

Nancy Vehr  
Wyoming Attorney Generals Office  
123 Capitol Building  
Cheyenne, Wyoming 82002  
(307) 777-7580

Robert C. Mathes  
Bjork Lindley Little PC  
1600 Stout Street, Suite 1400  
Denver, CO 80202-3110  
(303) 892-1400

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

**FILED**

FEB - 8 2008

GERRIE E. BISHOP  
CLERK OF THE DISTRICT COURT

PEOPLE OF THE STATE OF )  
WYOMING, )  
Plaintiff, )  
 )  
v. )  
 )  
ENCANA OIL & GAS (USA) INC, )  
a Delaware corporation, )  
Defendant. )

Docket No. 171-194

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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 EnCana Oil & Gas (USA) Inc., a Delaware corporation ("EnCana"), alleging that EnCana failed to comply with certain permit conditions applicable to its Pavillion Booster Station ("Facility") located in Fremont County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR"), and Permit No. MD-488A. DEQ/AQD and EnCana (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. EnCana is a Delaware corporation authorized to do 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 No. MD-488A.

## III. Background

### A. EnCana

1. EnCana owns and operates oil and gas facilities including the Facility.

2. EnCana holds various DEQ/AQD permits relating to the Facility including Permit No. MD-488A.

### B. DEQ/AQD Construction and Modification Permit Program

1. WYO. STAT. ANN. § 35-11-801 and WAQSR Ch. 6, § 2 require a DEQ 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) states 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. 6 WAQSR § 2 prescribes the applicability and procedures for issuing permits to sources under DEQ/AQD's construction and modification permitting program.

5. 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.

C. DEQ/AQD Permit No. MD-488A

1. On or about April 13, 2005, the DEQ/AQD issued permit MD-488A to EnCana for the Facility.

2. Condition 9 of permit MD-488A states in part, "That during the performance tests required by Condition 8 of this permit, Encana Oil & Gas (USA), Inc. shall establish a minimum operating temperature at which the incinerator must be operated at to continuously comply with the minimum control efficiency set forth in Condition 6 of this permit ..."

3. On September 27, 2005, Buys & Associates, Inc. conducted performance tests for EnCana. Based on the test results, a Thermal Oxidizer minimum operating temperature (24-hour average) of 768 degrees Fahrenheit was determined to assure a minimum control efficiency of 95 percent by weight for Total Organic Compounds (TOCs) during all periods of active operation.

**IV. Settlement**

A. Within thirty (30) days after notice to EnCana of entry by the Court of this Consent Decree, EnCana, without admitting any of the facts alleged and without admitting liability, agrees to pay to the DEQ/AQD the sum of twenty five thousand dollars and no cents (\$25,000.00) 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 EnCana'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 of this Consent Decree shall constitute full satisfaction of the claims against EnCana that DEQ/AQD alleged in the Complaint initiating this action or in DEQ Notice of Violation Docket No. 7121-07 ("NOV").

B. In consideration of the Settlement Amount paid by EnCana as specified under Section IV of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue EnCana, its respective successors, assigns, affiliates, parents, related entities, officers, directors, attorneys, shareholders, agents, employees and representatives, directly or indirectly, as to any common law claims, statutory claims, or other claims or causes of action which arise out of the facts, transactions, or events 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 EnCana's complete and satisfactory performance as specified in Section IV.A. of this Consent Decree.

D. Within thirty (30) days after payment by EnCana 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 EnCana, 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 EnCana 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. EnCana shall remain solely responsible for its compliance with the terms of this Consent Decree, all permits, and all federal, state and local laws and regulations.

#### **VII. Terms Not Severable**

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

#### **VIII. Reservation of Rights**

A. By signing this Consent Decree, EnCana 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 No. MD-488A. By entering into this Consent Decree, EnCana 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 EnCana'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 8 day of Feb., 2008.

s/ Nicholas J. Koltz  
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 8 day of Feb, 2008  
GERRIE E. BISHOP  
Clerk of District Court  
By [Signature]  
Deputy

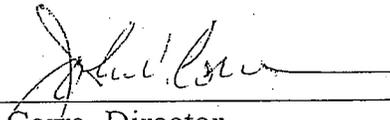
WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 1/15/08, 2008

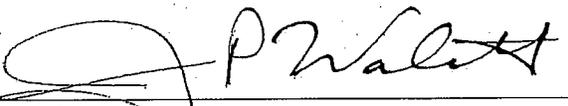
By:   
David A. Finley  
Administrator, Air Quality Division

Date: 1/21/08, 2008

By:   
John Corra, Director  
Department of Environmental Quality

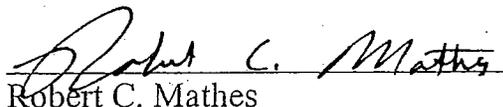
FOR ENCANA OIL & GAS (USA) INC:

Date: January 2, 2008

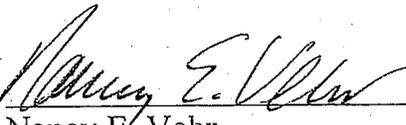
By:   
James P. Walcutt *SR*  
Attorney-in-Fact

APPROVAL AS TO FORM:

Date: January 4, 2008

By:   
Robert C. Mathes  
Bjork Lindley Little PC  
1600 Stout Street, Suite 1400  
Denver, CO 80202-3110  
(303) 892-1400  
Attorney for EnCana

Date: December 26, 2007

By:   
Nancy E. Vehr  
Sr. Asst. Attorney General  
Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002  
(307) 777-7580  
Attorney for DEQ/AQD