

**FILED**

JAN 04 2008

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 ISSUANCE )  
OF WYOMING POLLUTANT DISCHARGE )  
ELIMINATION SYSTEM (WYPDES) )  
GENERAL PERMITS AND THE )  
FOURMILE CREEK WATERSHED PLAN )  
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Docket No. 06-3816  
(Consolidated with 06-3815  
and 06-3817)

**YATES PETROLEUM CORPORATION, MARATHON OIL COMPANY AND  
CITATION OIL AND GAS CORP. PRE-HEARING MEMORANDUM**

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Come now the Petitioners (Yates Petroleum Corporation, Marathon Oil Company and Citation Oil and Gas Corp., collectively "Petitioners"), by and through their attorneys, Eric L. Hiser and Matthew Joy, and hereby present their Pre-Hearing Memorandum as follows:

**Summation of the Facts**

The Wyoming Department of Environmental Quality, Water Quality Division (WDEQ) issued the Pumpkin Creek General Permit (WYG 280000), the Willow Creek General Permit (WYG 290000) and the Fourmile Creek General Permitting Plan (collectively referred to as "the permits") on September 11, 2006.

WDEQ included the following conditions in the permits:

- 1) Effluent limitations applicable to Category IC discharges located above irrigation diversion for specific conductance (EC) and sodium adsorption ratio (SAR) that do not take in to account natural water quality;
- 2) As an alternative to meeting the overly-stringent effluent limits for EC and SAR, a permittee has the “option” of containing produced water in reservoirs with enough capacity to contain the amount of produced water and a 50-year, 24-hour storm event;
- 3) Water quality-based effluent limits for EC and SAR apply at end-of-pipe and do not take in to consideration a mixing zone, as required under the Wyoming Water Quality Rules & Regulations; and
- 4) The permits incorporate, and require compliance with, the *Wyoming Powder River Assimilative Capacity Allocation and Control Process* despite the fact that implementation of the Process and the process for authorizing credits under the Process are not finalized.

Petitioners timely filed a Notice of Appeal and Request for Hearing on November 9, 2006. In addition, the Wyoming Outdoor Council (WOC) also filed a Notice of Appeal and Request for Hearing on November 9, 2006. On August 14, 2007, the EQC allowed Petitioners to intervene in the WOC appeal. On October 4, 2007, the above captioned docket numbers were consolidated.

### **Legal Issues**

The legal questions to be resolved by the Environmental Quality Council are:

1. Are the effluent limits applicable to Category IC discharges located above irrigation for EC and SAR water quality-based?
2. Are the effluent limits applicable to Category IC discharges located above irrigation for EC and SAR appropriate under 1 WWQRR § 20, given that Section 20 provides that “surface waters which have the natural water quality for use as an agricultural water supply shall be *maintained* at a quality which allows for continued use of such waters for agricultural uses”?
3. Are the effluent limits applicable to Category IC discharges located above irrigation for EC and SAR appropriate?
4. Is the 50-year, 24-hour storm event containment requirement justifiable (i.e., reasonable), given the on-the-ground circumstances?
5. If the effluent limits applicable to Category IC discharges located upstream of irrigation for EC and SAR are water quality-based effluent limits, is it appropriate to require compliance with the effluent limits at end-of-pipe and not allow for a mixing zone?
6. Does the incorporation of the *Wyoming Powder River Assimilative Capacity Allocation and Control Process* in the permits provide fair notice concerning what requirements will be imposed on permittees?

#### Witnesses

The Petitioners will call the following witnesses:

Dr. Eric Kern  
Golder Associates  
3206 Durland Drive

Billings, MT  
(406) 656-4947

Dr. Kern is expected to testify regarding the fact that the effluent limits set forth in the permits are not appropriate under Chapter 1, Section 20 of the Wyoming Water Quality Rules & Regulations. Dr. Kern is also expected to testify regarding the results of data analysis of storm flow data in Pumpkin Creek in support of this opinion. Dr. Kern is also expected to testify that end-of-pipe compliance for EC and SAR effluent limits is not technically appropriate. Dr. Kern is expected to testify consistently with his deposition testimony and expert report (listed as Exhibit 1, below).

