

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)) Docket No. _____
PERMIT WY0049271)
(Yates, Taylor – Wild Horse Creek),)
DATED July 30, 2007)
)

**NOTICE OF APPEAL AND REQUEST FOR HEARING
CONCERNING ISSUANCE OF WYPDES
PERMIT WY0049271**

Comes now the Petitioner, Yates Petroleum Corporation (Yates), pursuant to the Department of Environmental Quality (DEQ) Rules of Practice & Procedure, Chapter 1, Section 3, and hereby files this Notice of Appeal and Request for Hearing concerning the WDEQ's issuance of WYPDES Permit number WY0049271. Yates objects to the permit as issued because the WDEQ acted outside its authority in imposing effluent limits based on a "margin of conservatism." Yates also objects to the provision requiring monthly monitoring of total dissolved solids based on the fact that monitoring for both total dissolved solids and specific conductance is unjustified and redundant. In support of this appeal, Yates advises the Environmental Quality Council (EQC) as follows:

I. Information About the Petitioner

1. The Petitioner filing this appeal is Yates Petroleum Corporation, located at 105 South 4th Street, Artesia, NM, 88210 and is qualified to do business in Wyoming.
2. Petitioner in this matter is represented by Eric L. Hiser and Matthew Joy, of Jordan Bischoff & Hiser, P.L.C., 7272 East Indian School Road, Suite 360, Scottsdale, Arizona, 85251. Correspondence and information related to this appeal should be served on Yates attorneys and on the company, c/o Lisa Norton, at the address above.
3. Yates is the owner of a coal bed natural gas (CBNG) facility called Taylor – Wild Horse Creek, WYPDES permit number WY0049271.

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II. Action Being Appealed

4. WDEQ issued a renewal WYPDES permit, number WY0049271, to Yates on or after July 30, 2007 authorizing discharge of produced water from the facility to several on-channel reservoirs located on various un-named ephemeral tributaries of Wild Horse Creek, in the Powder River Basin.
5. Yates appeals the issuance of renewal permit WY0049271 on the grounds that the effluent limitations applicable to sodium adsorption ratio (SAR) and specific conductance (EC) set forth in the permit are not based on scientific data submitted in a Section 20 Analysis conducted pursuant to DEQ's own Agricultural Use Protection Policy or any other valid scientific basis presented in the record.
6. Yates also appeals the issuance of the permit on the grounds that there is no justification for requiring monitoring of total dissolved solids (TDS) while also requiring monitoring for EC.
7. The Wyoming Department of Environmental Quality, Water Quality Division, issued a final renewal permit to Yates on or after July 30, 2007. The WQD utilized a "margin of conservatism" in unilaterally imposing artificially low effluent limitations of 15 for SAR and 2350 μ mhos/cm for EC.
8. WQD also included a monitoring requirement for TDS in the permit.
9. The effluent limitations and the TDS monitoring requirement are arbitrary and are not based on any valid grounds.

III. Basis for the Appeal

A. Procedural Background

10. Yates submitted a renewal application and supporting documentation on or around May 3, 2007. As part of this application, Yates requested that the analysis conducted in the Section 20 Compliance Analysis for Proposed Discharges by Petro-Canada to Wild Horse Creek, Campbell County, WY (November, 2005) be utilized in determining the effluent limits at issue in this appeal.
11. DEQ issued a draft permit for comment in public notice on June 15, 2007.
12. In that draft permit, DEQ utilized what it termed a "margin of conservatism" in establishing artificially low effluent limits despite the data gathered in the Section 20 Analysis. Yates timely submitted comments concerning DEQ's use of the "margin of conservatism" in establishing the effluent limits on or about July 17, 2007. Yates, through CBM Associates, also submitted comments objecting to the requirement to monitor TDS.

13. WDEQ issued the final permit, without addressing Yates' concerns regarding the SAR and EC effluent limits or the TDS monitoring requirement on or after July 30, 2007.

