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

PEOPLE OF THE STATE OF WYOMING, Plaintiff, v. FMC CORPORATION, a Delaware corporation, Defendant.	)))))))))))	Docket No. 171-615

FILED
APR 15 2008
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. STAT. ANN. §§35-11-901(a) and 903(c) (West 2007), has filed a Complaint against Defendant FMC Corporation, a Delaware corporation ("FMC"), alleging that FMC failed to comply with the pound per hour particulate emission limit for the RA-1 (Baby Sesqui) Calciner at FMC's Westvaco facility ("Facility") located in Sweetwater County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR"), and permit no. MD-5723. 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:

COPY

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 and the RA-1 (Baby Sesqui) Calciner.

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-5723.

III. Background

A. FMC

1. FMC owns and/or operates the Facility and its RA-1 (Baby Sesqui) Calciner.

2. FMC holds various DEQ/AQD permits relating to the Facility including permit no. MD-5723.

B. DEQ/AQD Construction and Modification Permitting Program and Permit MD-5723

1. WYO. STAT. ANN. § 35-11-801 and Chapter 6, Section 2 of the WAQSR require that persons obtain a DEQ air quality construction permit prior to commencing construction of any new facility or modifying any existing facility capable of causing or increasing 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 [DEQ] 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. Chapter 6, Section 2 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under DEQ/AQD's construction and modification permitting program.

4. Chapter 6, Section 2(f) allows reasonable conditions to be imposed upon construction or modification permits, including emission limits and emission testing and monitoring requirements.

5. On or about July 17, 2007, the DEQ/AQD issued permit MD-5723 to FMC for the Facility, including the Facility's RA-1 (Baby Sesqui) Calciner.

6. Condition no. 10 of permit MD-5723 limits particulate emissions from the Facility's RA-1 (Baby Sesqui) Calciner to five pounds per hour (5.0 lb/hr).

7. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4192-07 ("NOV") to FMC on December 14, 2007, alleging that FMC violated the Act, the WAQSR, and condition no. 10 of permit no. MD-5723 by failing to comply with the permitted particulate emission rate limit for the RA-1 (Baby Sesqui) Calciner at the Facility.

8. 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 any permit requirements, agrees to pay to the DEQ/AQD the sum of twenty-three thousand dollars and no cents ($23,000.00) as a full and complete cash payment to resolve this matter ("Stipulated Penalty 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 Stipulated Penalty 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 Stipulated Penalty Amount as specified in Section IV.A. of this Consent Decree shall constitute full satisfaction of the claim against FMC that DEQ/AQD alleged in the Complaint initiating this action or in DEQ Notice of Violation Docket No. 4192-07.

B. In consideration of the Stipulated Penalty 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 embody 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 including permit no. MD-5723. 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 11 day of April, 2008.

s/ Michael K. Davis

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 15 day of April 20 08.

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: 3/25, 2008 By: _____
David Finley
Administrator, Air Quality Division

Date: 3/25, 2008 By: _____
John Corra, Director
Department of Environmental Quality

FOR FMC CORPORATION:

Date: March 18, 2008 By: _____
Name: James Pearce
Title: Mfg. Director

APPROVAL AS TO FORM:

Date: 17 March, 2008 By: _____
Mark R. Ruppert
Holland & Hart LLP
P.O. Box 1347
Cheyenne, WY 82003-1347
(307) 778-4200
Attorney for FMC

Date: March 14, 2008 By: _____
Nancy E. Vehr
Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
(307) 777-6946
Attorney for DEQ/AQD