Mr. Hugh Lowham, P.E.  
Lowham Engineering LLC  
205 South Third Street  
Lander, WY 82520  
(307) 335-8466

Mr. Lowham is expected to testify regarding the reasonableness of requiring 50-year containment for Category 2 discharges. Specifically, Mr. Lowham is expected to testify regarding: safety concerns raised by such large empty reservoirs, from a reservoir construction and safety standpoint; the feasibility of constructing reservoirs of such size in upland areas given topography and land availability; the feasibility of utilizing existing reservoirs under the new containment requirement; the increase in land disturbance to accommodate such large reservoirs. Mr. Lowham may provide additional testimony concerning water quality data gathered at the Iberlin Ranch. Mr. Lowham is also expected to testify consistently with his expert report (listed as Exhibit 2, below) and his deposition testimony.

Mr. Bob Innes  
888 Black & Yellow Road

Gillette, WY 82717  
(307) 939-1360

Mr. Innes is a landowner in Pumpkin Creek who has expressed significant concern over the requirement that discharges be contained in reservoirs with enough freeboard to contain a 50-year, 24-hour storm event. Mr. Innes is expected to testify regarding the overly-large size requirement and its potential effects on management and operations at his ranch. Mr. Innes is also expected to testify regarding the issues presented by the large containment requirement with respect to his existing ponds.

The Petitioners may call the following witnesses:

John Wagner  
Administrator, Water Quality Division  
Department of Environmental Quality  
122 W. 25<sup>th</sup> Street  
4<sup>th</sup> Floor West  
Cheyenne, WY 82002  
(307) 777-7781

Mr. Wagner was, and is, the Administrator of the Water Quality Division at the time the general permits were developed. Mr. Wagner may testify regarding his reasoning and justifications for developing the permit conditions at issue in this matter.

Bill DiRienzo  
WYPDES Program Manager  
Department of Environmental Quality  
122 W. 25<sup>th</sup> Street  
4<sup>th</sup> Floor West  
Cheyenne, WY 82002  
(307) 777-7781

Mr. DiRienzo was the Supervisor for the watershed program that developed the Watershed based permits. Mr. DiRienzo recommended to Mr. Wagner and Mr. Corra

that the final permits be signed. Mr. DiRienzo may testify regarding the reasons and justification used in developing the conditions of the permits at issue in this matter.

Jason Thomas  
Department of Environmental Quality  
122 W. 25<sup>th</sup> Street  
4<sup>th</sup> Floor West  
Cheyenne, WY 82002  
(307) 777-5504

Mr. Thomas was the permit writer for the Willow Creek Watershed General Permit. Mr. Thomas may testify regarding the factors involved in establishing the permit conditions at issue in this appeal.

Todd Parfitt  
Deputy Director, Administrator of the Industrial Siting Program  
Department of Environmental Quality  
122 W. 25<sup>th</sup> Street  
4<sup>th</sup> Floor West  
Cheyenne, WY 82002  
(307) 777-7555

Mr. Parfitt was the WYPDES program manager during the early phases of development of the general permits (until February, 2006). As such, Mr. Parfitt may testify regarding the development of permit conditions at issue in this matter.

Kathy Shreve  
Environmental Program Principal  
Department of Environmental Quality  
122 W. 25<sup>th</sup> Street  
4<sup>th</sup> Floor West  
Cheyenne, WY 82002  
(307) 777-6682

Ms. Shreve was the permit writer for the Pumpkin Creek General Permit and the Fourmile Creek General Permitting Plan. As the primary permit writer, Ms. Shreve may testify, if called, regarding the justification for the conditions at issue in this appeal.

In addition, the Petitioners may call any witnesses listed by the WDEQ or Wyoming Outdoor Council, and may also call any witnesses that may be needed for rebuttal testimony, if allowed.