B. Effluent Limit Justification

14. The effluent limitations proposed in the permit were putatively developed under Chapter 1, Section 20 of the Wyoming Water Quality Rules and Regulations and the Agricultural Use Protection Policy (the Policy) developed by DEQ to assist it in establishing effluent limits for irrigation protection.
15. The purpose of the Policy is "to provide the criteria and procedures to be used by the Water Quality Division when translating the narrative goals expressed in the Section 20 standard into appropriate WYPDES permit limits." Section 20 Policy, Statement of Principal Reasons, undated, p. 3 (Attached as Exhibit "A").
16. WDEQ has failed to comply with the Policy in that the Policy does not provide the Division with the authority to introduce "a margin of conservatism" when data are evaluated to develop effluent limits based on a Tier 2 analysis (such as a Section 20 analysis).
17. The Policy does not provide for creating an artificial mechanism for lowering the EC and SAR values determined during a Tier 2 analysis, such as the Section 20 Analysis.
18. The unilateral imposition of such a margin is inconsistent with the Policy's Tier 2 option in that it is not representative of the pre-existing background water quality upon which EC and SAR effluent limits are supposed to be based.
19. In the Statement of Principal Reasons for promulgating the Policy proposed by the DEQ, the Division itself stated that "Tier 2 refers to a process whereby the default limits may be refined *to equal background water quality conditions* and is intended to be used in situations where the background EC and SAR is worse than the effluent water quality." Statement of Principal Reasons, p. 6 (italics added).
20. There is no provision in either the Section 20 Policy or the Section 20 Policy's Statement of Principal Reasons allowing for a "margin of conservatism."
21. Based on the data presented in the Section 20 Analysis, the mean soil EC for the Wild Horse Creek drainage was determined to be 4,082 $\mu\text{mhos/cm}$ which corresponds to a effluent water quality EC of 2,984 $\mu\text{mhos/cm}$.
22. According to the Statement of Basis, DEQ assumed that the lower end (3,532 $\mu\text{mhos/cm}$) of the 95% confidence interval for the mean soil EC was "the actual mean

root zone salinity for the downstream irrigated fields.” WYPDES Permit # WY0049271, Statement of Basis, p. 3. (Attached as Exhibit “B”.)

23. By making this assumption, DEQ unilaterally reduced the mean soil EC from 4,084 to 3,532 $\mu\text{mhos/cm}$.
24. DEQ made this reduction despite the fact that it acknowledged that “the actual mean root zone salinity for the whole field likely falls within a range of 3,532 to 4,636 micromhos/cm.” Statement of Basis, p. 3.
25. The reduced soil EC was then used to develop artificially low effluent limits for both EC and SAR.
26. This reduction is a significant and unjustifiable deviation from accepted statistical methodology and flies in the face of the Tier 2 approach set forth in the Agricultural Use Protection Policy/Draft Rule for the derivation of EC and SAR.
27. At the February, 2007 hearing, the EQC expressed its desire that the Policy be converted to a rule to provide for uniformity in its application and sanctioned use of the Policy in the interim.
28. Despite the EQC’s instruction to DEQ to apply the Policy uniformly to give certainty, DEQ has failed to do so, thus further injuring both discharger and land owner.
29. Similarly, the DEQ’s action is inconsistent with Section 20, Wyoming Water Quality Rules and Regulations, because the DEQ is no longer protecting the natural quality of the water, as Section 20 requires, but rather some artificial vision of what the water should be and, in so doing, DEQ violates Section 20 and imposes an unreasonable and arbitrary burden on discharge.

C. TDS Monitoring Requirement

30. The final permit requires that Yates conduct monthly monitoring at the end of pipe for TDS. Permit, Part I.A.2.b. The permit also requires monthly monitoring at end-of-pipe for EC.
31. Because EC and TDS are so closely related, monitoring only for EC is sufficient.
32. Unlike the requirement to monitor for EC, DEQ has provided no justification for the redundant requirement to monitor for TDS. *See* Statement of Basis.

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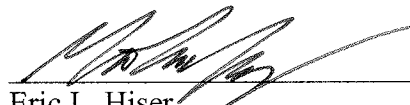
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33. Requiring monitoring for both EC and TDS is redundant and provides no additional information regarding the effect of water quality on the environment.

WHEREFORE, Yates respectfully requests the EQC grant the following relief:

1. Grant Yates a Contested Case Hearing on its appeal pursuant to the Environmental Quality Act, the Wyoming Administrative Procedures Act, and the EQC's Rules of Practice and Procedure;
2. Disapprove Permit WY0049271;
3. Instruct the DEQ, Water Quality Division to impose effluent limitations in the permit which are based on the available data;
4. Instruct the DEQ, Water Quality Division to rescind the monitoring requirement for TDS; and
5. Provide such other relief as the EQC determines just and reasonable under the circumstances.

Respectfully submitted this 27TH day of September, 2007.



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Certificate of Service

I certify that on this 27th day of September, 2007, service of a true and complete copy of Notice of Appeal and Request for Hearing Concerning Issuance of WYPDES Permit WY0049271 was made upon each party or attorney of record herein as indicated below.

The ORIGINAL and eleven (11) copies were filed by Federal Express and also emailing a .pdf version of the same on September 27, 2007 with:

Terri Lorenzon, Director / Attorney
Wyoming Environmental Quality Council
122 W. 25th Street
Herschler Bldg., R. 1714
Cheyenne, Wyoming 82002

COPIES were served by Federal Express of the same on September 27th, 2007 with:

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