during the irrigation season (April through September) under current NPDES permits in the Wildcat Creek drainage should be replaced by a different system for managing discharges to assure compliance with Chapter 1, Section 20 of the Wyoming DEQ Water Quality Rules & Regulations by not causing a measurable decrease in irrigated alfalfa production at the Swartz ranch, and if so, explain in detail what you believe the systems should be and the basis for your answer.

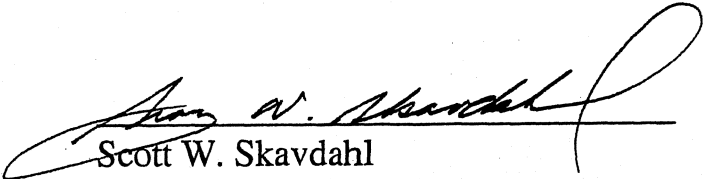
ANSWER: Pennaco objects to this request to the extent that it seeks work-product information, is vague and ambiguous. Without waiving the foregoing objections, Pennaco would state that the purpose behind the NPDES permits is to allow the discharge of water without degrading the quality of the natural water that ephemerally, intermittently or perennially occurs in the receiving waterway. Assuming that the effluent limits under the NPDES are properly set, there is no need for restrictions on the release of CBM discharge water during the irrigation season or at any other time, other than to insure discharged flows do not exceed the capacity of the channel. Pennaco is continuing to review discovery responses, data and information relevant to this issue and reserves the right to supplement this response in accordance with the Wyoming Rules of Civil Procedure.


Scott W. Skavdahl

INTERROGATORY NO. 4: Should the numeric limits for SAR and EC respectively for coalbed methane (CBM) process water discharges in the Wildcat Creek drainage be the same at all outfalls in order for the water quality to comply with

Chapter 1, Section 20 of the Wyoming DEQ Water Quality Rules & Regulations by not causing a measurable decrease in irrigated alfalfa production at the Swartz ranch, and explain in detail the basis for your answer.

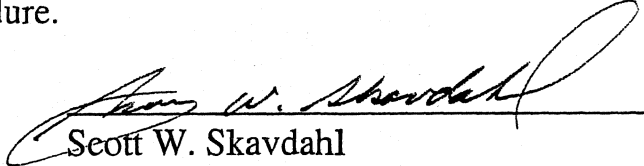
ANSWER: Pennaco would incorporate by reference herein, its objections as set for in Interrogatory No. 1. Without waiving those objections, Pennaco does not believe that numeric limits for SAR and EC are appropriate under current rules and regulations. Nonetheless, if such numeric limits were imposed, it should be based upon any facts and circumstances as to each outfall location and not the uniform limit for all outfalls regardless of location. The variables that need to be considered include, but are not limited to, soil type and composition in the drainage above and below the outfall, conveyance loss, size of the drainage above the outfall, the slope or gradient of the drainage above the outfall and distance from any irrigation use of the water. Pennaco is continuing to review discovery responses, data and information relevant to this issue and reserves the right to supplement this response in accordance with the Wyoming Rules of Civil Procedure.


Scott W. Skavdahl

INTERROGATORY NO. 5: Should the numeric limits for SAR and EC respectively for coalbed methane (CBM) process water discharges in the Wildcat Creek drainage be the same at outfalls as at ICP in order for the water quality to comply with Chapter 1, Section 20 of the Wyoming DEQ Water Quality Rules & Regulations by not causing a measurable decrease in irrigated alfalfa production at the Swartz ranch, and explain in detail the basis for your answer.