### **Exhibits**

The Petitioners may use the following exhibits during the course of the hearing:

1. 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, Dr. Eric Kern, Golder Associates, dated August, 2007.
2. The Hydrology and Channels of Pumpkin, Willow, and Fourmile Creeks, Campbell and Johnson Counties, Wyoming and Appendices and Maps, Mr. Hugh Lowham, P.E., Lowham Engineering, LLC, dated August 31, 2007.
3. Letter to Todd Parfitt, WDEQ, from T. Barber, dated September 29, 2005.
4. Water Quality Objectives, Pumpkin Creek, undated, pp. 1 to 8 (available from WDEQ Stakeholder Meeting Documents and History, June 14, 2005 Meeting).
5. Pumpkin Creek Draft General Permit, revision date 10-11-05.
6. Pumpkin Creek Draft General Permit, revision date 12-16-05.
7. Fact Sheet, General permit for Pumpkin Creek CBM Surface Discharge, revision date 12-21-05.
8. Fact Sheet, Pumpkin Creek Watershed General Permit for Surface Discharges Related to Coal Bed Methane Production, revision date 02-08-06.
9. Fact Sheet, Pumpkin Creek Watershed General Permit for Surface Discharges Related to Coal Bed Methane Production WYG280000, dated 08-25-06.
10. General Permit WYG280000, signed September 11, 2006.
11. Response to public Comments Related to Pumpkin Creek Watershed General Permit – WYG280000, dated September 13, 2006.

12. Water Quality Objectives, Fourmile Creek, dated 03-02-05, pp. 1 to 4 (available from WDEQ Stakeholder Meeting Documents and History, June 14, 2005 Meeting).
13. Fourmile Creek Draft General Permit, revision date 10-11-05.
14. Fourmile Creek Draft Plan for Coal Bed Methane Discharges, revision date 12-16-05.
15. Rationale, Plan for Fourmile Creek CBM Surface Discharge, revision date 01-30-06.
16. Fourmile Creek Watershed General Permit for Surface Discharges Related to Coal Bed Methane Production, revision date 02-08-06.
17. Rationale, Plan for Fourmile Creek CBM Surface Discharge, revision date 08-25-06.
18. Response to Public Comments Related to Fourmile Creek Watershed Permitting Plan, dated September 13, 2006.
19. Water Quality Objectives, Willow Creek, dated 02-23-05, pp. 1 to 5 (available from WDEQ Stakeholder Meeting Documents and History, February 23, 2005 Meeting).
20. Willow Creek Watershed – Proposed End-of-Pipe CBM Effluent Limits and Monitoring, dated June 15, 2005, pp. 1 to 2 (available from WDEQ Stakeholder Meeting Documents and History, June 15, 2005 Meeting)
21. Willow Creek Watershed Committee Comments, dated November 3, 2005 (available from WDEQ Stakeholder Meeting Documents and History, November 3, 2005 Meeting).
22. Willow Creek Draft General Permit for Surface Discharges Related to Coal Bed Methane Production, revision date August 11, 2005.
23. Willow Creek Draft General Permit for Surface Discharges Related to Coal Bed Methane Production, revision date November 4, 2005.
24. Willow Creek Draft General Permit for Surface Discharges Related to Coal Bed Methane Production, revision date December 20, 2005.
25. Fact Sheet, Willow Creek Draft General Permit for Surface Discharges Related to Coal Bed Methane Production, revision date February 16, 2006.



26. Willow Creek Draft General Permit for Surface Discharges Related to Coal Bed Methane Production, revision date February 16, 2006.
27. Fourmile Creek Watershed Plan for Surface Discharges Related to Coal Bed Methane Production, signed September 11, 2006.
28. Fact Sheet, Willow Creek Watershed General Permit for Surface Discharges Related to Coal Bed Methane Production, undated.
29. Willow Creek Watershed General Permit for Surface Discharges Related to Coal Bed Methane Production, signed September 11, 2006.
30. Response to Public Comments Related to Willow Creek Watershed General Permit, dated September 13, 2006.
31. Deposition Transcript of Virginia "Ginger" Paige, November 20, 2007.
32. Deposition Transcript of Larry C. Munn, November 20, 2007.
33. Deposition Transcript of Hugh Lowham, October 19, 2007.
34. Deposition Transcript of Dr. Eric Kern, October 30, 2007.
35. Deposition Transcript of Jason Thomas, October 18, 2007.
36. Deposition Transcript of Todd Parfitt, October 24, 2007.
37. Deposition Transcript of Kathy Shreve, October 22, 2007.
38. Deposition Transcript of Bill DiRienzo, October 23, 2007.
39. Deposition Transcript of John F. Wagner, October 24, 2007.
40. Letter to Leah Krafft, WDEQ, from T. Barber, Yates Petroleum Corporation, dated March 28, 2006.
41. WPDES Discharge Permit, Permit Number WY0040282, issued to Storm Cat Energy Corporation, signed October 10, 2007.

