Keith Guille

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

PEOPLE OF THE STATE OF WYOMING,	)	
Plaintiff,	)	
v.	)	Docket No. 172-147
HERMES CONSOLIDATED, INC., a Delaware corporation, dba WYOMING REFINING COMPANY,	)	
Defendant.	)	

FILED
JUL 24 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 Hermes Consolidated, Inc., a Delaware corporation dba Wyoming Refining Company (Wyoming Refining), alleging that Wyoming Refining failed to submit certain test results to the DEQ/AQD within thirty days of completion as required by Condition No. 15 of DEQ/AQD Permit Nos. MD-1500 and MD-1500A, and failed to conduct an annual performance test for particulate matter as required by Condition No. F10(a) of DEQ/AQD Operating Permit No. 3-0-136-2A for the Wyoming Refining Refinery facility (Facility) located in Newcastle, Weston County, Wyoming, in violation of the Act, the WAQSR and DEQ/AQD Permit Nos. MD-1500, MD-1500A, and Operating Permit No. 3-0-136-2A. The DEQ/AQD and Wyoming Refining (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 requiring defendant to file an answer or the taking of evidence, without the adjudication or admission of any issue of

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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. Hermes Consolidated, Inc. is a Delaware corporation doing business as Wyoming Refining Company (Wyoming Refining) 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, including DEQ/AQD Permits MD-1500, MD-1500A and Operating Permit No. 3-0-136-2A.

III. Background

A. Wyoming Refining

1. Wyoming Refining owns and/or operates the Facility.

2. The Facility is subject to various DEQ/AQD regulatory and permit requirements, including DEQ/AQD Permit Nos. MD-1500, MD-1500A and Operating Permit No. 3-0-136-2A.

B. DEQ/AQD Construction and Modification Permitting Program and DEQ/AQD Permit Nos. MD-1500 and MD-1500A.

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 the 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 December 19, 2006, the DEQ/AQD issued permit MD-1500 to Wyoming Refining for the Facility. Condition No. 15 of permit MD-1500 requires testing of the Prefact Heater (H-01), Crude Heater (H-03), Alky Reboiler (H-06), Boiler #1 (H-07), Boiler #3 (H-09), Vacuum Flasher/Supplementary Crude Heater (H-15), FCC Preheater (H-19), CO Furnace (H-20), Truck Rack Incinerator (H-21), and Common Stack for FCC Regenerator (S-21). Condition No. 15 of permit MD-1500 also requires test results to be submitted to the DEQ/AQD within 30 days of completion.

6. On or about May 30, 2007, the DEQ/AQD issued permit MD-1500A to Wyoming Refining for the Facility. Condition No. 15 of permit MD-1500A requires testing of H-01, H-03, H-06, H-07, H-09, H-15, H-19, H-20, H-21, and S-21. Condition No. 15 of permit MD-1500A also requires test results to be submitted to the DEQ/AQD within 30 days of completion.

7. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4212-08 ("NOV") to Wyoming Refining on February 25, 2008, alleging in part that Wyoming Refining violated the Act, the WAQSR, and DEQ/AQD Permit Nos. MD-1500 and MD-1500A by failing to submit required test results to the DEQ/AQD within thirty days of completion as required by permit Condition No. 15.

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.

C. DEQ/AQD's Operating Permit Program and DEQ/AQD Permit No. 3-0-136-2A.

1. 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."

2. 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."

3. 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."

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

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

6. 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."

7. 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."

8. On February 22, 2007, the DEQ/AQD issued Operating Permit No. 3-0-136-2A to Wyoming Refining for the Facility. Condition No. F10(a) of Operating Permit No. 3-0-136-2A requires annual performance tests using Methods 1-5 to determine compliance with particulate emissions for the FCC Stack (S-21)

9. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4212-08 ("NOV") to Wyoming Refining on February 25, 2008, alleging in part that Wyoming Refining violated the Act, the WAQSR, and DEQ/AQD Operating Permit No. 3-0-136-2A by failing to conduct the required annual performance test for particulate using Methods 1-5 for the FCC Stack (S-21).

10. 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 Wyoming Refining of entry by the Court of this Consent Decree, Wyoming Refining, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with statutory, regulatory or DEQ/AQD permit requirements, 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 (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 Wyoming Refining'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 claims against Wyoming Refining that DEQ/AQD alleged in the Complaint initiating this action or in DEQ Notice of Violation Docket No. 4212-08 ("NOV").

B. In consideration of the Stipulated Penalty Amount paid by Wyoming Refining as specified under Section IV.A of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Wyoming Refining, 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 Wyoming Refining as specified in Section IV.A. of this Consent Decree.

D. Within thirty (30) days after payment by Wyoming Refining of the Stipulated Penalty 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 Wyoming Refining, 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 Wyoming Refining 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. Wyoming Refining 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 and are entered into to avoid litigation and terminate this controversy, are not severable.

VIII. Reservation of Rights

A. By signing this Consent Decree, Wyoming Refining neither admits nor denies that it violated any provision of the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, DEQ/AQD Permit Nos. MD-1500, MD-1500A, Operating Permit No. 3-0-136-2A or any other permits issued pursuant to such authority. Nor shall this Consent Decree be construed as an admission of liability as to any such violation alleged herein or in the NOV. By entering into this Consent Decree, Wyoming Refining 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 Wyoming Refining'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 22 day of July, 2008.

s/ Peter G. Arnold
DISTRICT COURT JUDGE

c: Nancy Vehr, 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 24 day of July, 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: 7/7/08, 2008 By: _____
David Finley
Administrator, Air Quality Division

Date: 7/2/08, 2008 By: _____
John Corra, Director
Department of Environmental Quality

FOR HERMES CONSOLIDATED, INC. dba WYOMING REFINING COMPANY:

Date: May 27, 2008 By: _____
Name: BOB NEUFELD
Title: VP, ENVIRONMENT & GOVERNMENTAL RELATIONS

APPROVAL AS TO FORM:

Date: June 23, 2008 By: _____
Keith S. Burron
Associated Legal Group, LLC
1807 Capitol Avenue, Suite 203
Cheyenne, WY 82001
(307) 632-2888

Date: May 19, 2008 By: _____
Nancy E. Vehr
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123 Capitol Building
Cheyenne, WY 82002
(307) 777-6946
Attorney for DEQ/AQD