

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

PEOPLE OF THE STATE OF )  
WYOMING, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FMC WYOMING CORPORATION, a )  
Delaware corporation, )  
 )  
Defendant. )

Docket No. 170-821

**FILED**

NOV 08 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. STAT. ANN. §§35-11-901(a) and 903(c) (West 2007), has filed a Complaint against Defendant FMC Wyoming Corporation, a Delaware corporation (FMC), alleging that FMC failed to comply with Chapter 5, Section 2 of the Wyoming Air Quality Standards and Regulations (WAQSR) which incorporates, in relevant part, New Source Performance Standards (NSPS) for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971 (40 C.F.R. pt. 60, Subpart D) when FMC failed to comply with the opacity standard for the fourth quarter 2006 (4Q06) and first quarter 2007 (1Q07) and failed to operate and maintain the Sulfur Dioxide (SO<sub>2</sub>) and Nitrogen Oxides (NO<sub>x</sub>) monitoring systems for the UIN-14, Number 1 Boiler for the 1Q07 for the FMC Wyoming Corporation Granger Soda Ash Plant facility (Facility) located in Sweetwater County, Wyoming, in violation of the Act and the WAQSR. The DEQ/AQD and FMC (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. FMC is a Delaware Corporation and is the owner and/or operator of the Facility.

B. The 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. FMC**

1. FMC owns and/or operates the Facility.

2. The Facility, including the UIN-14, Number 1 Boiler, is subject to various DEQ/AQD regulatory requirements including the NSPS General Provisions and the Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971 (40 C.F.R. part 60, Subpart D).

#### **B. DEQ/AQD's Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971 (40 C.F.R. part 60, Subpart D).**

1. WYO. STAT. ANN. § 35-11-201 states, "No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the [Environmental Quality] council."

2. WAQSR Ch. 5 § 2 includes the NSPS General Provisions and certain NSPS adopted by the Environmental Quality Council (EQC) which regulate criteria pollutant

emissions from specific categories of new stationary sources, including reference test and monitoring methods and performance specifications for continuous monitors.

3. The provisions of WAQSR Ch. 5 § 2 are “applicable to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the effective date as designated in the applicable subparts of the Standards of Performance referenced in [WAQSR] Chapter 5, Section 2(b) and contained in 40 CFR part 60.” 5 WAQSR § 2(d).

4. The standards adopted by reference by the EQC include 40 C.F.R. part 60, Subpart D, NSPS Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971. 5 WAQSR § 2(b).

5. WAQSR Ch. 5 § 2(j) prescribes general monitoring requirements for continuous monitoring systems.

6. WAQSR Ch. 5 § 2(j)(v) states, “Except for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (iv) of this section, all continuous monitoring systems shall be in continuous operation ...”

7. 40 C.F.R. part 60, Subpart D, § 60.42(a)(2) prohibits owners or operators from causing to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity.

8. 40 C.F.R. part 60, Subpart D, § 60.45(a) requires each owner or operator to “install, calibrate, maintain, and operate continuous monitoring systems for measuring the opacity of emissions, sulfur dioxide emissions, nitrogen oxides emissions, and either oxygen or carbon dioxide ...”

9. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4085-07 (NOV) to FMC on June 5, 2007, alleging that FMC violated the Act and the WAQSR by failing to comply with the opacity standard for the 4Q06 and 1Q07 and failed to operate and maintain the SO<sub>2</sub> and NO<sub>x</sub> monitoring systems for the UIN-14, Number 1 Boiler at the Facility.

10. 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 FMC of entry by the Court of this Consent Decree, FMC, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with statutory or regulatory requirements, agrees to pay to the DEQ/AQD the sum of fifteen thousand dollars and no cents (\$15,000.00) 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 FMC'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 claims against FMC that DEQ/AQD alleged in the Complaint initiating this action or in DEQ Notice of Violation Docket No. 4085-07.

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

D. Within thirty (30) days after payment by FMC 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 FMC, 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 FMC 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. FMC 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, FMC 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, FMC 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 FMC'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 7 day of Nov, 2007.

*Nicholas E. Koltz*

DISTRICT COURT JUDGE

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 7 day of Nov, 2007.

GERRIE E. BISHOP  
Clerk of District Court  
By *[Signature]*  
Deputy

c: Nancy Vehr, Asst. AG

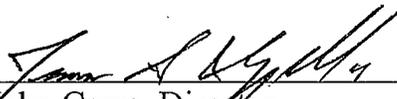
WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 10/24, 2007

By:   
David Finley  
Administrator, Air Quality Division

Date: 10/25, 2007

By:   
John Corra, Director  
Department of Environmental Quality

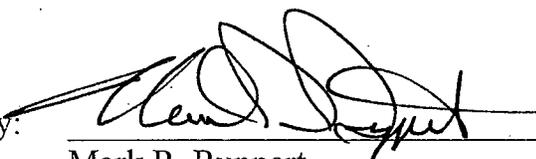
FOR FMC WYOMING CORPORATION:

Date: Oct 18, 2007

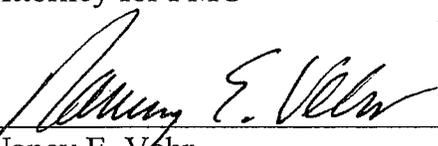
By:   
For Jim Pearce  
James Pearce  
Resident Manager

APPROVAL AS TO FORM:

Date: Oct 10, 2007

By:   
Mark R. Ruppert  
Holland & Hart LLP  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
(307) 778-4200  
Attorney for FMC

Date: October 8, 2007

By:   
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Attorney for DEQ/AQD