

IN THE FIRST JUDICIAL DISTRICT COURT  
IN AND FOR LARAMIE COUNTY, STATE OF WYOMING

PEOPLE OF THE STATE OF )  
WYOMING, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MOUNTAIN GAS RESOURCES, INC., )  
a Delaware corporation, )  
 )  
Defendant. )

Docket No. 168-~~845~~857

**FILED**

NOV - 7 2006

**CONSENT DECREE**

GERRIE E. BISHOP  
CLERK OF THE DISTRICT COURT

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”) in the name of the People of the State of Wyoming as Plaintiff, pursuant to Sections 901(a) and 903(c) of the Wyoming Environmental Quality Act (“Act”), WYO. STATS. ANN. §§ 35-11-901(a) and 903(c) (Lexis Nexis 2005), has filed a Complaint against Defendant Mountain Gas Resources, Inc., a Delaware corporation (“MGR”), alleging that MGR failed to comply with certain DEQ/AQD permit conditions for the Fontenelle Compressor Station facility (“Facility”) located in Sweetwater County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards & Regulations (“WAQSR”), and permit MD-1224. DEQ/AQD and MGR (collectively referred to hereinafter as “Parties”), and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties at arms length and in good faith and will avoid or settle certain litigation among the Parties, and that this Consent Decree is fair, reasonable and in the public interest. WHEREAS, the Parties, by and through their respective attorneys, have agreed to the following terms for resolving this litigation prior to trial, before the taking of evidence, without the adjudication or admission of any issue of fact or law, and with the consent of the Parties, THEREFORE IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

## **I. Jurisdiction**

This Court has jurisdiction over the subject matter and parties in this civil action under Section 901(a) of the Act (WYO. STAT. ANN. § 35-11-901(a)) and venue is proper in Laramie County under Section 903(c) of the Act (WYO. STAT. ANN. § 35-11-903(c)).

## **II. Parties**

A. MGR is a Delaware Corporation authorized to conduct business in the State of Wyoming and is the owner and/or operator of the Facility.

B. DEQ/AQD is the agency of Wyoming state government responsible for enforcing the Act, the WAQSR, the State Implementation Plan (“SIP”) adopted pursuant to the federal Clean Air Act as amended, and permits issued pursuant to those provisions including permit MD-1224.

## **III. Background**

### **A. MGR**

1. MGR owns and/or operates the Facility.
2. MGR holds various DEQ/AQD permits relating to the Facility including permit MD-1224.

### **B. DEQ/AQD Construction and Modification Permitting Program**

1. WYO. STAT. ANN. § 35-11-801 and WAQSR Ch. 6, § 2 require a DEQ/AQD permit prior to commencing the construction of any new facility or modifying any existing facility which may cause the issuance of air pollution in excess of standards established by the DEQ/AQD.
2. WYO. STAT. ANN. § 35-11-801(a) provides in pertinent part, “In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards.”
3. WYO. STAT. ANN. § 35-11-801(c) states, “A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department [DEQ] is commenced.”

4. WAQSR Ch. 6, § 2, prescribes the applicability and procedures for issuing permits to sources under DEQ/AQD's construction and modification permitting program.

C. DEQ/AQD Permit MD-1224

1. On September 7, 2005, the DEQ/AQD issued permit MD-1224 to MGR for the Facility.

2. Condition 5 of permit MD-1224 sets formaldehyde emission limits for the Facility's Superior 8GTLB (FC-1 and FC-2) and Superior 8GTLA/B (FC-3) engines at 0.2 grams per horsepower-hour (0.2g/hp-hr) and 0.5 pounds per hour (0.5 lb/hr).

3. Condition 6 of permit MD-1224 requires MGR to test the Superior 8 GTLB and Superior 8 GTLA/B engines for formaldehyde emissions within 90 days of permit issuance.

D. DEQ/AQD Notice of Violation Docket No. 3849-06

1. DEQ/AQD has alleged that MGR conducted formaldehyde emission tests on the Superior 8 GTLB and Superior 8 GTLA/B engines during the week of October 17, 2005 and additional tests during the week of December 5, 2005, and submitted the results to the DEQ/AQD via letter dated February 7, 2006.