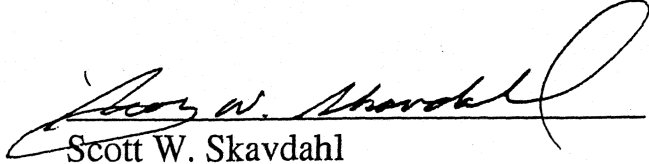
ANSWER: Pennaco incorporates by reference herein its objections as previously set forth in interrogatories #1 and #4. Without waiving the foregoing objections, Pennaco does not believe that any numeric limits, if appropriate to impose,

should be the same at outfalls as they are at irrigation compliance points (ICP) as such standards ignore science and reality. This understanding is predicated on the basis that an ICP is located downstream of the point of discharge and upstream of the existing point of use it is designed to protect. While Pennaco is still evaluating and considering the various information and data at this time, the reasons include, but are not limited to, the fact that such limits ignore the natural accumulation of salts that occur due to surficial processes from the outfall point to the ICP, the contribution of natural and other waters from sources other than the outfall which contribute to and affect SAR and EC values and water quantity, which may affect water from the point of the outfall to the ICP. Pennaco is continuing to review discovery responses, data and information relevant to this issue and reserves the right to supplement this response in accordance with the Wyoming Rules of Civil Procedure.


Scott W. Skavdahl

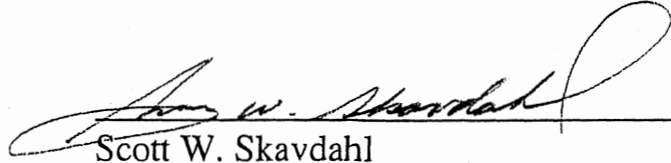
INTERROGATORY NO. 6: Identify the landowner of each site at which you do or will conduct coalbed methane operations which discharge CBM water in the Wildcat Creek drainage subject to NPDES permits issued by the DEQ.

ANSWER: Pennaco objects to this interrogatory to the extent that it seeks proprietary information in the form of future areas of operation or interest. Without waiving the foregoing objection, Pennaco states that the only landowner upon which it conducts operations and to which it discharges CBM water is Twenty Mile Land Company.


Scott W. Skavdahl

INTERROGATORY NO. 7: Specify the precise basis upon which you can assure unconditional landowner consent for unrestricted site access by DEQ inspectors to each of your CBM operations which do or will discharge CBM water in the Wildcat Creek drainage subject to NPDES permits issued by DEQ.

ANSWER: Pennaco objects to this request to the extent that it assumes any landowner consent is required under Wyoming law. Specifically, pursuant to Wyo. Stat. § 35-11-109, any designated, authorized officers of the Department of Environmental Quality are authorized pursuant to their enforcement power to enter and inspect any property, premise or place, except private residence, on or at which a water pollution source is located or is being constructed or installed. Thus, landowner consent is not required.


Scott W. Skavdahl

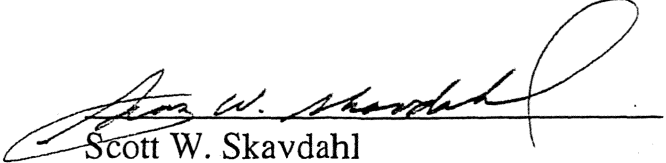
INTERROGATORY NO. 8: Identify (name, business, and professional affiliation, address, telephone number) each and every individual who had input in preparing your answers to each of the above interrogatories and specify the nature of that input.

ANSWER: In addition to legal counsel, Joe Olson, former Manager of Hydrology, Marathon/Pennaco and Stephanie Olson, Health, Environment and Safety Manager, Powder River Business Unit, Marathon/Pennaco had input in preparing this answer with respect to Interrogatories 1 through 6.

INTERROGATORY NO. 9: List each and every document or source of information (including, but not limited to, articles, studies, reports, data compilations) relied on or referenced by each individual identified above for input in preparing your answers to each of the above interrogatories.

ANSWER: Pennaco objects to this request to the extent that it is overly broad, vague, ambiguous and seeks attorney work-product. Without waiving the foregoing objections, please see that data and information submitted in support of Pennaco's Applications for Permits Nos. WY0048224, WY0048232, WY0047384 and WY0047376 and information and data produced in response to discovery requests of Swartz as well as those documents contained in the DEQ's permit files as referenced

above. Other documents and sources of information may have been used for general background information and understanding of the physical systems present in Wildcat Creek.

