

Keith Gulle

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

FILED

DEC 30 2008

GERRIE E. BISHOP
CLERK OF THE DISTRICT COURT

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
BP AMERICA PRODUCTION)
COMPANY, a Delaware corporation,)
)
Defendant.)

Docket No. 173-127

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), has filed a Complaint against Defendant BP America Production Company, a Delaware corporation ("BP"), alleging that BP failed to obtain a modification permit before removing a re-compressor at the Whitney Canyon Gas Plant ("Facility") located in Uinta County, Wyoming, in violation of the Act and the Wyoming Air Quality Standards & Regulations ("WAQSR"). DEQ/AQD and BP (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 pursuant to WYO. STAT. ANN. §35-11-901(a)(ii), 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. BP is a Delaware corporation and is the owner and/or operator of the Facility.

B. 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. BP

1. BP operates the Facility. The Facility is owned by BP, Chevron U.S.A. Inc., Merit Energy Company and Forest Oil Corporation (collectively, the Facility Owners).

2. BP holds various DEQ/AQD permits relating to the Facility.

B. DEQ/AQD Construction and Modification Permit Program

1. WYO. STAT. ANN. § 35-11-801 and WAQSR Ch. 6, § 2 require that persons obtain a DEQ permit prior to commencing the construction of any new facility or modification of any existing facility which may cause the issuance of 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 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. WYO. STAT. ANN. § 35-11-801(c) states, "A permit to construct is required before construction or modification of any industrial facility capable of causing

or increasing air or water pollution in excess of standards established by the department [DEQ] is commenced.”)

4. WAQSR Ch. 6, § 2 prescribes the applicability and procedures for issuing permits to sources under DEQ/AQD’s construction and modification permitting program.

5. WAQSR Ch. 6, § 2(a)(i) states: “Any person who plans to construct any new facility or source, modify any existing facility or source, or to engage in the use of which may cause the issuance of or an increase in the issuance of air contaminants into the air of this state shall obtain a construction permit from the State of Wyoming, Department of Environmental Quality before any actual work is begun on the facility.”

C. Wyoming Prevention of Significant Deterioration Program

1. Wyoming’s Prevention of Significant Deterioration (“PSD”) program pursuant to WAQSR Ch. 6, § 4, requires persons wanting to construct or modify major emitting facilities to demonstrate before construction commences, that construction or modification of the facility will not cause or contribute to air pollution in violation of any Wyoming ambient air quality standard.

2. Pursuant to WAQSR Ch. 6, § 4, before constructing a new major emitting facility or making a major modification to a facility in an attainment area, a person must first obtain a PSD permit and install and operate the best available control technology for each pollutant subject to regulation that would have the potential to emit in significant quantities.

3. WAQSR Ch. 6, § 4(a) defines a “major stationary source” to include “(b) any stationary source which emits, or has the potential to emit, two hundred and fifty tons per year or more of any pollutant for which standards are established under these Standards and Regulations or under the Federal Clean Air Act.”

4. “Major Modification” means “any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in the definition for “Significant emissions increase” in this section) of a regulated NSR pollutant (as defined in the definition for “Regulated

NSR pollutant”) in this section); and a significant net emissions increase of that pollutant from the major stationary source.” WAQSR Ch. 6, §4(a).

D. Notice of Violation to BP

1. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4334-08 (“NOV”) to BP on July 24, 2008, alleging in part that BP violated the Act and the WAQSR at the Facility for the removal of the re-compressor from service and flaring H₂S at the Inlet Flare, which had the potential to increase SO₂ emissions, without a permit modification. Additionally, the NOV contained a second alleged violation for bypassing the scrubber/stripping tower and flaring H₂S gas at the Tank Farm Flare which had the potential to increase emissions without obtaining a permit modification. During settlement discussions regarding this alleged violation, the AQD determined that this change would not have increased emissions of SO₂ and therefore, was not a violation of the permitting regulations.

2. On June 30, 2008, BP reported that a new re-compressor at the Facility was placed into service, remedying any violation of WYO. STAT. ANN. § 35-11-801 and the WAQSR.

3. 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 BP of entry by the Court of this Consent Decree, BP, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with the modification or PSD permitting requirements, agrees to pay to the DEQ/AQD the sum of two hundred thousand dollars and no cents (\$200,000.00) as a full and complete cash payment to resolve this matter (“Stipulated Penalty”). The check shall be made payable to the Department of Environmental Quality and shall be delivered to Luke J. Esch, Assistant

Attorney General, Wyoming Attorney General's Office, 123 Capitol Building, Cheyenne, Wyoming 82002.

B. Payment of the Stipulated Penalty shall constitute full satisfaction of BP'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 as specified in Section IV.A. of this Consent Decree shall constitute full satisfaction of the claims alleged in the Complaint initiating this action or in DEQ Notice of Violation Docket No. 4334-08.

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

D. Within thirty (30) days after payment by BP of the Stipulated Penalty 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 Sections IV and V shall survive termination of the Consent Decree.

VI. Parties Bound

A. This Consent Decree shall apply to and be binding upon BP, its successors and assigns and upon the DEQ and the State of Wyoming.

B. 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 BP 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. BP 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 embodies the comprehensive stipulated settlement between the Parties, are not severable.

VIII. Reservation of Rights

A. By signing this Consent Decree, BP 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, BP 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 BP'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 30th day of December, 2008.

G. Michael K. Davis
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 30 day of December, 2008.

G. Bishop
GERRIE E. BISHOP
Clerk of District Court

By [Signature]
Deputy

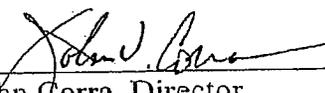
WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 12/30, 2008

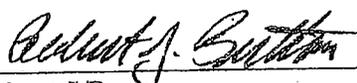
By: 
David Finley
Administrator, Air Quality Division

Date: 12/22, 2008

By: 
John Corra, Director
Department of Environmental Quality

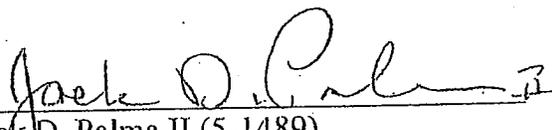
FOR BP AMERICA PRODUCTION COMPANY:

Date: 12/18/, 2008

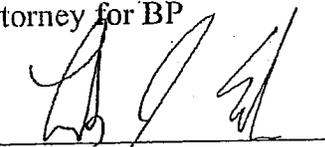
By: 
Robert J. Button
Vice President, Wyoming Performance Unit
North America Gas Strategic Performance Unit

APPROVAL AS TO FORM:

Date: 12/30, 2008

By: 
Jack D. Palma II (5-1489)
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Attorney for BP

Date: 12/29, 2008

By: 
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