

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

PEOPLE OF THE STATE OF )  
 WYOMING, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SINCLAIR WYOMING REFINING )  
 COMPANY, a Wyoming corporation, )  
 )  
 Defendant. )

Docket No. 170-89

**FILED**

**JUL 10 2007**

**GERRIE E. BISHOP**  
CLERK OF THE DISTRICT COURT

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**CONSENT DECREE**

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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 Sinclair Wyoming Refining Company, a Wyoming corporation (“Sinclair”), alleging that Sinclair vented the 582 Vacuum Tower MPV to atmosphere rather than routing through a flare or other control device which resulted in increased emissions at the Sinclair Wyoming Refinery facility (“Facility”) located in Carbon County, Wyoming, in violation of the Act and the Wyoming Air Quality Standards & Regulations (“WAQSR”). DEQ/AQD and Sinclair (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. Sinclair is a Wyoming corporation 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.

## **III. Background**

### **A. Sinclair**

1. Sinclair owns and/or operates the Facility.
2. The Facility is subject to various DEQ/AQD regulatory requirements including the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Petroleum Refineries.

### **B. DEQ/AQD’s Petroleum Refinery NESHAP**

1. WAQSR Ch.5, § 3 adopted certain Environmental Protection Agency (EPA) regulations on National Emission Standards for Hazardous Air Pollutants (NESHAPs) by reference, including 40 C.F.R. part 63, subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (Petroleum Refinery NESHAP).
2. 40 C.F.R. § 63.644(c) requires the owner or operator of a Group 1 miscellaneous process vent using a vent system that contains bypass lines that could divert a vent stream away from the combustion control device to comply with either paragraph (c)(1) or (c)(2).
3. 40 C.F.R. § 63.644(c)(1) requires the owner or operator to “[i]ninstall, calibrate, maintain, and operate a flow indicator that determines whether a vent stream flow is present at least once every hour...”

4. 40 C.F.R. § 63.644(c)(2) requires the owner or operator to “[s]ecure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.”

5. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 3998-07 (“NOV”) to Sinclair on January 11, 2007, alleging Sinclair violated the Act and the WAQSR by allowing the 582 Vacuum Tower Miscellaneous Process Vent (MPV) to vent to atmosphere without being routed through a flare or other control device to reduce emissions.

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.

#### **IV. Settlement**

A. Within thirty (30) days after notice to Sinclair of entry by the Court of this Consent Decree, Sinclair, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with regulatory requirements, agrees to pay to the DEQ/AQD the sum of seventeen thousand dollars and no cents (\$17,000.00) 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. Asst. Attorney General, Wyoming Attorney General’s Office, 123 Capitol Building, Cheyenne, Wyoming 82002.

B. Payment of the Settlement Amount shall constitute full satisfaction of Sinclair’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 alleged in the Complaint initiating this action or in DEQ Notice of Violation Docket No. 3998-07.

B. In consideration of the Settlement Amount paid by Sinclair as specified under Section IV.A of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Sinclair, 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 Sinclair as specified in Section IV.A. of this Consent Decree.

D. Within thirty (30) days after payment by Sinclair 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 Sinclair, 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 Sinclair 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. Sinclair 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, Sinclair 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, Sinclair 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 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, 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 Sinclair'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 July, 2007.

Michelle E. Kesteven  
DISTRICT COURT JUDGE

c: Nancy Vehr, Sr. Asst. AG

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE

I, Garrie 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 10 day of July, 2007.

GARRIE E. BISHOP  
Clerk of District Court

By [Signature]  
Deputy

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 6/7/07, 2007

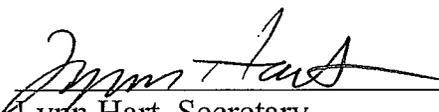
By:   
David Finley  
Administrator, Air Quality Division

Date: 6/11/07, 2007

By:   
John Corra, Director  
Department of Environmental Quality

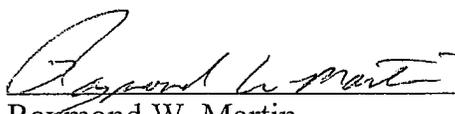
FOR SINCLAIR CASPER REFINING COMPANY:

Date: 5/30, 2007

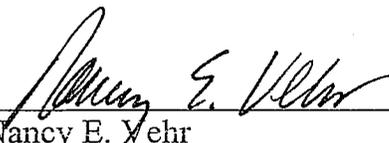
By:   
Lynn Hart, Secretary  
Sinclair Casper Refining Company

APPROVAL AS TO FORM:

Date: 5/25, 2007

By:   
Raymond W. Martin  
Sundahl, Powers, Kapp & Martin  
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Attorney for Sinclair

Date: May 23, 2007

By:   
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Attorney for DEQ/AQD