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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. )  
 )  
HERMES CONSOLIDATED, INC., )  
a Delaware corporation, dba WYOMING )  
REFINING COMPANY, )  
 )  
Defendant. )

Docket No. 171-614

**FILED**

APR 08 2008

GERRIE E. BISHOP  
CLERK OF THE DISTRICT COURT

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**COMPLAINT**

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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 Hermes Consolidated, Inc., a Delaware corporation doing business as Wyoming Refining Company (“Wyoming Refining”), 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 in the operation of the HDS Heater (Unit H-14) at the Wyoming Refining refinery facility (“Facility) located in Newcastle, Weston County, Wyoming.
2. As set forth in greater detail below, Wyoming alleges that Wyoming Refining violated the Act, the Wyoming Air Quality Standards and Regulations (“WAQSR”) and DEQ/AQD Operating Permit No. 3-0-136-2.
3. Wyoming seeks a civil penalty for this alleged violation.

COPY

## 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).

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, standards and 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 Hermes Consolidated, Inc. is a Delaware corporation doing business as Wyoming Refining Company ("Wyoming Refining") that owns and/or operates the Facility in Newcastle, Weston County, Wyoming.

8. Wyoming Refining 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 - AQD OPERATING PERMITS PROGRAM AND  
DEQ/AQD OPERATING PERMIT No. 3-0-136-2**

11. WYO. STAT. ANN. § 35-11-203(a) defines source categories subject to the DEQ/AQD operating permit program. In pertinent part, these sources include any stationary source or group of sources that: “Has the potential to emit one hundred (100) tons or more per year of any pollutant regulated under the Clean Air Act and is a major stationary source as defined in Section 302 of the Clean Air Act.”

12. WYO. STAT. ANN. § 35-11-203(b) states, “After the effective date of the operating permit program authorized under W.S. 35-11-203 through 35-11-212, it shall be unlawful for any person to violate any requirement of a permit issued under the operating permit program or to operate any source required to have a permit under this section, without having complied with the provisions of the operating permit program.”

13. WYO. STAT. ANN. § 35-11-801(a) provides in pertinent part, “In granting permits, the director may impose such conditions as may be necessary to accomplish the purpose of this act [Wyoming’s Environmental Quality Act] which are not inconsistent with the existing rules, regulations and standards.”

14. Chapter 6 , section 3 of the WAQSR prescribes the applicability and procedures for issuing permits to sources pursuant to Wyoming’s operating permit program.

15. Chapter 6, section 3(a) of the WAQSR states that any major source, “[is] subject to the operating permit requirements of this section.”

16. Chapter 6, section 3(d)(ii) of the WAQSR states, “Except as provided in this paragraph or in Chapter 6, Section 3(d)(iii), no source requiring an operating permit under Chapter 6, Section 3 may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under this section.”

17. Chapter 6, section 3(h)(i)(F)(I) of the WAQSR mandates the operating permit include a provision stating: “The permittee must comply with all conditions

of the operating permit. Any permit noncompliance constitutes a violation of the Act [CAA], Article 2 of the Wyoming Environmental Quality Act and the WAQSR and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.”

18. On February 28, 2006, the DEQ/AQD issued Operating Permit No. 3-0-136-2 to Wyoming Refining for the Facility.

### **BACKGROUND - SULFUR DIOXIDE**

19. “Sulfur Dioxide” (SO<sub>2</sub>) is “a rapidly-diffusing reactive gas that is very soluble in water.” 61 Fed. Reg. 25567 (May 22, 1996). SO<sub>2</sub> is emitted from the “combustion or processing of sulfur-containing fossil fuels and ores.” *Id.* At elevated concentrations, “SO<sub>2</sub> can adversely affect human health.” *Id.*

### **CLAIM I**

#### **Failure to perform Initial Performance Test for SO<sub>2</sub> on the HDS Heater**

20. DEQ/AQD repeats and incorporates by this reference the allegations contained in paragraphs 1 through 19 of this Complaint.

21. Wyoming Refining owns or operates the Wyoming Refining Refinery facility including the HDS Heater (Unit H-14) (Facility) and is located in Newcastle, Weston County, Wyoming.

22. The Facility is subject to various DEQ/AQD statutory and regulatory requirements and DEQ/AQD Operating Permit No. 3-0-136-2 which was issued on February 28, 2006 by the DEQ/AQD to Wyoming Refining for the Facility.

23. Condition F11 of DEQ/AQD operating permit 3-0-136-2 required an initial sulfur dioxide (“SO<sub>2</sub>”) performance test for the HDS Heater to be conducted within 30 days of achieving the maximum design rate but not later than 90 days following initial start-up.

24. Condition F11 of DEQ/AQD operating permit 3-0-136-2 stated that the initial SO<sub>2</sub> performance test for the HDS Heater using Methods 1-4, and Method 6 would be used to determine initial compliance with the 1.0 lb/hr emission limit.

25. The DEQ/AQD reviewed Wyoming Refining's Annual Compliance Certification for 2006 and determined that Wyoming Refining conducted an initial performance test for the HDS Heater (Unit H-14) on June 19, 2006 but had not completed a performance test on the HDS Heater (Unit H-14) for SO<sub>2</sub>.

26. Under an October 3, 2007 cover letter, Wyoming Refining submitted the results of the HDS Heater (Unit H-14) performance test for SO<sub>2</sub> which was completed on March 22, 2007.

27. Based upon the results of DEQ/AQD's review, and on information and belief, the DEQ/AQD alleges that Wyoming Refining violated the Act, the WAQSR, and DEQ/AQD Operating Permit No. 3-0-136-2 by failing to perform the initial performance test for SO<sub>2</sub> on the HDS heater as required by condition F11 of DEQ/AQD Operating Permit No. 3-0-136-2.

28. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4138-07 ("NOV") to Wyoming Refining on August 23, 2007, alleging in part that Wyoming Refining violated the Act, the WAQSR, and DEQ/AQD Operating Permit No. 3-0-136-2 by failing to perform the initial performance test for SO<sub>2</sub> on the HDS heater.

29. 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).

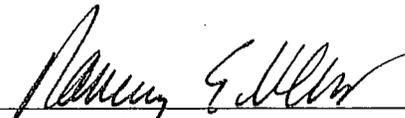
**WHEREFORE**, Plaintiff prays that:

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

B. This Court assess appropriate penalties against Defendant Wyoming Refining 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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