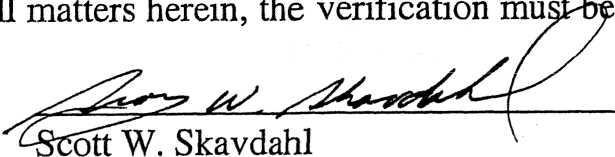

Scott W. Skavdahl

INTERROGATORY NO. 10: Identify (name, business, and professional affiliation, address, telephone number) of each and every individual you will or may call to testify at the hearing in this consolidated case regarding the substance of your answers to the above interrogatories and specifically describe any opinions they will express and the basis of such opinions.

ANSWER: Please see Pennaco Energy Inc.'s Designation of Expert Witnesses and attached information. In addition, Pennaco will identify the fact witnesses which it will or may call to testify at this hearing in accordance with the Environmental Quality Counsel's scheduling order.

Objection: Limited Verification

The verification herein is limited inasmuch as multiple individuals provided input to these responses. The verification therefore merely affirms that [Name] has attempted to exhaust all potentially responsive documents and to consult all persons who might have knowledge of the matters addressed herein. Because it is impossible for one individual to have knowledge of all matters herein, the verification must be limited.


Scott W. Skavdahl

RESPECTFULLY SUBMITTED this 29th day of May, 2003.



MARGO HARLAN SABEC and
RICHARD E. DAY
SCOTT W. SKAVDAHL
Williams, Porter, Day & Neville, P.C.
P. O. Box 10700
Casper, Wyoming 82602
(307) 265-0700
(307) 266-2306
Attorneys for Pennaco Energy, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that a true, full and correct copy of the foregoing *Pennaco Energy Inc.'s RESPONSES TO DEQ'S COMBINED REQUEST FOR DISCOVERY* was served upon the following via U.S. Mail, postage prepaid, first class, on this 29th day of May, 2003:

Maggie Allely
Michael Barrash
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123 Capitol Building
Cheyenne, WY 82002

Kate Fox
Davis & Cannon
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Cheyenne, WY 82001

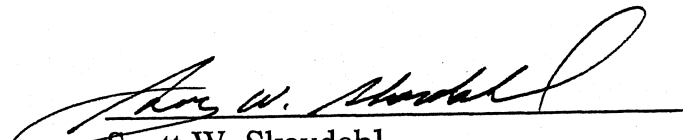
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ATTORNEYS AT LAW

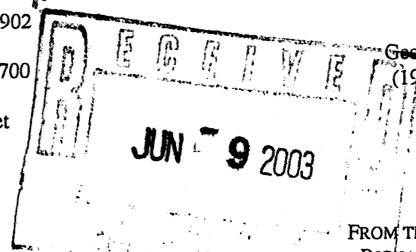
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BARRY G. WILLIAMS
PATRICK J. MURPHY
STUART R. DAY
STEPHENSON D. EMERY
SCOTT E. ORTZ
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SCOTT K. KLOSTERMAN
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(1922 - 2002)

Geo. M. Porter
(1915-1990)



June 6, 2003

FROM THE DESK OF:
RICHARD E. DAY
E-mail: rday@wpdn.net

Ms. Magdalene M. Allely
Mike Barrash
Assistant Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002

RE: In *the Matter of the Appeal of Edward H. Swartz, et al.*
Consolidated Docket No. 02-3801

Dear Ms. Allely:

Pursuant to Mr. Day's instructions, enclosed is page 9 of *Pennaco Energy Inc.'s Response to DEQ's Combined Request for Discovery* which was served on all counsel by Certificate of Service dated May 29. Would you please replace these signature pages within your copy of the document. This should complete the set of discovery responses for Pennaco. By copy of this letter, we are sending a copy of our signature page to all counsel. If you have any questions or need any additional information, please do not hesitate to call.

