

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

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
COLORADO INTERSTATE GAS)
COMPANY, a Delaware corporation,)
)
Defendant.)

Docket No. 172-000

FILED

JUN 25 2008

CONSENT DECREE

GERRIE E. BISHOP
CLERK OF THE DISTRICT COURT

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 Colorado Interstate Gas Company, a Delaware corporation (“CIG”), alleging that CIG operated the Sinclair Products Meter Station facility (“Facility”) as a major source without an operating permit or having submitted an operating permit application for its Facility located in Carbon County, Wyoming, in violation of the Act and the Wyoming Air Quality Standards and Regulations (“WAQSR”). The DEQ/AQD and CIG (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. CIG 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. Sinclair Products Meter Station Facility

1. The Facility is located in Carbon County, Wyoming, approximately 3.5 miles north of CIG’s Rawlins Natural Gas Plant.

2. At the Facility, propane, butane and Natural Gas Liquids (“NGL”) produced at CIG’s Rawlins Natural Gas Plant, are loaded onto railcars for shipment.

3. At the Facility, CIG used an installed flare as a control and safety device for propane and butane loading, but not for NGL loading. The emissions from NGL loading were vented directly to the atmosphere.

4. At the Facility, the railcars were depressurized before loading. The emissions from the railcar depressurization were vented directly to the atmosphere.

B. DEQ/AQD Operating Permit Program

1. Wyoming’s operating permit program for major sources defines sources subject to the operating permit program, procedures for applying for an operating permit, review of permit applications and issuance of operating permits. WYO. STAT. ANN. §§ 35-11-203 through -206.

2. 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: “(A) 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” or “(B) Has the potential to emit ten (10) tons per year of any single hazardous air pollutant or twenty-five (25) tons per year of any combination of hazardous air pollutants as defined by Section 112 of the Clean Air Act.”

3. WYO. STAT. ANN. § 35-11-203(b) states in relevant part, “[a]fter 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 operate any source required to have a permit under this section, without having complied with the provisions of the operating permit program.”

4. Chapter 6, Section 3 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under Wyoming’s operating permit program.

5. Chapter 6, Section 3(c)(i) of the WAQSR describes the timeline for operating permit program application submissions.

6. Chapter 6, Section 3(c)(i)(D)(II) of the WAQSR states: “Permit applications for all other operating sources subject to this section [sources other than natural gas compressor engines, natural gas sweetening plants, and natural gas processing plants] shall be submitted within twelve (12) months of the EPA’s approval of this operating permit program, but not later than November 15, 1995.”

7. 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.”

8. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4133-07 (“NOV”) to CIG on August 17, 2007, alleging that CIG violated the Act and the WAQSR by operating the Facility as a major source without an operating permit or having submitted an operating permit application as required by the Act and the WAQSR.

9. 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(a).

IV. Settlement

A. CIG, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with any statutory or regulatory requirements, agrees to the assessment of a total civil penalty in the amount of one hundred eighteen thousand seven hundred eighteen dollars and seventy-one cents (\$118,718.71) (“Total Stipulated Penalty Amount”) payable as follows:

1. Within thirty (30) days after notice to CIG of the Court’s entry of this Consent Decree, CIG will pay to the DEQ/AQD the sum of eighty-three thousand seven hundred eighteen dollars and seventy-one cents (\$83,718.71) (“Reduced Stipulated Penalty Amount”).

a. The Reduced Stipulated Penalty Amount includes Operating Permit Fees totaling thirty eight thousand six hundred ninety six dollars and twenty-five cents (\$38,696.25).

b. The Reduced Stipulated Penalty Amount includes accrued interest totaling ten thousand twenty two dollars and forty six cents (\$10,022.46).

