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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. 171-605

**FILED**

APR 08 2008

GERRIE E. BISHOP  
CLERK OF THE DISTRICT COURT

**COMPLAINT**

Plaintiff, the People of the State of Wyoming, by and through the Department of Environmental Quality, Air Quality Division ("DEQ/AQD") and Wyoming's Attorney General (collectively referred to hereinafter as "Wyoming"), upon information and belief, alleges:

**NATURE OF ACTION**

1. This is a civil action brought against FMC Corporation, a Delaware corporation ("FMC"), 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)), for a certain air quality violation at FMC's Westvaco facility located in Sweetwater County, Wyoming.

2. As set forth in greater detail below, Wyoming alleges that FMC violated condition 10 of DEQ air quality permit MD-5723, Wyoming Air Quality Standards and Regulations ("WAQSR"), and the Wyoming Environmental Quality Act ("Act").

3. Wyoming seeks a civil penalty for this alleged past violation.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter and the parties in this action pursuant to Section 901(a) of the Act. WYO. STAT. ANN. § 35-11-901(a).

**COPY**

5. Laramie County is the proper venue for this action pursuant to Section 903(c) of the Act. WYO. STAT. ANN. § 35-11-903(c).

#### **PARTIES**

6. DEQ, pursuant to WYO. STAT. ANN. §§ 35-11-104 and -109, is the executive branch agency of Wyoming state government vested by statute with the responsibility for administering and enforcing the Act, rules promulgated thereunder, and related permits. The DEQ/AQD is also charged with responsibility for administering the Act, the WAQSR, and related permits. WYO. STAT. ANN. § 35-11-110.

7. Defendant FMC Corporation (“FMC”), is a Delaware corporation that owns and/or operates the Westvaco facility (“Facility”) located in Sweetwater County, Wyoming.

8. FMC is a “person” as defined in Section 103(a)(vi) of the Act and WAQSR Ch. 1 § 3(a). WYO. STAT. ANN. § 35-11-103(a)(vi).

#### **STATUTORY AND REGULATORY BACKGROUND**

9. The Act establishes a statutory scheme which is designed in part to enable the State of Wyoming to prevent, reduce and eliminate pollution; to preserve and enhance the State of Wyoming’s air, water and land resources; and, to allow the State of Wyoming to plan the development, use, reclamation and enhancement of its air, land and water resources. WYO. STAT. ANN. § 35-11-102.

10. Any person who violates any provision of Article 2 of the Act, the WAQSR, or any standard or permit adopted pursuant to those provisions, is 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.

#### **BACKGROUND - DEQ/AQD CONSTRUCTION AND MODIFICATION PERMITTING PROGRAM AND PERMIT MD-5723**

11. 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.

12. 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.”

13. 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.

14. 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.

15. 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.

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

#### **CLAIM I**

#### **Failure to Comply with Condition No. 10 of DEQ/AQD Permit No. MD-5273 Particulate Emission Limit for RA-1 (Baby Sesqui) Calciner**

17. DEQ/AQD repeats and incorporates by this reference the allegations contained in paragraphs 1 through 16 of this Complaint.

18. FMC owns or operates the Westvaco facility (“Facility”), including the RA-1 (Baby Sesqui) Calciner, located in Sweetwater County, Wyoming.

19. The Facility is subject to the DEQ/AQD’s construction and modification permitting program.

20. On or about July 17, 2007, DEQ/AQD issued permit no. MD-5723 to FMC for the Facility, including the RA-1 (Baby Sesqui) Calciner.

21. Condition no. 10 of permit no. MD-5723 sets the allowable particulate emission rate for the RA-1 (Baby Sesqui) Calciner at five pounds per hour (5lb/hr).

22. On September 28, 2007, FMC conducted a stack test to determine the particulate emission rate for the RA-1 (Baby Sesqui) Calciner and provided the results of the testing under a stack test report transmittal letter dated November 7, 2007. The AQD's review of the stack test report showed the RA-1 (Baby Sesqui) Calciner was operating with a particulate emission rate of 8.30 lb/hr at the time of the test.

23. On November 27, 2007, FMC retested the RA-1 (Baby Sesqui) Calciner and the results of the retest showed the calciner was operating at a particulate emission rate of 1.76 lb/hr, in compliance with the permitted emission rate of 5.0 lb/hr.

24. Based upon the results of DEQ/AQD's review, and on information and belief, the DEQ/AQD alleges 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 for the RA-1 (Baby Sesqui) Calciner at the Facility.

25. 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 in part that FMC violated the Act, the WAQSR, and 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.

26. Any person who violates any provision of Article 2 of the Act, the WAQSR, or any standard or permit adopted pursuant to those provisions, is 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(a).

**WHEREFORE**, Plaintiff prays that:

A. This Court enter judgment in favor of the Plaintiff on the Claim asserted;

B. This Court assess appropriate penalties against Defendant FMC as provided in Section 901(a) and 903(c) of the Act, WYO. STAT. ANN. §§ 35-11-901(a) and -903(c); and

C. This Court award such other and further relief as it deems appropriate.

DATED this 8<sup>th</sup> day of April, 2008.

  
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