

Keith Guille

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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. )  
 )  
SINCLAIR CASPER REFINING )  
COMPANY, )  
a Wyoming corporation, )  
 )  
Defendant. )

Docket No. 172-561

**FILED**

NOV 06 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 Sinclair Casper Refining Company ("Sinclair"), alleging that Sinclair failed to comply with having the East Bay API Separator lid/cover on the unit resulting in emissions to atmosphere for approximately 3 months and for failure to perform reference Method 21 testing on the API Separator at its Sinclair Casper Refinery ("Facility"), located in Natrona County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR"), and permit no. MD-87. DEQ/AQD and Sinclair (collectively referred to hereinafter as "Parties"), and the Court by entering this Consent Decree find, that this Consent Decree has been negotiated by the Parties 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 and Venue**

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). Venue is proper in Laramie County under Section 903(c) of the Act. WYO. STAT. ANN. § 35-11-903(c).

**II. Parties**

A. Sinclair is a Wyoming Corporation and is the owner and operator of the Facility.

B. DEQ/AQD is the agency of Wyoming state government responsible for enforcing the Act, the WAQSR, and permits issued pursuant to those provisions including permit no. MD-87.

**III. Background**

A. Sinclair

1. Sinclair owns and operates the Sinclair Casper Refinery in Natrona County, Wyoming.

2. Sinclair holds DEQ/AQD permit MD-87 relating to the Facility.

3. Sinclair 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).

B. DEQ/AQD Construction and Modification Permitting Program and Permit MD-87

1. WYO. STAT. ANN. §§ 35-11-801 and Chapter 6, Section 2 of the WAQSR require that persons obtain a DEQ/AQD 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) of the WAQSR allows reasonable conditions to be imposed upon construction or modification permits, including emission limits, monitoring and reporting requirements.

5. On or about July 12, 1988, the DEQ/AQD issued permit MD-87 to Sinclair to modify the waste water treatment facilities by the construction of two API separators and an induced flotation unit at the refinery located at 5700 East HWY 20/26 in Casper, Wyoming.

6. Condition 2. a) of permit MD-87 requires “the fixed roof shall be installed over the separator tank, flotation chamber, flocculation tank or auxillary tank, basin, or other chamber in a manner so as to have no separation between the roof and the separator, tank, basin or chamber wall.”

7. A DEQ/AQD review of the 2007 Annual Compliance Certification, noted that the API Separator Unit (ME-2411) cover was removed between May 2007 to September 2007.

8. Condition 2. c) of permit MD-87 requires “that the roof, access doors, and openings shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background as determined during an initial and semiannual inspections thereafter by methods specified by the Administrator using Reference Method 21.”

9. A DEQ/AQD review of the 2007 Annual Compliance Certification, noted that the VOC monitoring of the API Separator Unit (ME-2411) had not been conducted from May 2007 through December 2007.

10. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued a Notice of Violation, Docket No. 4301-08 ("NOV") to Sinclair on June 18, 2008, alleging in part that Sinclair violated the Act, the WAQSR, permit no. MD-87, by failing to have the East Bay API Separator lid/cover on the unit resulting in emissions to atmosphere for approximately 3 months and perform reference Method 21 testing on the API Separator.

11. 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.

#### **IV. Settlement**

A. Within thirty (30) days after notice to Sinclair of entry by the Court of this Consent Decree, Sinclair, 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 \$18,000.00 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 John S. Burbridge, Senior Assistant Attorney General, Wyoming Attorney General's Office, 123 Capitol Building, Cheyenne, Wyoming 82002.

#### **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 and of this Consent Decree shall constitute full satisfaction

of the claims against Sinclair that DEQ/AQD alleged in the Complaint initiating this action or in the NOV.

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

D. Within thirty (30) days after the complete and satisfactory performance by Sinclair of the terms of this Consent Decree, 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 the termination of the Consent Decree.

## **VI. Parties Bound**

A. This Consent Decree shall apply to, and be binding upon Sinclair, its successors and assigns and upon the DEQ/AQD 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 Sinclair of its duty to comply with the Act, WAQSR, the federal Clean Air Act, and the 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. Sinclair 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**

A. 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, Sinclair neither admits nor denies that it violated any provision of the Act, the WAQSR, the federal Clean Air Act, or permits issued pursuant to such authority including permit no. MD-87.

B. DEQ/AQD 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/AQD 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**

A. 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 Sinclair's obligations under this Consent Decree and the Court's entry of a Termination and Dismissal order.

#### **X. Attorney's Fees/Costs of Action**

A. Each Party shall bear its own attorneys fees and costs of this action.

#### **XI. Retention of Jurisdiction**

A. 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**

A. The Signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree.

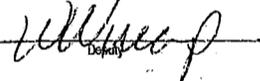
DATED this 5 day of Nov, 2008.

  
DISTRICT COURT JUDGE

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE

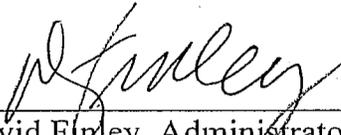
I Gerrie E. Bishop, Clerk of the District Court in and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a full true and correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.

Witness my hand and seal of said court this 5 day of Nov 2008  
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:

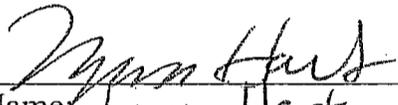
  
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David Finley, Administrator  
Air Quality Division

10/20/08  
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Date

  
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John Corra, Director  
Department of Environmental Quality

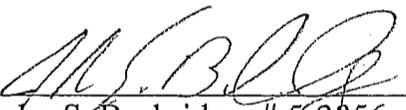
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FOR SINCLAIR CASPER REFINING COMPANY:

  
\_\_\_\_\_  
Name: Lynn Hart  
Title: Secretary & General Counsel

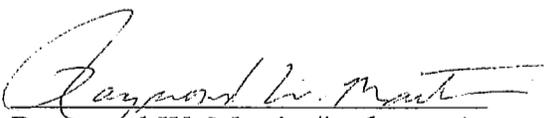
10/8/08  
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Date

APPROVAL AS TO FORM:

  
\_\_\_\_\_  
John S. Burbridge, # 5-2856  
Attorney General's Office  
123 Capitol Building  
Cheyenne, Wyoming 82002  
(307) 777-6946  
Attorney for DEQ/AQD

9.23.08  
\_\_\_\_\_  
Date

APPROVAL AS TO FORM:

  
\_\_\_\_\_  
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(307)  
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9/25/08  
\_\_\_\_\_  
Date