2. The check for the Reduced Stipulated Penalty Amount 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.

3. CIG agrees to complete the following Supplemental Environmental Project (“SEP”) in return for the DEQ/AQD offsetting thirty five thousand dollars and no cents (\$35,000.00) of the Total Stipulated Penalty Amount (“Stipulated Penalty Offset Amount”):

a. A SEP is a project that is beneficial for the environment and is otherwise not required by applicable statutes, regulations, permits or orders.

b. CIG will perform a SEP referred to as the “Precombustion Chamber SEP” and more fully described as follows:

i. CIG agrees to install Cameron (Cooper Energy Services) screw-in precombustion chambers at the Laramie Compressor Station on Unit CG-2. Unit CG-2 is a 3400 hp, Dresser Clark TCVA-10 two-stroke reciprocating engine that is currently permitted to allow NOx emissions up to 6.5 g/bhp-hr or 213.2 tons per year.

ii. Within 60 days of completing the installation of the precombustion chambers, CIG will test the Dresser Clark TCVA-10 engine to determine actual NOx emissions.

iii. Within 60 days of completing the NOx emission testing, CIG will submit a permit application to the DEQ/AQD to revise the potential NOx emission limit for the engine. The revised NOx emission limit shall be the lower of either 5.0 g/hp-hr and 64 tons per year, or an emission rate based on the actual tested NOx emissions.

iv. CIG will complete installation of the precombustion chambers, NOx testing and permit application submittal by no later than September 30, 2008.

v. CIG agrees that if it does not complete the Precombustion Chamber SEP as set forth above, CIG will pay the Stipulated Penalty Offset Amount to the DEQ/AQD by no later than November 18, 2008.

vi. CIG certifies that as of the date it signs this Consent Decree, CIG is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is CIG required to perform or develop the SEP pursuant to any other agreement or relief any other case. CIG further certifies that it has not received and is not negotiating to receive credit for this SEP in any other pending action.

B. Payment of the Reduced Stipulated Penalty Amount and successful completion of the Precombustion Chamber SEP shall constitute full satisfaction of CIG'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 Reduced Stipulated Penalty Amount and CIG's successful completion of the Precombustion Chamber SEP as specified in Section IV.A. of this Consent Decree shall constitute full satisfaction of the claim against CIG that

DEQ/AQD alleged in the Complaint initiating this action or in DEQ Notice of Violation Docket No. 4133-07.

B. In consideration of the Reduced Stipulated Penalty Amount paid by CIG and CIG's successful completion of the Precombustion Chamber SEP as specified under Section IV.A of this Consent Decree, the DEQ/AQD and the State of Wyoming hereby release and covenant not to sue CIG, 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.

C. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by CIG as specified in Section IV.A. of this Consent Decree.

D. After paying the Reduced Stipulated Penalty Amount and completing the Precombustion Chamber SEP, CIG shall notify the DEQ/AQD in writing. Within thirty (30) days after receiving CIG's notice, and 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 CIG, 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 CIG 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.

CIG 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, CIG 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, CIG 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 CIG'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 23 day of June, 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 23 day of June, 2008.
GERRIE E. BISHOP
Clerk of District Court

By [Signature]
Deputy

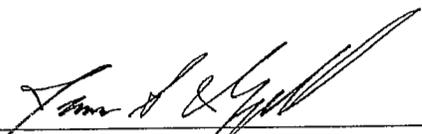
WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 5/28, 2008

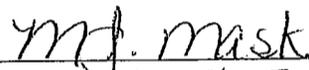
By: 
David Finley
Administrator, Air Quality Division

Date: 6/2, 2008

By: 
John Corra, Director
Department of Environmental Quality

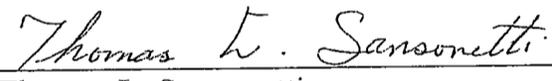
FOR COLORADO INTERSTATE GAS COMPANY:

Date: May 12, 2008

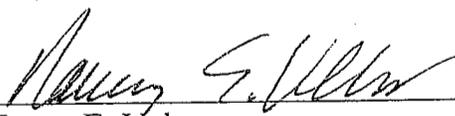
By: 
Name: Matt J. Mask
Title: Director RMD

APPROVAL AS TO FORM:

Date: May 3, 2008

By: 
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Date: May 1, 2008

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