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WYOMING ATTORNEY
GENERAL OFFICE, WNR

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

PEOPLE OF THE STATE OF WYOMING,	)	
Plaintiff,	)	
v.	)	Docket No. 169-541
PACIFICORP, an Oregon corporation,	)	
Defendant.	)	

FILED
MAR 27 2007
GERRIE E. BISHOP
CLERK OF THE DISTRICT COURT

CONSENT DECREE

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 PacifiCorp, an Oregon corporation ("PacifiCorp"), alleging that PacifiCorp failed to control fugitive dust emissions on June 14, 2006 from PacifiCorp's Naughton Plant facility's ("Facility") coal stockpile located in Lincoln County, Wyoming, in violation of the Act and the Wyoming Air Quality Standards & Regulations ("WAQSR"). DEQ/AQD and PacifiCorp (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. THEREFORE, 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, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

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. PacifiCorp is an Oregon corporation and owns and operates 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.

III. Background

A. PacifiCorp

1. PacifiCorp owns and operates the Facility, including the coal stockpile.

2. PacifiCorp holds various DEQ/AQD permits relating to the Facility.

B. DEQ/AQD General Emission Standards

1. General emission standards limit the quantity, rate, or concentration of air pollutant emissions by prescribing operation and maintenance procedures. 3 WAQSR § 1(a).

2. 3 WAQSR § 2(f) requires sources operating within the State of Wyoming to control fugitive dust emissions.

3. "Fugitive emissions" are "emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening." 1 WAQSR § 3(a).

4. 3 WAQSR §2(f)(ii)(A) states, "Any person owning, operating or maintaining a new or existing material storage, handling and/or hauling operation shall minimize fugitive dust from such an operation. Such control measures may include the application of asphalt, oil, water or suitable chemicals on . . . material stockpiles and other surfaces which can give rise to airborne dusts. . .."

5. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 3926-06 ("NOV") to PacifiCorp on August 29, 2006,

alleging that PacifiCorp violated the Act and the WAQSR at the Facility on June 14, 2006 by failing to control fugitive dust emissions from the coal stockpile.

6. 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. WYO. STAT. ANN. § 35-11-901.

7. PacifiCorp informed the DEQ/AQD that: (i) on July 7, 2006, prior to receipt of the Notice of Violation on August 29, 2006, PacifiCorp implemented actions at the Facility to automate the coal pile water cannons to automatically turn on at wind speeds above 25 miles per hour; and (ii) on July 3, 2006, the Facility manager issued an operations order to Facility personnel to manually run the water cannons for a minimum of one start cycle period each morning.

IV. Settlement

A. Within thirty (30) days after notice to PacifiCorp of entry by the Court of this Consent Decree, PacifiCorp, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with the Act or WAQSR, agrees to pay to the DEQ/AQD the sum of seven thousand dollars and no cents ($7,000.00) 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. Payment of the Settlement Amount shall constitute full satisfaction of PacifiCorp's obligations under this Consent Decree.

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

A. DEQ/AQD agrees that payment of the Settlement Amount as specified in Section IV.A. of this Consent Decree shall constitute full satisfaction of the claim against PacifiCorp that DEQ/AQD alleged in the Complaint initiating this action or in DEQ Notice of Violation Docket No. 3926-06.

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

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

D. Within thirty (30) days after payment by PacifiCorp of the Settlement Amount subject to the conditions stated in Section IV, 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 PacifiCorp, its successors and assigns and upon the DEQ, DEQ/AQD 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 PacifiCorp 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. PacifiCorp 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, PacifiCorp 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. By entering into this Consent Decree, PacifiCorp neither admits nor denies the validity of any allegation contained in the NOV or the Complaint.

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

C. The DEQ, DEQ/AQD 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, 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 PacifiCorp'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 26 day of March, 2007.

s/

DISTRICT COURT JUDGE

c: Nancy Vehr, Sr. Asst. Attorney General

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 27 day of March 07

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: 3/1, 2007 By: _____
David Finley, Administrator
Air Quality Division

Date: 3/2, 2007 By: _____
John Corra, Director
Department of Environmental Quality

FOR PACIFICORP:

Date: FEBRUARY 23, 2007 By: _____
John Schreurs, Acting Plant Manager
Naughton Plant

APPROVAL AS TO FORM:

Date: ~~FEBRUARY 23~~, 2007 By: _____
Paul Hickey
Hickey & Evans
P.O. Box 467
Cheyenne, WY 82003-0467
(307) 634-1525
Attorney for Pacificorp

Date: February 14, 2007 By: _____
Nancy E. Vehr
Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
(307) 777-6946
Attorney for DEQ/AQD