Exhibit 1 is Dr. Kern's Expert Report regarding surface water quality in Pumpkin Creek and sets forth the grounds for Dr. Kern's expected testimony. Dr. Kern will testify consistent with this report. The report has been provided to opposing counsel.

Exhibit 2 is Mr. Lowham's Expert Report regarding the hydrology and channels of Pumpkin, Willow and Fourmile Creeks. This information was utilized by Mr. Lowham in developing his testimony regarding the reasonableness of the 50-year containment requirement. The report has been provided to opposing counsel.

Exhibit 3 is a letter from Tim Barber, Yates Petroleum Corporation, to Todd Parfitt, WDEQ, concerning the containment requirement for Category 2 discharges. Specifically, Mr. Barber points out that landowners are not in favor of large containment requirements.

Exhibits 4 through 30 are all part of WDEQ's permit file. To the extent that draft versions of final permits are included as well as background documents included in the file, these may be useful in determining the progress of permit development during the hearing and any trends and/or responses to comments from the public or stakeholder committees. All exhibits are available on WDEQ's watershed based permitting website.

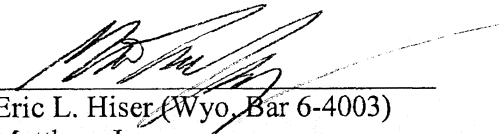
Exhibits 31 through 39 are Deposition Transcripts taken of the possible various witnesses. All parties were represented at the time of the depositions. They are included for purposes of obtaining testimony from possible witnesses at the hearing.

Exhibit 40 is a letter from Tim Barber, Yates Petroleum Corporation to Leah Krafft, WDEQ concerning the 100-year containment requirement for Category 2 discharges in the draft of the general permit prior to the date of the letter. Specifically, Mr. Barber expresses concerns regarding the large size of 100-year containment.

Exhibit 41 is a WYPDES discharge permit, permit number WY0040282, signed October 5, 2007, issued to Storm Cat Energy Corporation. This permit allows for two different effluent limits for EC and SAR. One set of effluent limits are set at the outfall and another set of effluent limits are set at a downstream irrigation compliance point.

In addition, the Petitioners may use as an exhibit any document found to be in the file of the WDEQ/WQD on this matter, any document referenced by the WDEQ/WQD in their responses to Interrogatories or Requests for Admission, any exhibit listed or used by the WDEQ/WQD, and may use other evidence or documents developed or discovered after the date of this Pre-Hearing Memorandum.

RESPECTFULLY SUBMITTED this 4<sup>TH</sup> day of January, 2008.



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Eric L. Hiser (Wyo. Bar 6-4003)  
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ATTORNEYS FOR PETITIONERS

**Certificate of Service**

I certify that on this 4<sup>th</sup> day of January, 2008, service of a true and complete copy of Petitioners' Pre-Hearing Memorandum in Consolidated File Nos. 06-3815, 06-3816 and 06-3817 was made upon each party or attorney of record herein as indicated below.

The ORIGINAL and ten (10) copies were filed by Federal Express and also emailing a .pdf version of the same on January 4, 2008 with:

Terri Lorenzon, Director / Attorney  
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COPIES were served by Federal Express and emailing a .pdf version of the same on January 4, 2008 with:

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COPIES were served by Federal Express on January 4, 2008 with:

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