Very truly yours,

Cherie L. Carpenter
Secretary To
RICHARD E. DAY

RED/clc

cc: Kate Fox	(W/Enclosures)
Keith Burron	(W/Enclosures)
Jack Palma	(W/Enclosures)
Mike Wozniak	(W/Enclosures)
Tom Lubnau	(W/Enclosures)

DATED this 3rd day of ~~May~~^{June}, 2003. SO

Stephanie Olson

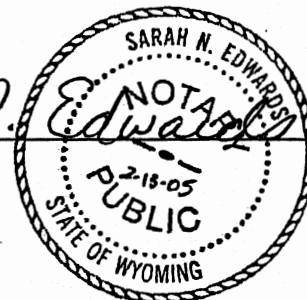
Stephanie Olson, Health, Environment and Safety Manager, Powder River Business Unit, Marathon Oil Company/Pennaco Energy, Inc.

STATE OF Wyoming)
COUNTY OF Campbell) ss.

SUBSCRIBED AND SWORN to before me this 3rd day of ~~May~~^{June}, 2003 by Stephanie Olson, HES Manager, Powder River Business Unit, Marathon Oil Company/Pennaco Energy, Inc.

Witness my hand and official seal.

Sarah N. Edwards
Notary Public



²⁻¹⁸⁻⁰⁵
My Commission Expires:
2/13/05

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: All documents listed, identified, or referenced in your answer to any of the interrogatories above.

RESPONSE: See Petitioner's Response to Interrogatory No. 10; those documents have previously been produced and/or made available for inspection at the Law Offices of Williams, Porter, Day & Neville, P.C. upon reasonable notice.





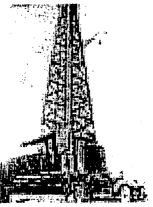
OUR HISTORY

Since 1887, Marathon Oil Corporation has been making energy history. The following is a timeline tracking the Company's growth and evolution as a leader in worldwide energy innovations.



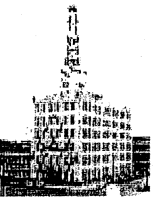
1887

The Ohio Oil Company is founded under the leadership of president Henry M. Ernst in northwestern Ohio-the country's leading center for crude oil production at this time. "The Ohio" becomes the largest oil producer in the state.



1889

John D. Rockefeller's Standard Oil Trust purchases The Ohio.



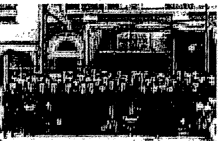
1905

The company moves its headquarters from Lima, Ohio, to Findlay, Ohio.



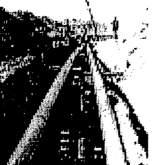
1908

Establishing itself as a major pipeline company, The Ohio now controls one half of the field production in three states.



1911

The Ohio resumes independent operation following the dissolution of the Standard Oil monopoly, as a result of Teddy Roosevelt's trust busting campaign. James C. Donnell becomes president of the company.



1915

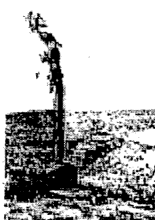
The Ohio assigns 1,800 miles of pipeline, as well as gathering and storage facilities, to the newly acquired Illinois Pipe Line Company.



1924

The Ohio purchases the Lincoln Oil Refining Company to better integrate and develop crude oil outlets.

1926



The Ohio discovers the Yates Field in West Texas. The Ohio forms the Ohio-Mexico Oil Company to manage seven concessions in northern Mexico.



1930

The Ohio purchases the Transcontinental Oil Company, acquiring the Marathon product name, the Pheidippides Greek runner trademark, and the "Best in the long run" slogan. The Ohio Oil Company's stock is publicly traded on the New York Stock Exchange for the first time.

1931

Drilling discoveries in Mexico result in The Ohio's first international natural gas production.



1943

The Ohio dissolves the Illinois Pipe Line Company and creates its own internal pipeline department. The Ohio begins prospecting in Canada and Guatemala.

1948

Amerada, Conoco and The Ohio Oil Company combine to form the Conorado Petroleum Corporation to identify geologically promising production sites worldwide.

