

**FILED**

JAN 04 2003

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 PREHEARING MEMORANDUM

Respondent Wyoming Department of Environmental Quality (DEQ), pursuant to the Wyoming Environmental Quality Council's (EQC) December 6, 2007 Amended Order to Reschedule Prehearing Conference in the above-captioned consolidated case, submits the following Prehearing Memorandum:

Witnesses

1. Jason Thomas, WQD Supervisor for WYPDES/CBM Permitting, Herschler Building 4th Floor West, 122 W. 25th Street, Cheyenne, Wyoming 82002, 307-777-7781. Respondent DEQ will call Mr. Thomas to testify about issues relating to the contested Willow Creek Watershed General Permit.

2. Kathy Shreve, WQD WYPDES Environmental Program Principal, Herschler Building 4th Floor West, 122 W. 25th Street, Cheyenne, Wyoming 82002, 307-777-7781. Respondent DEQ will call Ms. Shreve to testify about issues relating to the contested Pumpkin Creek Watershed General Permit, and, if necessary, the Fourmile Creek Watershed Plan.

3. Bill DiRienzo, WQD WYPDES Program Manager, Herschler Building 4th Floor West, 122 W. 25th Street, Cheyenne, Wyoming 82002, 307-777-7781. Respondent DEQ will call Mr. DiRienzo to testify about issues relating to the contested Watershed General Permits and, if necessary, the Fourmile Creek Watershed Plan.

4. John Wagner, WQD Administrator; Herschler Building 4th Floor West, 122 W. 25th Street, Cheyenne, Wyoming 82002, 307-777-7781. Respondent DEQ may call Mr. Wagner to testify about issues relating to contested Watershed General Permits and, if necessary, the Fourmile Creek Watershed Plan.

5. Respondent DEQ may call any of the other parties' witnesses to testify about issues relating to contested Watershed General Permits and, if necessary, the Fourmile Creek Watershed Plan.

6. Respondent DEQ may call any other witnesses for purposes of rebuttal, impeachment, or foundation.

#### Exhibits

1. "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.

2. The contested Pumpkin Creek Watershed General Permit.

3. The contested Willow Creek Watershed General Permit.

4. The contested Fourmile Creek General Plan, *if necessary*.

5. The DEQ's "Fact Sheet" for the contested Pumpkin Creek General Permit.

6. The DEQ's "Fact Sheet" for the contested Willow Creek General Permit.

7. The DEQ's "Rationale" for the Fourmile Creek General Plan, *if necessary*.

8. USDA Agricultural Resource Service (ARS) Salt Tolerance Database Printout.

9. Hanson Diagram.

10. Petitioners Yates Petroleum Corporation's (Yates), Marathon Oil Company's (Marathon) and Citation Oil & Gas Corp.'s (Citation), collectively Y/M/C, "Initial Expert Disclosure Statement" dated August 1, 2007, with Attachments, and cover letter dated August 1, 2007.

11. Y/M/Cs' September 4, 2007 cover letter for Export Reports.

12. Dr. Eric Kern's (Golder Associates Inc.) Expert Report ("Evaluation of Surface Water Quality in the Pumpkin Creek Drainage Associated with Development of the Watershed-Based Permit for Coal Bed Natural Gas (CBNG) Discharges") dated August 2007, with Tables, Figures, Appendices.

13. Mr. Hugh Lowham's (Lowham Engineering LLC) Expert Report ("The Hydrology and Channels of Pumpkin, Willow, and Fourmile Creeks, Campbell and Johnson Counties, Wyoming") dated August 31, 2007, with Appendices D & E.

14. Petitioner Wyoming Outdoor Council's (WOC) "List of Expert Witnesses," dated August 22, 2007.

15. Y/M/Cs' Answers to DEQ's Interrogatories, dated October, 2007.

16. Y/M/C's October 26, 2007 letter ("Re: Landowner Testimony") following up on Y/M/C's response to DEQ's Interrogatories.

17. Any documents, including exhibits and/or attachments thereto, *filed with the EQC* in Doc. Nos. 06-3815, 06-3816 or 06-3817 by Petitioners Y/M/C or Petitioner WOC, which are not specifically listed here.

18. Any other exhibits needed for purposes of rebuttal, impeachment, or foundation.

#### Identification of Issues for Hearing

These consolidated appeals were initiated by the Notice of Appeal filed by Y/M/C (Doc. No. 06-3815) contesting the Pumpkin Creek and Willow Creek Watershed General Permits and the Fourmile Creek Watershed Plan, and the two Petitions for Review filed by WOC (Doc. Nos. 06-3816 & 06-3817) contesting the Pumpkin Creek Watershed General Permit and the Willow Creek Watershed General Permit, respectively. The issues in this consolidated case are those *specifically identified* in Y/M/Cs' Notice and WOC's Petitions, except for the following:

1. The EQC's Scheduling Conference Order in Doc. No. 06-3815 (filed June 5, 2007) determined Petitioners Y/M/Cs' pleadings were sufficient to give DEQ notice of the four claims upon which Y/M/Cs' protest is based, no further pleadings were required from DEQ, and no matters other than those specifically admitted by DEQ are deemed admitted.

2. The EQC's December 6, 2007 Order Denying Summary Judgment eliminates the first three issues identified in WOC's Petitions from the scope of the hearing.

3. The EQC's decision on the DEQ's pending Motion for Partial Summary Judgment could determine that the fourth issue (assimilative capacity requirements) identified in Y/M/Cs' Notice of Appeal and/or the appeal of the Fourmile Creek Watershed Plan are not ripe for review on the merits in this proceeding.

Pending Motions

1. Respondent DEQ's Motion for Partial Summary Judgment.

Other Matters

1. Foundation and admissibility of exhibits.
2. Y/M/Cs' and WOC's non-expert witnesses.
3. Order of presentation of cases.
4. Other.

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 PREHEARING MEMORANDUM 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 email, addressed as follows:

Eric L. Hiser  
Matthew Joy  
Jorden, Bischoff & Hiser  
7272 E. Indian School Road, Suite 360  
Scottsdale, AZ 85251  
Phone: 480-505-3900  
Fax: 480-505-3901  
[ehiser@jordenbischoff.com](mailto:ehiser@jordenbischoff.com)  
[mjoy@jordenbischoff.com](mailto:mjoy@jordenbischoff.com)

Steve Jones  
Watershed Protection Program Attorney  
Wyoming Outdoor Council  
262 Lincoln Street  
Lander, WY 82520  
Phone: 307-332-7031  
Fax: 307-332-6899  
[steve@wyomingoutdoorcouncil.org](mailto:steve@wyomingoutdoorcouncil.org)



Attorney General's Office