2. DEQ/AQD has alleged that as a result of DEQ/AQD's review of MGR's formaldehyde emission test results for the Superior 8 GTLB and the Superior 8 GTLA/B engines, DEQ/AQD determined the formaldehyde emission rates for the Superior 8 GTLB and Superior 8 GTLA/B engines exceeded the permitted allowable grams per horsepower-hour (g/hp-hr) and pounds per hour (lb/hr).

3. DEQ/AQD has alleged that pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 3849-06 ("NOV") to MGR on February 28, 2006, alleging that MGR violated the Act, the WAQSR, and permit MD-1224 by failing to comply with permit condition 5.

4. WYO. STAT. ANN. § 35-11-901 provides that any person who violates any provision of Article 2 of the Act or any rule, regulation, standard or permit issued or adopted pursuant to those provisions may be subject to a penalty not to exceed ten thousand

dollars (\$10,000.00) for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction.

5. By signing this Consent Decree, MGR neither admits nor denies that it violated permit MD-1224, or any provision of the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, or any other statute, permit, rule or regulation. Further, MGR neither admits nor denies any of the allegations contained in the NOV or the Complaint.

#### **IV. Settlement Conditions**

Without admitting any of the facts alleged in the NOV or Complaint, and without admitting any liability or failure to comply with permit conditions, MGR agrees to the following:

A. Settlement Amount. Within thirty (30) days after notice to MGR of entry by the Court of this Consent Decree, MGR, agrees to pay to the DEQ/AQD the sum of six thousand three hundred sixty dollars and no cents (\$6,360.00) as a full and complete cash payment to resolve this matter ("Settlement Amount"). The check shall be made payable to the Department of Environmental Quality and shall be delivered to Nancy Vehr, Sr. Assistant Attorney General, Wyoming Attorney General's Office, 123 Capitol Building, Cheyenne, Wyoming 82002.

B. Injunctive Relief.

1. Audit. Within thirty (30) days after notice to MGR of entry by the Court of this Consent Decree, MGR will complete an audit ("Audit") of all of the Wyoming facilities MGR owns or operates to determine which facilities operate Superior 8 GTLB or Superior 8 GTLA/B engines. MGR will report the Audit results to Bob Gill, Compliance Program Manager, DEQ/AQD, Herschler Building, 122 W. 25th St., Cheyenne, WY 82002.

2. Formaldehyde Emission Reductions. To reduce formaldehyde emissions, MGR will install oxidation catalysts on all the Superior 8 GTLB or Superior 8 GTLA/B engines owned or operated by MGR in Wyoming within sixty (60) days after completing the Audit.

3. Permit Applications. Within thirty (30) days after installation of the oxidation catalysts on all the Superior 8 GTLB or Superior 8 GTLA/B engines owned or

operated by MGR in Wyoming, MGR will submit permit applications to the DEQ/AQD to obtain enforceable requirements to operate and maintain the formaldehyde emission controls.

C. Payment of the Settlement Amount and successful completion of the Injunctive Relief shall constitute full satisfaction of MGR's obligations under this Consent Decree.

#### **V. Release and Covenant Not to Sue and Dismissal With Prejudice**

A. In consideration of the Settlement Amount paid by MGR and completion of the Injunctive Relief specified under Section IV of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue MGR, its respective successors, assigns, affiliates, parents, officers, directors, employees and representatives, as to any common law claims, statutory claims, or any other claims or causes of action whatsoever arising out of the facts, transactions, or events which were or could have been alleged in the Complaint or in the NOV on the basis of knowledge DEQ/AQD actually had at the time of issuing the NOV.

B. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by MGR as specified in Section IV of this Consent Decree.

C. MGR shall notify the DEQ/AQD upon completion of its obligations specified in Section IV of this Consent Decree.

D. Within thirty (30) days after receiving MGR's notice of completion, the DEQ/AQD will request that the Court terminate this Consent Decree and dismiss this action with prejudice to all claims which were made in this lawsuit.