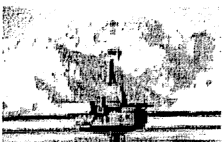
1949

Drilling discoveries in Alberta, Canada, result in The Ohio's first international oil production.



1959

The Ohio purchases the Aurora Gasoline Company, taking the company's gasoline sales beyond the national industry average. The Ohio's pipeline department forms Marathon Pipe Line Company. The company opens an office in the United Kingdom to handle interests in the Eastern Hemisphere.



1961

Following the discovery of the Kenai natural gas field in 1959, The Ohio begins supplying natural gas to Anchorage, the largest city in Alaska.

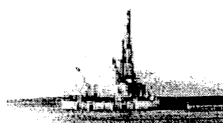
1962

In celebration of its 75th anniversary, The Ohio changes its name to **Marathon Oil Company** in honor of its brand-name motor fuel and launches its new logo design. Marathon Oil Company acquires Plymouth Oil Company, launching the company into the wholesale gasoline business. Marathon, Amerada Hess and Conoco form The Oasis Group and achieve world-class commercial oil discoveries in Libya's Sirte Basin.



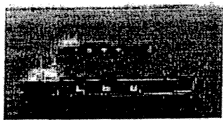
1965

Pioneers in the region, Marathon discovers the McArthur River oilfield in the Cook Inlet region-fully establishing the company in the state of Alaska.



1967

Marathon Oil Company leads the development of the world's first ocean tankers specially designed to transport liquefied natural gas (LNG). Exports of LNG to Japan begin in 1969.



1971

Marathon discovers the Kinsale Head natural gas field offshore Ireland. Production from two platforms begins in the late 1970s, providing Ireland with its first indigenous source of natural gas to date.



1976

Marathon purchases international exploration and production company, Pan Ocean Oil Corporation, gaining assets in the United Kingdom, Nigeria, Norway and Indonesia.



1977

To meet the fuel demands of modern catalytic-converter equipped cars, Marathon Oil Company acquires a new refinery in Garyville, Louisiana, the nation's first grassroots refinery in more than a decade.



1982

Marathon Oil Company becomes a wholly owned subsidiary of the **United States Steel Corporation**.



1983

Marathon's Brae A platform in the South Brae Field comes onstream in the North Sea, beginning production in the United Kingdom.



1984

Marathon Oil Company acquires the exploration and production properties of Husky Oil, a premier producer in the state of Wyoming.



1985

The Yates Field produces its billionth barrel of oil.

1986

As a result of large-scale restructuring, the United States Steel Corporation changes its name to **USX Corporation**, which includes the Marathon Group and United States Steel LLC. Marathon brings the KH Field in Indonesia's offshore Kakap Block onstream.



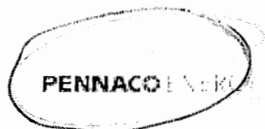
1990

Marathon establishes its headquarters in Houston, Texas.



1998

Marathon and Ashland Inc. form **Marathon Ashland Petroleum LLC (MAP)**, a joint venture combining the companies' refining, marketing and transportation businesses. At the end of its start-up year, MAP emerges as one of the foremost firms in the downstream sector of the American petroleum industry. Marathon also adds Canadian assets through its acquisition of Tarragon Oil & Gas Ltd.



2001

Marathon acquires Pennaco Energy adding a leading coal bed methane asset and expanding its natural gas resources in North America. The USX Corporation's Board of Directors vote to separate the Marathon Group and United States Steel LLC and re-establish them as two independent companies.



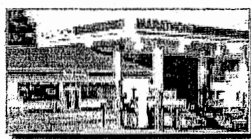
2002

Marathon Oil Corporation established as a standalone company trading on the New York Stock Exchange under the symbol MRO. Marathon acquires CMS Energy's assets in Equatorial Guinea.



2003

Marathon acquires Khanty Mansiysk Oil Corporation (KMOC), forming the basis for a new core area in Russia.








2005

Marathon becomes 100 percent owner of Marathon Ashland Petroleum LLC. Marathon Ashland Petroleum LLC changes name to Marathon Petroleum Company LLC.

2006

Marathon finalizes plans for \$3.2 billion Garyville, Louisiana, refinery expansion that will increase plant's capacity by 180,000 barrels per day. When completed in late 2009, Marathon will supply an additional 7.5 million gallons of clean transportation fuels to the market each day.

 company snapshot  print  e-mail  link

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Marathon Oil Company Completes Merger of Pennaco Energy, Inc.

DEQ "ATTACHMENT C"

HOUSTON, March 27 /PRNewswire/ -- Marathon Oil Company announced that it has completed the acquisition of Pennaco Energy, Inc. (Amex: PN), through a merger approved by the Pennaco shareholders at a meeting held in Houston on March 26. Under the terms of the merger, shares not held by Marathon were converted into the right to receive \$19 in cash.

Marathon's intention to acquire Pennaco was announced on December 22, 2000 and the subsequent tender offer closed on February 5. At that time Marathon acquired 86% of Pennaco stock. With the merger, Pennaco is now a wholly-owned subsidiary of Marathon Oil. The total cost of the acquisition was approximately \$500 million, including net debt of \$54 million.

Marathon's Pennaco operations will be run from Pennaco's office in Denver. Terry Dobkins, former vice president of Production for Pennaco will head the new unit and report to Steve Hinchman, Marathon's senior vice president of Worldwide Production.

"Much of the growing demand for energy in the United States will be met by natural gas, particularly the growth in electric power generation," said Hinchman. "The North American gas market is a core area for Marathon, and this acquisition boosts our already strong presence. These assets add significant new reserves that we plan to develop and deliver quickly to the marketplace.

"This is a focused operation with talented people who are determined to make a difference to Marathon's natural gas business. Furthermore, I am delighted to say that we have had a 98 percent acceptance rate for the job offers made to the Pennaco team following the merger."

Pennaco was founded in 1998 and is entirely focused on the production of coal bed methane gas (CBM) from the Powder River Basin, located in northern Wyoming and southern Montana. The company is one of the largest leaseholders in this play with over 400,000 net acres and current net production of over 50 million cubic feet of natural gas per day. Net proven reserves are estimated at approximately 200 billion cubic feet, with probable reserves of over 800 billion cubic feet. Marathon estimates that the ultimate acquisition and development costs of the proven, plus probable reserve base will be around \$4.50 per barrel of oil equivalent.

Marathon Oil Company, part of the USX-Marathon Group (NYSE: MRO) and a unit of USX Corporation, is a large fully integrated oil firm engaged in the worldwide exploration and production of crude oil and natural gas. Through Marathon Ashland Petroleum LLC, the Company also refines, markets and transports petroleum products in the United States. Visit the company's Web site at <http://www.marathon.com> or <http://www.usx.com>.

This release contains forward-looking statements with respect to estimated proven reserves, potential additional reserves, plans for prompt development and the presently expected development costs. This forward-looking information is based on certain assumptions (including, among others) presently known physical data concerning size and character of reservoirs, economic recoverability, ability to obtain required permits, future drilling success, production experience, industry economic conditions (such as supply and demand), levels of company cash flow from operations and operating conditions. This forward looking information may prove to be inaccurate and actual results may differ significantly from those presently anticipated. In accordance with "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, USX has included in Form 10-K, for the year ended December 31, 2000, cautionary language identifying other important factors, though not necessarily all such factors, that could cause future outcomes to differ from those set forth in these forward-looking statements.

SOURCE Marathon Oil Company

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Related links:

- <http://www.usx.com>
- <http://www.marathon.com>

Company News On-Call:

- <http://www.prnewswire.com/comp/133204.html> or
- <http://www.prnewswire.com/comp/929150.html> or fax, 800-758-5804, ext. 133204, or ext. 929150

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