E. The terms of Section IV and V shall survive termination of the Consent Decree.

#### **VI. Parties Bound**

A. This Consent Decree shall apply to and be binding upon MGR, its successors and assigns and upon the DEQ and the State of Wyoming.

B. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Consent Decree shall not be construed so as to create such status. The rights, duties and obligations contained in this Consent Decree shall operate among the Parties to this Consent Decree.

C. Nothing in this Consent Decree relieves MGR of its duty to comply with the Act, WAQSR, Wyoming's SIP, the federal Clean Air Act, and rules regulations and standards adopted thereunder including any permit requirements.

D. This Consent Decree is not and shall not be construed to be a permit or permit modification issued pursuant to any federal, state, or local statute, ordinance or regulation. MGR shall remain solely responsible for its compliance with the terms of this Consent Decree, all permits, and all applicable federal, state and local laws and regulations.

## **VII. Terms Not Severable**

The terms of this Consent Decree, which embodies the comprehensive stipulated settlement between the Parties, are not severable.

## **VIII. Reservation of Rights**

A. By signing this Consent Decree, MGR neither admits nor denies that it violated any provision of the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, or permits issued pursuant to such authority including permit MD-1224. By entering into this Consent Decree, MGR neither admits nor denies the validity of any allegation contained in the NOV or the Complaint.

B. DEQ and the State of Wyoming reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, including seeking additional injunctive relief and/or civil penalties.

C. DEQ and the State of Wyoming do not waive sovereign immunity by entering into this Consent Decree and retain immunity and all defenses available to them as sovereigns under all state and federal law, except that any of the Parties may bring an action to seek interpretation or enforcement of this Consent Decree. Each party shall bear its own costs, fees, and expenses in any such action.

## **IX. Termination of Consent Decree**

Except as otherwise provided in Section V of this Consent Decree, the terms and conditions of this Consent Decree shall terminate upon the DEQ/AQD's filing of written notice to the Court confirming the completion of MGR's obligations under this Consent Decree and the Court's entry of a Termination and Dismissal order.

**X. Attorneys' Fees/Costs of Action**

Each Party shall bear its own attorneys fees and costs of this action.

**XI. Retention of Jurisdiction**

The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree, to enter such orders as are appropriate under the Consent Decree, and to resolve all disputes as may be necessary or appropriate for the construction or to carry out the terms of this Consent Decree until it is terminated as provided above.

**XII. Authority**

The signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree.

DATED this 6 day of November, 2006.



DISTRICT COURT JUDGE

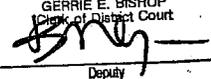
c: Nancy Vehr, Sr. Asst. AG

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE

I, Gerrie E. Bishop, Clerk of the District Court in and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a full true and correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.

Witness my hand and seal of said court this 2 day of November, 2006.

GERRIE E. BISHOP  
Clerk of District Court

By  Deputy

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 10/16, 2006

By:   
David Finley  
Administrator, Air Quality Division

Date: 10/20, 2006

By:   
John Corra, Director  
Department of Environmental Quality

FOR MOUNTAIN GAS RESOURCES, INC.:

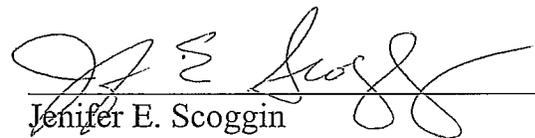
Date: October 11, 2006

By:   
Dave Keanini, Vice President

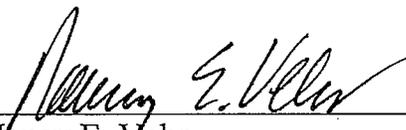
*AKP*

APPROVAL AS TO FORM:

Date: October 12, 2006

By:   
Jennifer E. Scoggin  
Holland & Hart LLP  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
(307) 778-4200  
Attorney for MGR

Date: September 25, 2006

By:   
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Attorney for DEQ/AQD